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ADVANCED INTEGRATED MENTORSHIP

POLITY ASSESSMENT TEST-3

(To be filled by candidate)

Test Code : TC302

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GENERAL INSTRUCTIONS

This Question-cum Answer (QCA) Booklet contains 25 pages. Immediately on receipt of the booklet, please check that this QCA booklet does not have any misprint or torn or missing pages or items, etc. If so, get it replaced by a fresh QCA booklet.

Candidates must read the instructions on this page and the following pages carefully before attempting the paper.

Candidates should attempt the questions strictly in accordance with the instructions specified in the question paper and in the space prescribed under each question in the booklet. Any answer written outside the space allotted may not be given credit.

Question paper will be provided separately and can be taken by the candidates after conclusion of the exam.

SUBJECT/PAPER

GENERAL STUDIES 2

Invigilator's Sign. :

(For filling by Examiners only)

Evaluator Code :

Q.No	Pg No.	Maximum Marks	Marks	Total
1	1			
2	3			
3	5			
4	7			
5	9			
6	13			
7	16			
8	19			
9	22			
10	25			
Grand Total				

Signature

MACRO COMMENTS

Q → 1

Ans

The IX Schedule once a vessel for reforms was transformed into a Constitutional dustbin of limited propositions. What was the significance of IR Coelho judgement - - - ?

IX Schedule of Indian Constitution provides for saving the laws included in Article 31-B from getting challenged in Courts of law, i.e. from judicial review.

IX Schedule

1) Originally it was created by 1st Constitutional Amendment act to promote social justice. Laws related to land reforms were added into it.

for eg: Zamindari abolition act.

2) Over the years the number of laws increased to more than 200 and many significant laws like Tamil Nadu reservation act were added into it.

IR Coelho Judgement

① In this case, SC said that laws placed in 9th schedule after April 24, 1973 are open to judicial review on the grounds of violation of Article 14, 15, 19, 21 and basic structure.

Significance of judgement

- ① Basic Structure : This strengthened the doctrine of basic structure as SC said that judicial review is basic feature of Constitution.
- ② Hierarchy of rights : SC clarified that there is no hierarchy in ^{fundamental} fundamental rights and all rights are equally important.
- ③ Effect and Impact test i.e. "Rights test" : SC innovated this test which said that not only form of law but the impact of law will be tested.
- ④ Constitutionalism : This case upheld the principle of 'limited government' & strengthened democracy.

Through this judgement legislature should learn that any law should be Carefully made with wider Consultation of all stakeholders so that it does not need the shield of 9th schedule and even if needed it should be used only in 'rarest of rare' case.

Q → 2

Examine the Importance of establishing a National tribunals Commission in systematically reforming the tribunal system in India.

Ans →

74th report of parliamentary Standing Committee has recommended establishing National tribunal commission (NTC).

Importance of NTC in reforming tribunals →

① Uniform administration: Main objective behind NTC is to provide for uniform administrative practices across all tribunals bodies so as to avoid conflict.

② Proper Coordination: NTC will ensure that effective line of Communications is set up between tribunals and ministries to make the system more efficient.

③ Autonomy: NTC will also ensure to reduce the interference of ministries into tribunals. This will preserve autonomy of tribunals.

- ④ Reduce pendency: By improving the efficiency, effectiveness of tribunals NTC will help in reducing pendency of cases in tribunals.
- ⑤ Conflict of Interest: Government is major litigant in tribunals and also it makes rules related to tribunals. NTC will remove this COI by framing rules.

⑥ Other steps that can be taken to reform tribunals?

- ↳ ① Supreme Court has said to create an Independent body for appointment and transfer of members of tribunals
- ② Improving Infrastructure.
- ③ Digitalization of process.
- ④ Fulfilling vacancies in all benches

Along with the creation of NTC, a holistic approach is needed to reform tribunals as also pointed out by S.C in L. Chandra Kumar case. Above steps should be taken on war footing basis to make tribunals an independent and efficient body.

Q-3

The Governor's office is neither decorative nor inconsequential, it assumes a Constitutional role of profound essence. To what extent does the governor actively contribute to the governance of a state & reinforce the principles of federalism in country?

Ans

Governor is the nominal head of state while the real power lies in council of ministers headed by Chief Minister of the state.

Role of governor in state

- ① Executive: All the decisions of the state is taken in the name of governor.
- ② Communication: Governor acts as an effective channel of communication between Centre and States.
- ③ Article 163: Governor acts on the aid and advice of Council of ministers.
- ④ Reserving bills: Governor can reserve important State bills for presidential consideration (Article 200).
for eg: matters related to State High Court.
- ⑤ President's rule: If the states fail to run according to Constitution or fail to follow directions of Centre then Governor can recommend to president about the same.

- ⑥ Appointing Com: Governor appoints chief minister by inviting largest party.
- ⑦ Special provisions: Governors also look after areas like 5th & 6th schedule, areas under Article 371 to 371J and maintain federal equilibrium.

Limitations in governor's role

- ① Disobeying the Com: Many times governor is not listening to advice of Com and acting on its own.
for eg: Kerala governor asking for resignation of chancellors of universities
- ② Delaying in assent: Governors sit on States bill indefinitely without any action
for eg: → NEET bill in Tamil Nadu.
- ③ Many criticize the governor is used by Centre to destabilize State govt.
for eg: Maharashtra.
- ④ Interference in daily governance → for eg: Delhi
Lo vs. Chief Minister, Governor of West Bengal.

Sarkari's Commission has said steps to reform governor's office like fixing the tenure for 5 years, non-political personality, consultation of State Chief Minister before selection etc.

It should be done to make governor as "friend philosopher and guide" of State government and not an obstruction to it.

Q-9

Instances of president's delay in commuting the death sentences have come under public debate as a denial of justice. Should there be a time specified for the president to accept/reject such petitions? Analyze.

Ans

Article 72 gives power to president to pardon, commute, reprieve, remit, etc. of a punishment given by courts to a convict.

Commutation: Commutation of death sentence means converting the death sentence into other forms of punishment like life imprisonment.

Delay in Commutation

- ① No time limit: There is no time limit specified in Article 72 of Constitution, within which president can take decision.
- ② Rarest of Rare Case: In Bachchan Singh Case it was held that death penalty should be given to very rare cases.
- ③ Politically sensitive issue: Commuting a death sentence can be influenced by public opinion and political

atmosphere.

for eg: A.G. Perarivalan case, Mirbhayy case, Afzal guru case.

- ④ Red tapism: President sends the mercy plea to Home ministry where the Bureaucratic procedures consume lot of time.

Arguments for specifying time limit:

- ① Mental torcher: The delay in Commutation causes lot of mental trauma and agony to prisoners (violates Article 21)
- ② SC Judgement: In Devender pal Singh case & Bhullar Shatrughan case SC said that inordinate delay in deciding mercy plea will automatically convert death sentence to life imprisonment.

⑤ Along with specifying the time limit other reforms should also be taken to reduce Red tapism, speeding the criminal justice system, e.t.c to provide Complete justice because as they say "Justice delayed is justice denied".

NEXT IAS

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Q-5

How has Judicial activism in India contributed to the protection and advancement of human rights? Discuss w.r.t. significant cases.

Ans

Judicial activism is the proactive role played by judiciary in bringing change in the society.

Judicial activism and Human rights protection ⇒

- ① Concept of PIL: In S.P Gupta case, SC relieved the "Locus Standi" principle. Now anyone can go to courts for rights of disadvantaged sections and get justice. This provided avenue to protect Human Rights of marginalized people.
- ② Hussainara Khatoon Case: SC directed the officials to provide free legal aid to undertrials & said Right to speedy trial as a fundamental right.
- ③ Sheela Barse case: SC issued guidelines to protect women prisoners from custodial violence.
- ④ Viishaka Vs state of Rajasthan: SC issued guidelines to protect

women from sexual harassment at work place.

- ⑤ M.C Mehta Case : SC closed down several polluting industries in Delhi as Right to clean environment is a Human right.
- ⑥ In Naz Foundation Case, SC decriminalised Homosexuality and in Navtej Singh Johar Case Transgender was recognized as third gender.
- ⑦ Banning Instant triple talaq, allowing women entry in Sabarimala temple etc are other examples.

Concerns: Although Judicial activism fills the gap created by legislature and executive but it can sometimes translate into Judicial overreach for eg: Banning liquor on the roadside of Highways.

Supreme Court has pointed out that while exercising Judicial activism courts should also apply Judicial restraint to protect Separation of power doctrine. Human rights are organic like society and evolve over time so proactive step by judiciary is welcomed.

Q-16

Resorting to ordinances have always raised concerns about the violation of the spirit of SC. While noting the rationales justifying the power to promulgate, analyze whether the decision of SC on the issue has further facilitated resorting to this power. Should power to promulgate the ordinances be repealed?

Ans

President under Article 123 and governors under Article 213 can promulgate ordinances.

Rationale for this power : Justification

- ① The Legislature not in session : This power is used during recess of legislatures to fulfill some "immediate & urgent need."
- ② During crisis : Recent example of Covid-19 when parliament could not hold sessions, the promulgating power ensured that necessary laws to deal with situations got framed.

Supreme Court has given many judgements regarding Use and misuse of this power.

Important judgements :

- ① A.C Cooper case (1970) : Presidents Satisfaction about "immediate need" of ordinance is subject to judicial review on ground of being "Malafied".
- ② D.C Wadhwa case (1987):
 - (a) Bihar government kept repromulgating the same ordinance for 256 times. SC said this as unconstitutional. Excessive repromulgation without laying it before legislature is ultra vires
 - (b) Ordinance is not a substitute to powers of legislature.
- ③ Kesavananda bharti case : Separation of power is basic structure.

Trends in Ordinances

- ① Numbers increased : In 1950 the average ordinance was 7.1/year. It increased to 215 in 2020 (PRS data)
- ② Repromulgation of ordinances by president has not decreased
for eg: Tribunals reforms ordinance, Indian medical Council amendment ordinance

③ States are also resorting to ordinance route excessively
for eg: Kerala govt issued '81' ordinances
in 2020 (PRS data)

④ However there are many genuine cases of ordinance route.
for eg: Ordinance related to disaster management during Covid-19.

So decisions of SC has not fully stopped the misuse of ordinance making power.
But despite this ordinance making power should not be repealed because:

- ① It fulfills legislative vacuum.
 - ② Misuse does not implies repealing of law. It implies the restraint on the part of executive as there is nothing wrong with the law.
 - ③ Helps during crisis and emergency
- Separation of power and "checks and balances" are core spirit of Constitution.
The power of ordinance should be used as a "last resort" & not "daily affairs".

Q-7

Constitution envisages an Independent judiciary, not an insulated judiciary. In light of the given statements, Discuss the issues associated with the appointment of judges in the higher judiciary & suggest alternatives to the current system.

Ans

Article 124(2) and Article 217 of Indian Constitution provides of appointment of judges to Supreme Court and High Courts respectively.

Appointment of Judges: Mechanism

- ① In 2nd judge case Supreme Court created Collegium system for appointment of judges.
- ② As per 3rd judge case: president has to consult ^{collegium} ~~collegium~~ of SC, HC (as the case may be) for appointment. This consultation is binding on president.
- ③ Collegium system:
 SC: CJI + 4 most senior judges
 HC: CJ of HC + 2 most senior judges.

Issues associated →

- ① Non transparent: The manner

of selecting judges by collegium system is very secret. Minutes of the meetings are not disclosed

② Nepotism and favouritism: Many critics that it leads to favouring the near and dear ones.

③ Against Separation of power:
Supreme Court in 4th judges case struck down National judicial appointment Commission (created by law to appoint judges ^(NJAC)). It is termed by many as judicial overreach.

④ Delays in appointment: Collegium system leads to tussle between government and judiciary which keeps the appointment pending for eg: 27% vacancy in H.C [ADR data]

⑤ Vice president of India has termed collegium system as "tyranny of unelected".

Alternatives to Current System →

- ① NJAC: Eastwhile NJAC could be revived with reformed terms after consultation with all stakeholders including judiciary.
- ② Reform in Collegium System:
In the present system no member of government is represented in Collegium.
- ③ Transparency: Minutes of meetings of collegium system should be made public.
- ④ Time bound decision: Both judiciary and government should specify a time limit to take decision.

Appointment of Judges should not affect the independence of judiciary. Each organ of government should have say in appointment and above alternatives could be employed for the same.

Q-18

Examine the advantages & Challenges associated with the implementation of online dispute Resolution (ODR) mechanisms in resolution of disputes.

Ans

Online dispute resolution is a mechanism in which information and Communication technology is integrated with Judicial process for justice delivery.

Advantages of ODR

- ① Huge number of pendency : According to National judicial data grid, around 4.7 crore cases are pending across India. ODR can help in reducing it.
- ② Accessibility : ODR increases accessibility of Courts to people. Courts can be accessed from any corner of Country.
- ③ Time Saving : ODR saves time in travelling to Courts. This also reduces vehicular emission.

- ④ Transparency: The proceedings are live in which people from anywhere can watch it.
- ⑤ Digital India initiative: It increases awareness of people regarding technology.
- ⑥ Infrastructure: Issues ~~&~~ related to lack of infrastructure like physical buildings are resolved to some extent.
- ⑦ Alternate dispute resolution mechanisms like Arbitration, mediation, Lok adalat etc gets a fresh push.

Challenges

- ① Lack of ^{Digital} ~~physical~~ Infrastructure: In most of lower courts infrastruc is absent.
- ② Lack of funding: funds are not sufficient to develop digital infra.
- ③ Data privacy and Cybersecurity: Cybersecurity attacks are also

increasing. for eg! AIIMS infrastructure was affected by a Ransomware which halted whole health system

- ④ Lack of awareness about online system among masses especially rural India.
- ⑤ Status quoist attitude of many courts who are not willing to adopt to new technique.

Solutions

- ① E-Courts project by Ministry of L & J.
Under this websites like NJDG are maintained.
- ② Training to officials in Courts about new technology.
- ③ Awareness generation Campaign.
- ④ Funding should be made available.
- ⑤ Strong cyber security measures by govt. agencies like CERT-IN.
- ⑥ Best practices, for eg! Australia, Israel etc.

In the new digital world, ODR is the future & is inevitable, it is best to be prepared by implementing above reforms. ODR helps in speedy trial which is a fundamental right (Hussainara Khatoon case).

Q-9 Judicial legislation is antithetical to the doctrine of SLP as envisaged in the Constitution. In this context justify the ^{filling} ~~findings~~ of a large number of public interest petitions praying for issuing guidelines to executive authorities.

Ans Article 50 of Indian Constitution provides for separation of power between Executive and Judiciary. However despite this there is no strict separation of power between judiciary and other organs as said by SC in Indira Nehru Gandhi case & Re Delhi laws act case.

Justification for demand of judicial legislation

- ① Filling the gaps: when Executives and legislatures are not fulfilling their duties then judiciary has to fill in.
for eg:- Vishaka Vs. State of Rajasthan
SC issued guidelines to protect women from sexual harassment at workplace
- ② Excessive workload on legislature & executive branches is shared by Judiciary to do complete justice (Article 142)

- ③ Evolving Society : Some of rights are not accepted by social morality but are accepted by Constitutional morality
for eg! Decriminalizing homosexuality which is still seen with stigma in society.
- ④ Social Justice : SC steps in to fulfill goal of welfare state which government is not able to do alone.
for eg : Preventing Custodial Violence, rights of undertrials many of whom are SC/STs.
- ⑤ Environment protection : In M.C Mehta Case, SC closed several polluting Industries and gave Concept of "Absolute liability" which protects workers.
- ⑥ Protection against totalitarian Government : for eg : During emergency

Challenges with judicial legislation:

- ① Judicial overreach: In many cases judiciary encroached upon other organs
for eg^s Banning diwali crackers,
Banning liquor on roadside etc.
- ② Tyranny of unelected: It undermines the popular elected government.
- ③ Tussle between judiciary & other organs affect efficiency of overall governance.

Way forward

- ① Judicial restraint: SC has directed the Courts to employ restraint.
- ② Wider consultation with all stakeholders before making laws to prevent it from future legal hurdles.
- ③ Reform in parliamentary procedures & process.

Each organ of government should function efficiently without encroaching on other organs. A multistakeholder, multipronged and holistic approach is needed to solve societal and emerging public issues.

All organs must together with restraints.

Q-10 The huge number of undertrials languished in prison reflects that equality before the law doesn't always signify the equal access of law. In this context discuss the reasons for a growing number of undertrials in Indian prison & also suggest corrective measures.

Ans

According to data given by National crime Records bureau, there are 67% of undertrials in Indian prisons.

Reasons for undertrials : Issues in Police & Judiciary

- ① Poor Investigation: Police are not ^{of crimes} trained for investigation but for law and order.
- ② Vacancy in police: India has 133 police per 100,000 population while UN has recommended 222 / 1 lakh.
- ③ Bail amount: ~~many~~ Majority of undertrials are poor. They can't afford bail amount.
- ④ Poor awareness about laws: Poor people with no understanding

of Complexities of Law

⑤ Lacuna in law implementation :

• Poor and 'vague wording' in laws gives wide discretion to executive.
ex: Archaic laws like IPC, CrPC.

⑥ Huge pendency of cases : 9.7 crore
Cases are pending according to NJDG.

⑦ Vacancy in judiciary : around
27% in High Courts & 25% in
subordinate courts (NJDG).

⑧ Slow functioning of police and judiciary

⑨ Lack of Infrastructure in judiciary.

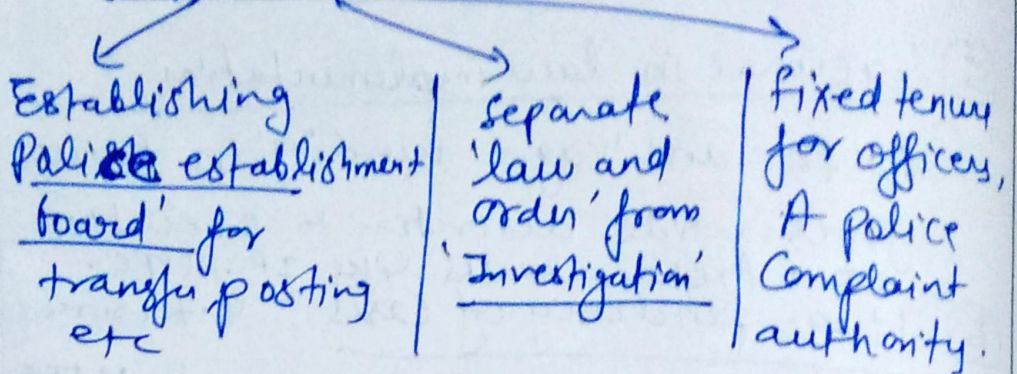
⑩ Not employing online dispute resolution
mechanism and Alternate dispute
resolution effectively.

⑪ Corruption in police : only rich who
can bribe officials get justice

Corrective Measures : Reforming
criminal
Justice System

① Supreme Court in Prakash Singh
Case, 2006 gave guidelines to
reform police system. It should

be implemented :



- ② Reforming archaic laws like Indian evidence act, 1872, IPC, CrPc etc
- ③ Providing free legal aid to poor in prison (Article 39A).
- ④ SC directed Courts to not set the bail amounts too high.
- ⑤ Filling vacancies in police & judiciary
- ⑥ Using technology to speed up process
- ⑦ Alternate dispute resolution like Lok adalats, Gram Nyayalayas etc.

Right to Speedy trial is a fundamental right as held by SC in Hussain Khatoon Case. Justice delayed is justice denied. Above reforms should be taken on war footing basis to solve issue of under trials.