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87

VALUES IN THE CONSTITUTION

Time Allowed: 3 hrs.

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 is indicated against it. • The paper contains 3 Sections; First Section has direct questions for NCERT text books, while Second Section has questions from wide range of books and study material and the Third Section has inter-disciplinary and application based questions that require knowledge and information of other subjects as well. • Answers to questions no. 1 to 5 should be in 150 words, answers to questions no. 6 to 15 should be in 200 words, whereas answers to questions no. 16 to 20 should be in 250 words. • Keep the word limit indicated in the questions in mind. • 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.
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Supervisor Signature _____

Supervisor Signature _____

Name Medha Anand

Roll No. _____

Mobile No. _____

Date _____

Signature Medha Anand

REMARKS

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Section - A (NCERT)

Q1. Although, the Constitution of India does not use the word federation, yet the Indian Union is based on the principles of federalism. Discuss. (10 Marks)

Ans 1. Indian constitution, Article 1 declares India as a Union of states and not the word federation per se, but the principles which are mentioned in the constitution prove it to be a federation.

The various provisions which prove that states enjoy considerable autonomy are -

1. Provision of various lists in seventh schedule - state govt has as much power over state list as union govt has on Union list when seventh schedule is read with Art 246.
2. Status of Rajya Sabha - House of states - Rajya Sabha in India enjoys considerable power as compared to other countries as can be clearly seen in Art 249 and Art 312.
3. Amending procedure of constitution - Both centre and states will be considered in matter affecting division of power b/w centre and state (ratification of atleast half of the states).
4. Devolution of finances - state govt have effective control over finances, giving them considerable leeway.

Remarks

But, there is also unitary bias among constitution as propounded by Art 2 and Art 3, wherein India is an "indestructible nation of destructible states". This can be proved by

- (1) Post of governor - He is appointed on Centre's discretion and accused of being "Centre's agent" on many discourses.
- (2) State Emergency Provisions - Under Art 356, Union can impose President's rule on vague terms
- (3) Centre's rule on state list in case of national Emergency (Art 253), President's rule (Art 356), forging international treaty etc.
- 4.) Residuary subjects of 7th schedule with the union.

Hence, Indian provisions are federal but with a unitary bias & makers have tried to make it a perfect blend to accommodate the diversity of India.

4½

head arguments given by

Remarks

Kanburkar; why Indian model has been called as quasi-federal, cooperative-federalism -

Q2. Our interest in and fascination for democracy often pushes us into taking a position that democracy can address all socio-economic and political problems. Critically analyze.

(10 Marks)

Ans. India is often introduced - as the largest democracy owing to its huge population. While the ideals of democracy are important to be followed, but mere democracy won't provide the population of the country food, clothing and shelter.

It is often argued that since democracy involves checks and balances and decision by discussion, it takes a lot of time to arrive at decisions. This takes a heavy toll on the socio-economic welfare of people. For Ex - Funding is provided to welfare schemes after beneficiaries have suffered a lot. The reason may be red tapism or inefficiency.

Criminalisation of Politicians has become a common phenomenon. To pass the first past the post system parties choose candidates having money power and muscle power. Simply holding elections & neglecting such a crucial phenomenon sickens democracy.

Caste Identities have become stronger and social tensions prevail when leaders make

Remarks

gains through caste politics. This leads to factions fighting for asserting castes rather than a quest for development.

Women participation is often neglected. Even in P.R.I's, the concept of Panchayat Pati have become common. Democratisation should also be accompanied by gender sensitivity and involvement.

Tribal issues are usually dealt with by their coercive integration with the mainstream society, instead by trying to preserve their culture.

Thus, democracy alone can't do wonders, it must be accompanied by value enhancement of the society at large, more emphasis on socio-economic upliftment rather than mere elections etc.

(2½)

what do you understand
by 'democracy'? how does
it contrast with authoritarian
approach?

Remarks

Q3. We cannot live in a world where there are no constraints. We need some constraints or else society would descend into chaos. Elaborate.

(10 Marks)

Ans. Constraints are the safety valve of a decent society. Rights need to come with constraints else no one would be able to enjoy their rights at all. Constraints are beneficial restrictions which give all people a chance to exercise their liberty without hurting someone else's dignity.

The makers of the constitution were aware of this and hence provided fundamental rights with constraints viz Right to freedom of movement can be constrained on grounds of morality and public ^{interest} peace. Similarly, freedom of speech (ART 19) and expression can be curtailed on grounds of defamation, sedition, public interest, sovereignty of nation etc.

Parliamentary privileges act as constraints on common man's fundamental rights as she can't publish an expunged material (Searchlight case) This is to ensure that MPs and MLAs are free to express their opinion w/o any fear.

Remarks

The Right to Equality is constrained by providing positive discrimination to mitigate disadvantaged groups viz women, SC, ST etc. This is to ensure justice to one and all.

Thus, to prevent the world into going into chaos, constraints on rights are a must and they ensure that all are able to duly enjoy their rights.

(3½)

mention relatively more
examples/criteria -
critically write about
idea of 'restrictions'
That would make your
analysis balanced

Remarks

Q4. The champions of democracy support the idea that equality is a necessary condition for social development. In this reference, elaborate on types of equality guaranteed by Indian constitution. (10 Marks)

Ans Equality demands treatment of one and all and also that likes must be treated alike. These are summarised as Equality before law and Equal Protection of law respectively, i.e. to say that constⁿ provides equal to all those who are placed equally.

Equality before law ensures that all persons are treated equally by law & not discriminated on race, religion, sex, caste etc. Equal Protection of law ensures that those at equal pedestal are treated equally. It doesn't guarantee equal treatment to those placed unequally.

Following equality are also provided by our constⁿ

- ① Political equality - Universal adult suffrage (Art 326) ensures all above the age of 18, to be able to vote. The 61 Constⁿ Amendment lowered the voting age from 21 to 18 for all irrespective of caste, gender etc.
- ② Social equality - Art 17 provides untouchability as an offence, giving hitherto underprivileged castes men & women social equality.

Remarks

- ③ Religious Equality - Secularism provides that none of the religion is wrongly discriminated against. Art 26-30 provide for freedom of conscience, religion.
- ④ Economic Equality - Taxes are collected based on income and not on the basis of primordial identities.
- Grievance
- ⑤ Redressal Equality - Article 32 provides all people a mechanism to approach the court in case of breach of their rights.

Thus, the Indian constⁿ provides a diverse range of equality to its populace to ensure justice to all.



Major categories are
social, economic & political -

go beyond FR
contrast formal and

Remarks

substantive equality -

Q5. Examine the similarities between the position of British Crown and Indian President.

(10 Marks)

Ans - India has borrowed many provisions from British Constitution including the Westminister model or Prime Ministerial form of the govt.

The position of President has also been taken from the same with the difference being that while Indian President is elected, British crown is hereditary.

Similarities between British Crown and Indian President include -

- ① De jure head - Both act as De jure head i.e. by jurisdiction and not as De facto i.e. as a matter of fact.
- ② National Heads of the govt - While they are head of the state they don't act as head of the govt, which is the PM.
- ③ Engages in international agreements and treaties on the advice of COM.
- ④ They are the final link to make ~~and~~ bills in act on the advice of COM.

Remarks

5. They have pardoning power.
6. They represent the nation and complete a chain which would have had a void in their absence.

Due to the long legacy of colonialism, there are various similarities b/w Indian President and British Crown.

(3)

Focus more on powers and fr;
write also about -
dissimilarities between the
two -

Remarks

Section - B

Q6. Under Indian setup, the president's job is restricted to rubberstamping the decisions of the central government, faithfully. In this context, analyse the functions, roles and responsibilities of President and why he doesn't need to be a rubber stamp.

At the Westminster model that India appointed ^{.. (12.5 Marks)} ensured that president works as Head of state and not as Head of govt. This has led to many comment that his/her job is restricted to rubberstamping the decisions of central govt.

In Kesava Singh case, SC ordered that Prez should work on advice of govt which is also added to Art 72. But, he has been also given discretionary Powers: like Vetoing Power, right to send a matter for reconsideration, right to be informed by PM on policy matters etc

Abdul Kalam sent back a proposal for amending office of Profit provisions to cater to Congress Party's undue demand. This was termed revolution ^{only} and he not just marked his dissent, opened the topic for discussion in public order. Pocket veto once ensured that President's

Remarks

rule wasn't imposed in Pepsu states.

The President can even exercise absolute veto wherein s/he rejects a proposal for reconsideration of Parliament. Though again if s/he receives the proposal, s/he needs to sign it (to allow rule of the elected govt).

The President even clears bills saved by governors to ensure that democracy functions well.

The recent SC judgment stands a testimony to imp. of Prez, wherein a difference of opinion b/w delh govt & LG will be cleared by Prez.

This proves the important link our President has been in the polity of our nation.

(1 1/2)

write in alignment with the demands; leg, exec, jud power; explain situations of discretion

Remarks

Q7. What is direct democracy? Is it time for India to adopt a measure of direct democracy as is being practiced to some extent in Switzerland and some states of the United States of America? Examine critically. (12.5 Marks)

Ans. Direct Democracy implies rules directly by the people. Initiative, Recall, Referendum and Plebiscite. With our Indirect Democracy being plugged into criminalisation and corruption, demands for initiating direct democracy are on the rise.

Arguments for Direct Democracy -

- It will make the govt more accountable & responsible
- will check the long dreamt goal of constⁿ of a govt of, by & for the people.
- will be a solⁿ to criminalisatⁿ of politics
- would take politics away from primordial identities like caste etc.
- will protect minority interest.
- will take all the people in the democratic process.

Remarks

Arguments against Direct Democracy

- Switzerland has a small popⁿ and India being the largest democracy would find it hard to ^{copy a} model unattentive to its needs.
- Consensus building among parties on clauses would be hard
- Poverty & illiteracy among the masses will act as deterrent.
- Infrastructural needs would require humongous finance.
- Teething problems are bound to occur.

Thus, in contemporary times it would be hard to introduce direct democracy in India.



get examples from the US and Switzerland;
75th & 77th amendments can be related to direct democracy -

Q8. Right to expression is guaranteed by the Indian Constitution, however, to ensure that citizen find proper avenues to express themselves, we need to evolve mechanisms. Elaborate. (12.5 Marks)

Ans. With the rising social media, online abuse has become a common phenomenon. It is because of lack of awareness among victims for grievance redressal and anonymity offered to abusers that such practices have become widespread.

Mechanisms need to be evolved to ensure that people find proper avenues to express themselves -

→ Schools should be the best place to inculcate a habit of debate & discussion and simultaneously learning to listen to varied viewpoints.

→ Families should inculcate habit of discussion, instead of mere following like sheep behind the elders.

→ Colleges should ensure debates & discussions and should be a vent for youngsters to give their opinions.

Remarks

- Govt should open up platforms for citizens to vent out their grievances
- Print media can be used very well.
- effective restraint on online abusers should be ensured by enacting laws in that effect.

Thus, free speech must be accompanied by constraints to ensure that no one's rights are hampered and all get to enjoy the fruits of democracy.

④

Talk about

→ articles

→ reasonable restrictions

→ structural impediments in exercising freedom of

speech

Remarks

→ get examples of suppression of dissent -

Q9. What are parliamentary privileges? Under what circumstances, they can have a conflict with civic liberties. Elaborate. (12.5 Marks)

Ans. Art 105 provides for parliamentary privileges - both to individual members as well as to the parliament as a whole. They have often been cited as a tool against civil liberties.

against Right to freedom of speech & Expression -

① "The Hindu" episode - In 2004, the editor of the Hindu was brought to court for speaking against the parliament in their editorials.

② Shobha De case - she was convicted for speaking against the govt policies.

③ Karnataka Assembly case - the recent case against the journalists for breach of parliament privileges stand a testimony to this fact.

Also, since MP's and MLAs can't be caught 40 days before, during & 40 days after session it impinges on the Right To Equality of the people.

Remarks

Also, when Shaikh and Mukti Morcha (JMM) was accused of bribery, SC acquitted them using parliamentary privileges.

Way forward -

→ Problems arise due to non-codification of parliamentary privileges.

→ Independent commⁿ should look into breach of parliamentary privileges instead of parliamentarians being a judge of their own cases and destroying principles of natural justice.

④

First of all you should list all imp privileges given individually and collectively -

see how it restricts judiciary etc -

Remarks

Q10. What is conscription? Examine the case of conscription in India in light of the balance between Fundamental Duties and Rights. (12.5 Marks)

Ans. Conscription refers to the govt mandating it for people to join national services in case of emergency specially in the Army.

This raises the debate b/w FD's and FR's wherein when the govt gives its people certain rights doesn't it have the right to take help of people in times of crisis.

SC in Gopal case held FR's above FD's while in Maenke case it kept FD's above FR's. But in Minerva Mills case it declared that FD's & FR's are wheels of a chariot and denouncing one over the other won't be fruitful.

FD's in Part IV-A of the constⁿ are morally binding & not legally enforceable but help the govt in enforcing moral ideas on its population.

are you talking about FR and FD?

same the case correctly

Remarks

National security & integration do require people to serve the nation during emergencies & crisis. While this clause can't be really proved wrong or against FR's, the debate b/w FR's & PD's are an everlasting one.

③
Get more rigorous understanding
about democracy
arguments for and
against
Refer in endon context.

Remarks

Q11. Examine the difference between equality and liberty as a state's objective?

Ans. B.R. Ambedkar called Liberty, Equality (12.5 Marks) and Fraternity as the trinity on which democracy survives. He proposed that Liberty without Equality would lead to chaos, while Equality without Liberty will lead to crushing one's thought & creativity.

While Equality means - giving all an equal chance - in terms of opportunities, employment, freedom etc, Liberty means allowing one's creativity to nurture.

Liberty, Equality as tenets of democracy were first propounded during French Revⁿ & have become the bedrock of modern democracies in the world.

Scientific thought is a successor to Liberty of thought while dissent succeeds Liberty of ^{speech} expression and caricatures are successors of Liberty of Expression.

The Constⁿ provides Equality - Social, Economic and Political. While social equality includes gender equality, no caste based discrimination etc.

Remarks

Economic equality lets banks give loans to any startup etc. to ensure they are given equal chances.

Political equality is ensured by Universal Adult Suffrage (Art 326) and equal chances for all to form political parties.

Thus, equality & Liberty are basic tenets a democratic govt provides to its citizen

(4)

mention more articles;

see how do these

value impact our

politics and nature

of state; is there any

tensions between the two?

Remarks

Q12. Examine the importance of elections in a modern democracy? Are they enough for working of a democracy? (12.5 Marks)

Ans - Elections are the lynchpins of modern democracy. They ensure people's participation is apt and help in forming a govt based on popular vote.

But mere elections aren't enough for working of a democracy and a lot must follow in to ensure that democracy doesn't reduce to shambles -:

- ① Political awareness among citizens ensures that they choose their leader wisely.
- ② In Ramesh Datal case, SC held that convictⁿ on the day of nominatⁿ amounts to disqualificatⁿ this keeps convicts at bay & ensures that tainted leaders aren't formed.
- ③ Public Trust - With recent outcry against faulty EVM's, ECI should ensure that people trust the system.
- ④ In ADR vs VOI 2002, SC mandated disclosure of assets, liabilities of candidates to ensure account

Remarks

about

- ⑤ Representative Polity - With First Past The Post system, minority interest take a back seat.
- ⑥ Gender equality must be ensured
- ⑦ As SC said, dissent as safety valve of democracy, people should be free to give their views.
- ⑧ Parliamentary Privileges should be codified.

Thus, elections are an imp. ingredient for making of democracy but not the only ingredient.

(3½)

Explain significance of elections in detail; -

Then discuss major problems with our election process -

Role of EC, SC, media be identified in creating a thriving, vibrant democracy.

Remarks

Q13. What are some reasonable restrictions on freedom and liberty? Examine why they are needed for proper functioning of a modern society. (12.5 Marks)

Ans Restrictions are - necessary for preventing a society into chaos. They ensure that all people are able to enjoy their rights in a able & just manner.

Restrictions on freedom & liberty

- ① Defamation - Defaming a person amounts to criminal intent as clarified by SC and as it leads to tainting a persons image. Sectⁿ 499 & 500 of IPC
- ② Seditious - stating against govt policies in a way to incite people amounts to seditious as per Sectⁿ 124 of IPC. In Maenka Gandhi case, SC held criticizing govt policies don't amount to sedition.
- ③ Art 19(2) - It gives sovereignty of nation, defamatory, sedition, integrity etc as exemptions to freedom of speech & expression.
- ④ Freedom to move is restricted in case of tribal areas (inner line permit) and aids patient (medical ground).

Remarks

The SC and the governments have time and again tried to strike a balance b/w liberty, freedom of individuals and constraints on them. It has sufficiently succeeded in achieving this aim of giving freedom to all.

(4)

critically engage with
idea of "reasonable
restrictions"

get examples of
suppression of freedom

List all imp freedoms
given first of all

Q14. Did the Government of India Act, 1919 introduced responsible Government and ended 'benevolent despotism' in India? Discuss. (12.5 Marks)

Ans 14. GoI Act 1919 or Montagu-Chelmsford reforms introduced the following to end 'benevolent despotism' in India -

- ① introduced bicameralism in state legislatures
- ② introduced diarchy - reserved subjects (for governor) & transferred subjects (for COM)
- ③ introduced list specifying central subjects and state subjects.
- ④ Extended "Reserve" to Sikhs, Anglo-Indians etc.

Though the experiment was not very successful but was an act in the right direction. $(2\frac{1}{2})$

actually evaluate montagu reforms in the wake of Benevolent Despotism -

↳ Explain this phrase in the introduction

Remarks

Remarks

Q15. Triple talaq which has been banned in more than 20 Islamic countries was still a practice followed in India, until recently. What is the reason behind it? How far the judicial pronouncements in India have been successful in opposing this practice? Critically Analyze. (12.5 Marks)

Ans. Shayara Bano case brought attention among Muslim women to the forefront of national debate. Practices like triple talaq were still prevalent in India as -

- ① Lack of political will - Rajeev Gandhi overturned decision of SC to provide relief to divorced Muslim women
- ② Minority issues - The fear the traditional muslims play when talking of reforms leads to no change in status quo.

~~Judicial pron~~

- ③ Illiteracy among Muslim women doesn't allow them to stand for their rights.
- ④ Lack of awareness.

Judicial pronouncements -

SC ruled triple talaq as not being part of core values of Islam and against rights of women as only men were allowed to utter Talaq thrice & get rid

Remarks

of the marriage while women were to prove why they wanted divorce in court.

It ruled against Triple Talak to ensure gender justice and led to promulgation

The Muslim Women Ordinance criminalising triple talak in its entirety.

But, a lot needs to be done from generating awareness to ensuring that women assert their rightful demands.

An ordinance is just the first step changing ground realities is the key.

(3 1/2)

- Introduce triple talak
- see minority rights, Indian model of secularism, personal law, UCC debate
- Make your analysis rigorous.

Remarks

Section - C

Q16. The Supreme Court issued a notice to the Centre over a public interest plea seeking direction to establish guidelines to prevent torture, cruelty, inhuman or degrading treatment of jail inmates. In this context, discuss the need of prison reforms and various measures in this direction. (15 Marks)

Ans 16. The state has the responsibility of ensuring that the prisoners residuary rights are taken care of. It is in this regard that SC has asked centre to take note of ground realities.

Need of Prison Reforms -

- ① Overcrowding - Prisons in India are on an average carrying 150% of its capacity, reflecting the shoddy conditions in which people live.
- ② Lower conviction Rates - A huge population of undertrials and a threat of them being converted to hardcore criminals is a consequence of the fact that convictⁿ rate in India is 45% with avg. convictⁿ taking approx. 15 long years.
- ③ Custodial deaths - Unpteen cases of custodial deaths are a danger sign of the deteriorating morals of jail officers.
- ④ Custodial Rapes - These reflect the inhumanity & insensitivity of the system towards its people.

Remarks

- ⑤ Elite Issue - while normal citizens are subjected to inhuman treatment, it is also heard of for elite class being provided TV & fridges etc.
- ⑥ Solitary confinement impacts the mental & physical stability of a person and should be used as a last resort.
- ⑦ Colonial mindset of police personnel regarding themselves as Mai Baap of the prisoners gets them trapped further.

The govt needs to understand that they need to make prisoners fit into society after they leave the prison and not convert them into hardcore criminals.

Various measures in this direction include -

- ① open prison system in Maharashtra where prisoners leave for work in day time and return back to prison at night.
- ② Kerala Experiment of jail inmates opening a cafe / restaurant should be copied.
- ③ Radio shows in prisons & making radio jockeys among prisoners, leads to all of

Remarks

- them being aware of their rights
- ④ Himachal Pradesh govt has provided facilities like video conferencing to the prisoners called 'Jail Vatsa' to ensure they remain psychologically sound while talking to family
 - ⑤ In Maharashtra, a jail reform initiative 'gala bhel' (personal meeting) is organised to allow prisoners to celebrate special occasions with family members.
 - ⑥ Recently, the govt has appointed a committee - AMITAVA ROY committed to look into prison reforms.

The case of Ajit Kumar, a prisoner from Varanasi who studied diploma in tourism studies from IGNOU & became all India topper, must set testimony to the urgency of prison reforms required. The govt needs to rope in experts to ensure well being of these deviants.

7½

comprehensively addressed the demands of the question.

Remarks

Q17. Democracy is truly functioning when people have right to recall legislators and held them accountable for what they were elected for. In this reference, critically examine the need for the right to recall option in India. (15 Marks)

Ans 17 While Recall is an instrument of Direct Democracy wherein people enjoy the ability to Recall a legislator if they find him/her unsuitable for the post.

Arguments for giving Right to Recall-

- It will make the legislators accountable and responsible for their actions.
- While ^{foundatⁿ} of NOTA was laid in PUCI vs UOI 2013 case Right to Recall would further strengthen the democracy by providing parallel means of accountability.
- Rather than appearing only after 5 years, it would ensure that legislators remain in public eye throughout their terms.
- It would help realise the constitutional dream of a govt of the people, by the people, for the people in a true sense.

Remarks

→ The rising criminalisation of politics can be duly checked if voters are given Right to Recall

→ It would encourage legislators to work for development and welfare rather than on parochial grounds.

Arguments against Right to Recall.

→ Implementation problem will be huge owing to the large population of India.

→ Immoral practices like opposition parties irrationally resisting R2R will have to be checked

→ Consensus building on provisions of R2R would be a humongous task

→ Huge illiteracy & poverty existing in India would create problems in implementation of R2R in a true sense.

→ The provisions related to "basic structure doctrine" will be modified.

→ Litigations would spike and the already overburdened judiciary would be able to handle it.

Thus, implementing R2R would involve a lot of challenges and all the stakeholders' opinions will have to be kept in mind before implementing it.

7

Before meeting merits/elements of 'right to recall',
 write about status of
 accountability and responsiveness
 in present election process.

Remarks

Q18. The Supreme Court's landmark and unanimous judgment that individual privacy is a guaranteed fundamental right under Article 21 will further increase the scope of the most liberally inserted article. In this context, discuss how the judgment interprets privacy and its implications on Aadhaar and Article 377 (15 Marks)

Ans 18 SC in Puttaswamy case upheld the right to privacy as a FR under Article 21. It led to discussion on array of topics from validity of Art 377 (Criminalisation of Gay sex) to validity of Aadhaar, as a breach of one's privacy. While SC had dismissed R2P in MP Sharma case and Kharak Singh case, its assertion of R2P has opened a Pandora's Box.

Aadhaar Verdict

The SC held the govt view that provision of Aadhaar ensures plugging up of leakages in welfare schemes by ensuring negation of bogus beneficiaries and giving the real beneficiaries the actual benefit.

Simultaneously, SC dismissed compulsory Aadhaar linkage to PANI card etc and held it to be a voluntary clause.

Remarks

Linking of bank accounts, digital wallets also can't be said to be a pre-requisite as per SC.

On Aadhar ^{Act} being passed as Money Bill, SC pragmatically sought it as a viable option; though not a morally correct decision.

Article 377

In Navtej Johar case, SC dismissed Art 377, decriminalising sexual acts which are said to be "against the law of nature". It upheld that what goes on between two adults in private space is none of its concern.

Indu Malhotra judged that society owes an apology to the LGBTQI (Lesbian, Gay, Bisexual, Transgender, Queer & Intersex) community.

Thus, in Aadhar case the SC ruled that it is essential for guaranteeing welfare services to its people & not a breach of privacy of citizens per se.

While in case of sectⁿ 377, it gave privacy a wider connotation and decriminalised Gay sex except for Bestiality, which still remains a criminal offence.

Thus, R2P has given wide amplitude to people's right & also opened a Pandora's box of litigation.

7

Lead arguments that criticise the judgment also - make overall analysis balanced.

Q19. The indirect democracy stands on the principle that government of experts could make long-term plans for the nation's future than normal citizens. But political corruption has converted this principle to the myth. How can accountability be brought in indirect democracy? Does a qualification criterion be made for election both for election and candidate? (15 Marks)

Ans. Indirect democracy means where citizens elect their representative to higher posts. It ensures that those who are experts of ground realities reach the top positions.

It also gives a secure tenure as long as the legislators enjoy majority. This ensures that they are able to formulate long-term plans for the nation's future without any fear or prejudice.

In direct democracy, Right to Recall may lead to instability or short-term plans to woo the voters & escape election.

But the advantages of Indirect democracy have become void owing to the political corruption that exist in the society. Political corruption projects itself in a variety of forms-

→ Criminalisation of Politics leads to those with money & muscle power gaining access to power.

Remarks

- People bribe voters with liquor & gifts.
- Paid news has become rampant.
- Parochial mindset has diverted law makers from developmental plans & focussed more on caste based issues.

→ Caste based politics has increased manifold.

Ways of bringing accountability in indirect democracy -

1 → In Ramesh Dalal case, if a candidate is convicted by a court even on the day of his nomination, he stands disqualified.

2 → In ADR vs VOI 2002, a candidate needs to disclose all his whereabouts for the people to see.

3 → As per recommendatⁿ of ECI, sectⁿ 58B should be inserted in RPA to disqualify parties even in case of bribery to voters.

4 → Checks & balance mechanisms should be legally enforced.

5 → Organisations like ADR, Vidhi foundatⁿ should be further encouraged.

Remarks

A qualified criteria may work out as in educational qualification etc but it may not serve the purpose in entirety.

In Rajasthan, educational qualification for women were inscribed for PRTs, the decision backfired and higher caste men went for second marriages, leaving the 1st wife for want of young, educated brides - to be able to contest elections.

∴ Any measure needs to be effectively studied & thought out to ensure that the decision doesn't backfire and restricting candidates by subscribing qualifications may invite litigation under Right to Equality. So, decisions must be well thought out.

Bring on other, more general arguments for/against a qualification criteria -

6/12

Remarks

Q20. The Supreme Court upheld the constitutional validity of sections 499 and 500 of the Indian Penal Code providing for criminal defamation over free speech. In this context, elaborate on the arguments of the Supreme Court to uphold the validity of these sections and significance of the judgment. (15 Marks)

The SC upheld the validity of criminal defamation over free speech on a variety of grounds. It decided that someone's free speech should not curtail someone's reputation.

In Maneka Gandhi case, SC extended Right to life as right to live with dignity.

In keeping up with this precedent, the SC ordered that a person can't lose his reputation through years of toil and another person can't impinge on his reputation.

The SC ordered that both fine and imprisonment must be levied on a person charged for criminal defamation, so that if a person is unable to pay the fine, s/he at least goes to the prison for his attempt to destroy someone's reputation.

Remarks

It was essential to ensure the dignity of a person and ensure that a hard earned image of a person is not tarnished owing to the exercise of free speech of another.

Significance

This constraint prevents the society from turning into chaos by ensuring that people's dignity is well safeguarded. The SC took a tough stand to show to the nation, that alongwith democracy and rights, India stands for safeguarding the dignity & respect a person has earned throughout his lifetime.

It is in itself a wider understanding of right to life instead of mere animal persistence. Thus, SC verdict is a step in the right direction and will ensure people's emotions aren't played with.

Remarks

5
You should recognize
dangerous ramifications of
making defamations a
criminal offence

Remarks

