



Approach – Answer: General Studies Mains Mock Test 1391 (2020)

1. *Enumerate important privileges enjoyed by each House of Parliament collectively and its members individually and also discuss their significance.*

Approach:

- Give a brief introduction regarding Parliamentary privileges.
- Mention the collective privileges available to each House of Parliament.
- Mention the individual privileges available to them as well.
- Discuss the significance of these privileges.

Answer:

Parliamentary privilege is the sum of certain rights and immunities enjoyed by each House collectively and by members of each House individually, without which they may not be able to discharge their functions effectively, and which exceed those possessed by other bodies or individuals.

Indian constitution under Article 105 empowers Parliament to codify parliamentary privileges. However, no such laws have been brought yet and those privileges available to the house, members and its committees available before the commencement of the constitution are being followed till date.

Privileges of the House collectively:

- **Right to publish debates and proceedings and the right to restrain publication by others.** However true reports of parliamentary proceedings can be published by press.
- **Right to exclude strangers** from its proceedings and hold secret sittings.
- **Right to regulate internal affairs of the House and to decide matters arising within its walls:**
 - Regulate its own procedure and conduct of business and to adjudicate upon such matters.
 - No person can be arrested, and no legal process (civil or criminal) can be served within the precincts of the House without the permission of the presiding officer.
 - The courts are prohibited to inquire into the proceedings of a House or its committees.
 - House receives immediate information of the arrest, detention, conviction, imprisonment and release of its Member.
- **Right to punish members and outsiders for breach of its privileges** by reprimand, admonition or imprisonment (also suspension or expulsion in case of members).

Privileges enjoyed by the members individually:

- **Complete Freedom of speech** for anything said or any vote given by him/her in Parliament or its committees.
- **Freedom from arrest in civil cases** during the session of parliament and 40 days before the beginning and 40 days after the end of a session.
- **Freedom to refuse to provide evidence or be a witness** in a case pending in a court when parliament is in session.

Significance:

- **Enables free and fair discussion** by enabling the members to speak out their mind and expressing their views in the House without any fear.

- **Prevents willful misrepresentation of debates** or premature publication of proceedings.
- **Internal autonomy** serves as a natural corollary of the immunity from proceedings in a court of law in respect of anything said or done inside the House.
- **Prevents obstruction to members from attending their parliamentary duty** (in case of arrest).
- **Ensures that the attendance of a member in the House takes precedence** over all other obligations such as being a jury/witness to a case.

Thus, these privileges are important for both the Houses to maintain their authority, dignity and honour and support its members in the discharge of their parliamentary responsibilities.

2. Give an account of the composition and functions of the Finance Commission as mentioned in the Constitution of India.

Approach:

- Briefly mention the constitutional status of Finance Commission and its composition.
- Discuss its major functions as mentioned in the constitution.
- Give a brief conclusion.

Answer:

The Finance commission is a constitutional body which is set up at an interval of every five years by the President under Article 280 of the Indian Constitution. It is assigned the task of enabling transfer of resources from the Centre to the states and its distribution among the states to overcome the vertical and horizontal imbalances in India's federal structure.

Composition of the Finance Commission:

It consists of a Chairman and four other members, appointed by the President. However, the qualifications of these members and manners of their selection are determined by the Parliament, as authorized by the constitution.

Accordingly, the Chairman must be a person having '**experience in Public Affairs**' and the other four members must be appointed from amongst the following:

- A **High Court Judge** or one qualified to be appointed as such
- A person having **special knowledge of the finance and accounts** of the government
- A person having wide **experience in financial matters and administration**
- A person having **special knowledge of economics**

Functions of the Finance Commission:

As mentioned in Article 280 (3), its function is to make recommendations to the President regarding:

- The **distribution of the net proceeds of taxes** between the Union and the States and **the allocation of such proceeds** between the states.
- The **principles which should govern the grants-in-aid** of the revenue of the states out of the Consolidated Fund of India.
- The measures needed **to augment the Consolidated Fund of a State** to supplement the resources of the Panchayats and the Municipalities in the state.
- Any other **matter referred to the commission by the President** in the interests of sound finance.

Hence, Finance Commission is a critical institution to strengthen fiscal federalism and improve the quality of public spending. Till date, fifteen Finance Commissions have been constituted. The most recent was constituted in 2017, headed by Dr. N.K. Singh.

3. ***Preamble shows the general purposes behind several provisions in the Constitution, and is a key to the minds of the makers of the Constitution. Explain. Also, comment on the amendability of the Preamble.***

Approach:

- Briefly mention the significance of the Preamble.
- Discuss how preamble gives general purposes behind numerous constitutional provisions.
- Discuss the amendability of the Preamble.

Answer:

Preamble is an introductory document to the Constitution that reveals the source of authority, nature of the Indian state, objectives of the Constitution and date of adoption of the Constitution. It embodies the basic philosophy and fundamental values and contains a grand and noble vision of the Constituent assembly.

Preamble is a key to the minds of its makers and reveals that establishment of sovereign democratic republic was the sole object of the founding father. The aim was to realize the goal of a just social and economic order based on justice, equality and freedom.

The various elements of the preamble reflect the general purposes behind various provisions of the Constitution such as:

- **Justice** (social, economic and political) - Fundamental rights and Directive principles contain various provisions which aim to eliminate inequalities, remove discrimination and secure equal rights to all.
- **Liberty** (of thought, expression, belief, faith and worship) - Article 19 provides for freedom of speech and expression and Article 25-28 gives the right to religion to everyone including minorities.
- **Equality** (of status and opportunity) – it promotes civic, political and economic equality as reflected in following articles:
 - Article 14-18 provides for absence of special privileges to any section of society and adequate opportunities for all without discrimination.
 - Article 39 secures equal rights to an adequate means of livelihood and equal pay for equal work.
 - Article 325 and 326 provides for universal adult franchise and right to participate in elections without any discrimination.
- **Fraternity** (dignity of an individual and unity and integrity of the nation)
 - System of single citizenship promotes the feeling of fraternity.
 - It is a fundamental duty of every citizen to promote harmony and spirit of a common brotherhood.

Since preamble is key to our constitution, there have been **questions over its amendability**. This question was dealt in the **Kesavananda Bharati Case** (1973) and the Supreme Court held that the Preamble is a part of the Constitution and it can be amended under Article 368, subject to the basic structure doctrine.

It found its earlier opinion tendered in **Berubari Union Case** 1960 that Preamble is not a part of the Constitution and therefore, cannot be amended under Article 368, to be wrong.

The Preamble has been amended only once till now by the **42nd Constitutional Amendment Act 1976** which added three new words- **Socialist, Secular and Integrity**- to the Preamble.

4. ***Explain the principle of subsidiarity, its importance and discuss how the 73rd constitutional amendment act tries to achieve it.***

Approach:

- Introduce by briefly explaining the principle of subsidiarity.
- Explain its importance for democracy, efficiency and effectiveness of administration as well as accountability in brief.
- Discuss how the 73rd constitutional amendment act tries to achieve the principle.

Answer:

The principle of subsidiarity means that a central authority should not exercise functions which can be carried out efficiently by immediate or local level, rather it should support the latter and help coordinate its activity with the activities of the whole community.

It ensures that decisions are taken as closely as possible to the citizen and that constant checks are made as to whether action at community level is justified in the light of the possibilities available at national, regional or local level.

Importance of the principle:

- **Greater democratic participation:** Subsidiarity helps democratic system derive its full legitimacy and promotes self-reliance at the local level as well as greater ownership of programmes by the local communities.
- **Improved administrative and economic efficiency:** People have better knowledge of problems in their localities. They also have better ideas on where to spend money and how to manage things more efficiently.
- **Clear delineation of responsibilities:** Since whatever can be done best at a particular level should be done at that level only and not at higher levels, this necessitates a rational and realistic analysis of the functions that are required to be discharged at different levels. Thus, clearly delineating responsibilities at different levels.
- **Better decision and policy making:** Once decision-making and its consequences are integrally linked at the local level, people can better appreciate that hard choices need to be made in governance. Further, it also helps in formulating such policy which has the concurrence of all stakeholders.

Principles of subsidiarity especially gains relevance for India due to large geographical expanse and diverse needs of various regions and communities which can be best addressed at the local level. The 73rd Constitutional Amendment Act, 1993 tries to achieve the features of the principle of subsidiarity by:

- **Devolving greater power to the grass root levels through Panchayati Raj Institutions** to handle 29 functional items (listed in Eleventh Schedule) like rural housing, poverty alleviation, drinking water, etc.
- **Greater participation of community through establishment of Gram Sabha** of which all voters of the village are members. The Panchayat works under the overall supervision of Gram Sabha.
- **Making provisions for effective transfer of funds** (through State Finance Commission), **functions and functionaries.**
- **Making it constitutionally mandatory to hold regular elections** to local government bodies through establishment of State Election Commission.
- **Barring interference of courts** in the electoral matters of Panchayats.

States like Kerala, Karnataka and Madhya Pradesh are good examples depicting how the 73rd Constitutional Amendment Act, 1993 can achieve the features of the principle of subsidiarity. Local government can be best realized only if the provisions of the 73rd Constitutional Amendment Act are implemented in letter and spirit.

5. *Explaining the importance of an independent judiciary, highlight the relevant Constitutional provisions that safeguard and ensure the independent and impartial functioning of the Supreme Court.*

Approach:

- Briefly discuss the idea of independent judiciary.
- Explain the importance of an independent judiciary.
- Highlight the Constitutional provisions that safeguard and ensure the independent and impartial functioning of the Supreme Court.

Answer:

The principle of judicial independence is a natural corollary of '**Doctrine of separation of powers**' and is designed to protect the system of justice, thereby maintaining public trust and confidence in the judiciary. An independent judiciary is free from the influence or control of the legislature, the executive and the popular opinion.

Importance of an independent judiciary:

- Independent & impartial judiciary upholds the rule of law, which is indispensable for a democratic government,
- It acts as a watch dog and checks whether the executive and legislature are functioning properly without encroaching in each other's domain.
- It maintains the supremacy of the Constitution by deciding disputes between the Centre and States or the states inter-se.
- As the final interpreter and the guardian of the Constitution, judiciary protects the rights of the individual and provides them equal justice without fear or favour.

Constitutional provisions that safeguard and ensure independent and impartial functioning of the Supreme Court in India are:

- **Security of tenure:** The judges of the Supreme Court can be removed from office by the President only in the manner and on the grounds mentioned in the Constitution.
- **Appointment of judges of the Supreme Court:** The Executive is required to consult Judges of the Supreme Court and High courts in the appointment of the Judges of the Supreme Court.
- **Conditions of employment:** The salaries and allowances of the judges of the Supreme Court are fixed by the Constitution and charged upon the **Consolidated Fund of India**.
- **Powers of the Supreme Court:** Parliament can extend, but cannot curtail the jurisdiction and power of the Supreme Court (**Art. 138**).
- **Separation of judiciary from executive:** Article 50 directs the State to take steps to separate the judiciary from the executive in the public services of the State.
- **No discussion in Legislature on the conduct of the judges:** According to **Article 121** neither in Parliament nor in a State Legislature a discussion can take place with respect to the conduct of a Judge of the Supreme Court in discharge of his duties except during the impeachment process.
- **Power to punish for its contempt:** The Supreme Court has the power to punish any person for its contempt (**Article 129**).
- **Prohibition on practice after retirement:** **Article 124** prohibit retired judges of the Supreme Court to appear and plead in any court or before any authority within the territory of India.

Independent judiciary is a lynchpin for a country like India and acts as a final vanguard for establishing constitutional supremacy & ensuring social, economic & political justice for all the citizens of the country.

6. ***Mention the six freedoms as guaranteed under Article 19 of the Indian Constitution. Also, comment on the way in which the constitution has attempted to strike a balance between individual liberty and interests of society.***

Approach:

- Mention the six freedoms as guaranteed under Article 19 of the Indian Constitution.
- Discuss the way in which the constitution has attempted to strike a balance between individual liberty and social control.

Answer:

Article 19 of the Constitution provides for following six fundamental forms of freedom :

- Freedom of speech and expression
- Freedom to assemble peacefully without arms
- Freedom to form associations or unions or co-operative societies

- Freedom to move freely throughout the territory of India
- Freedom to reside and settle in any part of the territory of India
- Freedom to practice any profession or to carry on any occupation, trade or business.

Balancing individual liberty and social interests

Liberty as conceived by the preamble or the fundamental rights **is not completely absolute but qualified**. If left unchecked, liberty can create the conditions of lawlessness in the society, breed separatism & antinational activities. Hence, the balance between individual liberty and larger social interests has been achieved in the Constitution by putting 'reasonable restrictions' on the exercise of this right for certain purposes viz.:

- In case of freedom of speech and expression, State can impose reasonable restrictions on the grounds of sovereignty and integrity of India, security of the state, friendly relations with foreign states, public order, contempt of court, defamation, public order, decency and morality and incitement to an offence.
- Reasonable restriction is imposed on the exercise of right of assembly on two grounds-namely sovereignty and integrity of India and public order including the maintenance of traffic in the area concerned. Similarly, assembly of five or more persons may be restricted under section 141 of IPC on certain specified grounds.
- Reasonable restrictions can be imposed on freedom of association on the grounds of sovereignty and integrity of India, public order and morality.
- Freedom of movement and freedom of residence are subject to the interests of the general public (For example SC held that the freedom of movement of prostitutes can be restricted on the ground of public health) and the protection and interests of any scheduled tribe (to prevent distinctive culture of tribals).
- Freedom of profession can be restricted in the interest of general public by way of licensing, prescribing professional or technical qualifications for certain trades etc. Immoral and dangerous profession/business or trade is not included under this right.

A right balance between individual liberty and societal interest will lead to a rule based order where citizens can participate fully and effectively in the social and political process of the country.

7. *With examples, discuss the significance of alternative dispute resolution mechanisms in light of costly and time-consuming litigation process in India.*

Approach:

- Briefly discuss about the costly and time-consuming nature of litigation process in India.
- Define alternative dispute resolution mechanisms and discuss its significance.

Answer:

Litigation process in India is currently marred by high cost and time delays due to various reasons like poor judge to population ratio which is further aggravated on account of unfilled vacancies in courts, several unavoidable reasons and procedure for delay like multiple rounds of appeals and revision, dependency on lawyers due to complex techniques of a court of law and high fees charged by lawyers and courts.

Alternative Dispute Resolution (ADR) provides an alternative approach to traditional process of dispute resolution through litigation. It provides accessible, useful, informal, voluntary, speedy and inexpensive justice to contesting parties. ADR mechanisms in India inter-alia include arbitration, mediation/conciliation, Lok Adalats and Consumer Dispute Redressal system.

Significance of ADR mechanisms

- It facilitates speedier justice and the parties involved have control over the eventual outcome. This results in quick implementation of the decisions taken.
- Mediation can play a very useful role in amicable resolution of matrimonial and family matters.

- Most ADR processes are based on integrative approach. They are more corporative and less competitive than the usual method of litigation.
- It makes justice more accessible through counseling or arbitration centers.
- The proceedings in ADR are informal and do not involve the formalities and complexities as involved in a Court of law like hiring a lawyer.
- Disputes amongst the government departments and agencies can be best resolved through out of court mediation rather than litigation.
- It can be used any time, even when a case is pending before a court of law.
- ADR is often less stressful than expensive and lengthy process of litigation; most people have reported high degree of satisfaction with ADR.
- As pointed out by Malimath Committee, ADR plays an important role in doing away with delays and congestions in court proceedings.

ADR mechanisms are being incorporated in developing countries in order to strengthen the judicial system. Adoption and popularizing ADR in India is a major step for achieving the much cherished goal of achieving justice for all in India.

8. Explain why the Indian Constitution has been argued to have created a 'federation with a centralising tendency'.

Approach:

- Briefly discuss the fundamental basis of Federation in Indian Constitution.
- Discuss the main federal features of the Indian Constitution which makes it closer to Federal state.
- Discuss the reasons why India is described as federation with a centralizing tendency.

Answer:

The debate whether India has a 'Federal Constitution' and 'Federal Government' has been grappling us since the conception of our Constitution. In India, Federalism is considered as a basic feature of the Constitution, even though the word is not mentioned anywhere in the Constitution.

The main features of the Indian Constitution which makes it closer to Federal state are as follows:

- **Written Constitution and supremacy of the Constitution-** Written Constitution ensures that there is a clear division of powers between the central and state governments.
- **Rigid Constitution:** All the provisions of the Constitution concerning Union-State relations can be amended only by the joint actions of the State Legislatures and the Union Parliament.
- **Division of Powers:** The Seventh Schedule divides the subjects of administration into Union, State and Concurrent Legislative Lists.
- **Independent Judiciary:** The Constitution establishes an independent judiciary headed by the Supreme Court.
- **Bicameral Legislature:** A bicameral system is considered essential in a federation because it is in the Upper House alone that the units can be given equal representation.
- **Dual Government Polity:** In a federal State, there are two governments, one at the centre and the other at the state level.

But the Indian Constitution also has some unitary features which can be argued to have created a federation with centralizing tendency:

- **Strong Centre:** The division of powers is in favour of the Centre and highly inequitable from the federal angle. For instance, the Union List contains important and higher number of subjects than the State List.
- **Special powers:** The Parliament can make laws on subjects of state list under certain circumstances. For instance, under article 249, Parliament can make laws even on any of the state list matter.
- **Emergency Provisions:** During the time of emergencies the Federal apparatus transforms into unitary system without any formal amendment to the Constitution.
- **States not indestructible:** The states in India have no right to territorial integrity. The Parliament can by unilateral action change the area, boundaries or name of any state.

- **Role of governors:** The Governor is appointed by the President on the advice of central government and his/her actions are viewed as interference by the centre in the functioning of the state government.
- **Financial Powers:** There is concentration of financial powers in the hands of the union as more revenue generating items are under the control of the central government. Besides, the union government also uses its discretion to give grants and loans to the states.

It is true that the union has been assigned larger powers than the state governments, but this is a question of degree and not quality, since all the essential features of a federation are present in the Indian Constitution. According to K.C. Wheare, in practice the Constitution of India is quasi-federal in nature and not strictly federal. It is a union or a composite of a novel type. Thus, it can be safely said that the Indian Federalism is unique in nature i.e. 'federation with a centralising tendency' and is tailored according to the specific needs of the country.

9. *The parliamentary control over government and administration in India is more theoretical than practical. Discuss.*

Approach:

- Introduce with a short note on the doctrine of separation of powers.
- Highlight why some parliamentary control over the government and administration is important.
- Discuss the various modes through which the Indian parliament exercises control over the executive.
- Mention some reasons behind the ineffectiveness of the same.

Answer:

The Constitution establishes a Parliamentary form of government in which the executive is responsible to the Parliament for its acts and policies. Members of the cabinet are chosen from legislature itself. The ministers are collectively responsible to the Parliament in general and Lok Sabha in particular. They continue to be in the office as long as they enjoy confidence of the majority of members in the Lok Sabha.

The Parliament exercises control over the executive through the question hour, zero hour, short duration discussion, tools such as calling attention motion, adjournment motion, no-confidence motion, censure motion, etc. It also supervises the activities of the executive through its committees such as Committee on Government Assurance, Committee on Subordinate Legislation, etc.

Any legislation to be enacted requires approval from a majority of members of both houses of the Parliament. Even the rules and regulations coming out of delegated/executive legislation need to be tabled before the Parliament for their examination.

The Parliament also exercises the budgetary control and post budgetary control over the executive in financial matters. No tax can be levied or collected and no expenditure can be incurred by the Executive without the approval of the Parliament. The Parliament also scrutinizes government spending and financial performance with the help of its committees.

However, in reality the parliamentary control over the executive is more theoretical than practical. The following factors are responsible for this:

- The administration has grown in volume and the Parliament has neither the time nor the expertise to control it.
- Parliamentarians are usually laymen who face difficulty in understanding the demands for grants which is technical in nature.
- The Executive enjoys legislative leadership owing to majority support. Consequently, it plays a significant role in formulating policies and minimises the possibility of effective criticism.
- The public expenditure is examined by the committees after it has been incurred not before it.
- The scope of financial control has also been reduced due to increased recourse to 'guillotine'.
- The expansion of 'delegated legislation' has increased the powers of the bureaucracy and reduced the law making powers of the parliament.

- Lack of strong, steady and principled opposition has also reduced the effectiveness of legislative control over administration.

Since, the parliamentary control is quite sporadic, general and political in nature, thus it can be inferred that legislative control over the government and administration in India is more theoretical than practical and the control is not that effective as it ought to be.

10. Why did the Constituent Assembly replace the original plan to have elected governors in favour of appointment by the President? Also, bring out the arguments that are raised against the current form of appointment of Governors.

Approach:

- Discuss why the Constituent Assembly replaced the original plan to have elected Governors in favour of appointment by the President.
- State the arguments raised against the current form of appointment of Governors.
- Mention the recommendations of various Committees in this regard.
- Conclude on the basis of the above points.

Answer:

The Governor is the Chief Executive head of a state in India. There was a unanimous understanding in the Constituent Assembly that Governors will be agents of the Central government, almost like the Governors appointed during the British rule. However, the Assembly was initially divided on the method of election of the Governor and his/her role in the state.

Eventually, the Assembly concluded that a directly elected Governor would challenge the authority of the Chief Minister. They did not want alternate centres of power at the state level. Further, they adhered to the Parliamentary Executive system, wherein the heads of the state and government were to be elected indirectly and directly respectively. Also, since the Governor plays a unique role in the balancing the scheme of Indian federal system, thus, it was agreed that the Governor would be appointed and removed by the President, who shall hold office during the 'pleasure of the President'.

The arguments that are raised against the current form of appointment of Governors include:

- **Instability:** The appointment and removal of the Governors are deemed to be abrupt as they are frequently changed when there is a change in the government at the Centre. In *B.P. Singhal Vs. Union of India* (2010), the SC stated that Governors should not be removed or transferred arbitrarily.
- **Nepotism:** The ruling parties have often used the office of the Governor to reward loyalists and thus it has become retirement home for politicians.
- **Misuse of Constitutional provisions:** There have been instances when the Governors have arbitrarily imposed Article 356 in the states upon the directives of the Central government. E.g. imposition of Article 356 in Uttarakhand in 2016, Jammu and Kashmir in 2018, etc.
- **Seen as representatives of the center:** The Governors are deemed as 'agents of the Centre' by the state governments who feel that they serve the interests of the Centre as opposed to states' interests.
- **Misuse of discretionary power:** The Governor's discretionary power under Article 163 has been misused despite it being a limited power. In 2016, the SC struck down the unilateral actions of the Governor of Arunachal Pradesh in summoning an Assembly session and sending messages to the Assembly as unconstitutional.

Thus, the arguments against the current form of appointment are centered on the issue of arbitrary decision-making and exclusion of the state Executive in this regard. In this context, the Venkatachalliah and Punchhi Commissions have argued for the security of tenure of the Governors and localizing of Emergency provisions under Articles 355 and 356 of the Constitution.

Similarly, the Sarkaria Commission opined that the Governors should be allowed to complete their tenure of five years except for extremely compelling reasons. Governorships should be given to eminent persons with impeccable credentials rather than treating it as a post-retirement job for politicians.

The Governor is the head of the state. Therefore, it is pertinent to maintain the integrity of his/her office by addressing the concerns related to the current form of appointment of governors.

11. Explaining the concept of judicial activism, discuss why it is important for courts not to take over the functions of the legislature or the executive.

Approach:

- Briefly explain the concept of judicial activism and reasons for its advent.
- Discuss why it is important for the judiciary to practice constitutional restraint while dealing with functions of the legislature or the executive.

Answer:

Judicial activism refers to the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in the society. It asserts judiciary's role in forcing the other two organs of the government (legislature and executive) to discharge their constitutional duties.

The advent of judicial activism has been due to many reasons like legislative vacuum, executive failure to discharge their duties, constitutional articles such as Art. 142, growth of concepts of human rights and social welfare and judicial enthusiasm towards them. But sometimes this enthusiasm turns into adventurism or even overreach, which goes against the Constitutional mandate. So, it is asked of the courts, by the Supreme Court itself, to practice judicial restraint.

Arguments for courts to not take over the functions of the legislature or the executive:

- It violates the delicate **balance of power** enshrined in the Constitution i.e. principle of separation of powers where each organ of the state must have respect for others and should not encroach on others' domain.
- The justification often given for judicial encroachment on the domain of the executive or the legislature is that the other two organs are not doing their jobs properly. Even assuming this is so, the same allegations can be made against the judiciary too because there are **cases pending** in courts for half-a-century.
- Entertaining more litigations only further **delays** the justice delivery in the country.
- The regular intervention by judiciary undermines **democratic** character of Indian polity. This is because judiciary is non-elective in nature and the judges' appointment in itself is questioned multiple times on grounds of nepotism and bias.
- It is possible that judges may allow their **personal political values** and policy agendas to colour their judicial opinions.
- The judiciary must realise that administrative authorities have **expertise** in the field of administration.
- The judiciary lacks the **resources** required to perform the functions of executive or legislature.

Judicial activism has brought a revolution in terms of welfare of the people such as introduction of due process of law (Maneka Gandhi case), Vishaka guidelines (1997), ban on registration of diesel vehicles in Delhi etc., but there is a very fine line between judicial activism and judicial overreach. It is of utmost importance that the judiciary respects the constitutional boundaries to avoid any adventurism on its part, whilst moving forward with the activism for overall good of society in line with the vision of DPSPs articulated in the Constitution.

12. Compare the constitutional position of Rajya Sabha with the Lok Sabha in terms of legislative powers. Also bring out special powers given to Rajya Sabha in this context.

Approach:

- Briefly introduce with the composition of Parliament.
- Then compare the constitutional position of Rajya Sabha with Lok Sabha in terms of legislative powers i.e. where they are equal and where not equal.
- Also, give an account of the special powers given to Rajya Sabha.

Answer:

The Parliament constitutes the President, the Lok Sabha and the Rajya Sabha and all these three pillars of Parliament have different roles with respect to the legislative process in different stages of law making. The Constitutional position of the Rajya Sabha in comparison to Lok Sabha with respect to legislative powers can be compared in the following ways:

Equal status with Lok Sabha:

Rajya Sabha has equal legislative power with Lok Sabha in:

- introduction and passage of ordinary bills.
- introduction and passage of Constitutional amendment bills.
- introduction and passage of financial bills involving expenditure from the Consolidated Fund of India.
- approval of ordinances issued by the President.

Unequal status with Lok Sabha:

- A money bill can be introduced only in the Lok Sabha and not in Rajya Sabha.
- Rajya Sabha cannot amend or reject a Money Bill. It can return the bill to Lok Sabha within 14 days, either with recommendations or without recommendations and Lok Sabha can either accept or reject all or any of the recommendations of the Rajya Sabha.
- A financial bill, not containing solely the matters of Article 110 can be introduced only in the Lok Sabha. But with regards to its passage, both the houses have equal powers.
- The final power to decide whether a particular bill is a money bill or not is vested in the Speaker of the Lok Sabha and the Speaker presides over the joint sitting of both the houses.
- Rajya Sabha can only discuss the budget but cannot vote on the demands for grants.

Special Powers of Rajya Sabha in this context:

Rajya Sabha has been given two exclusive or special powers that are not enjoyed by the Lok Sabha:

- It can authorize Parliament to make a law on a subject enumerated in the State List under article 249.
- It can authorize the Parliament to create new All- India Services common to both the Centre and States under article 312.

So, overall the power and status of Rajya Sabha are broadly equal and coordinate with that of Lok Sabha, except in financial matters and control over council of ministers.

13. *Comment upon the distribution of legislative subjects between the Centre and states. Under what circumstances does the Parliament make laws on matters enumerated in the State list?*

Approach:

- Introduce briefly with articles and part of the Constitution dealing with the distribution of legislative subjects between the Centre and states.
- Discuss how the legislative power's distribution between Centre and State is done in the Indian constitution.
- Bring out the circumstances under which Parliament can make laws on matters enumerated in the State List.

Answer:

Articles 245 to 255 in Part XI of the Constitution deal with the legislative relations between the Centre and states. The division of legislative powers is done with respect to both the territory and the subjects of legislation and is contained in the three-fold distribution of legislative subject i.e. Union list, state list and concurrent list under Schedule 7 of the Indian Constitution.

- The Parliament has exclusive powers to make laws with respect to any of the matters enumerated in the **Union List** which generally comprises of the matters of national importance and the matters which require uniformity of legislation nationwide.

- The state legislature in normal circumstances makes law with respect to any matters enumerated in the **State list**. Few examples include matters like police, public order, public health etc.
- Both Parliament and State legislature can make laws with respect to any of the matters enumerated in the **Concurrent list**. The matters on which uniformity of legislation is required but is not essential are placed in the concurrent list.
- The power to make laws with respect to **residuary subjects** i.e. the matters which are not enumerated in any of the three lists is vested with the Parliament.

The Constitution ensures the predominance of the Union list over the State list and the Concurrent list and that of concurrent list over the state list. In case of a conflict between the Central law and the state law on a subject enumerated in the Concurrent list the Central law prevails over the state law. However, if the state law has been reserved for the consideration of the President and has received his/her assent, then the state law prevails in that state.

This unique distribution of legislative powers in the current scheme ensures that the diversity of India is taken into consideration while integrity and uniformity is maintained wherever required.

Circumstances under which Parliament can make laws on matters enumerated in the State list:

- **Article 249:** When Rajya Sabha passes a resolution supported by two-thirds of the member present and voting, declaring that it is necessary in national interest that Parliament should make laws on matter in the State list .
- **Article 250:** During a national emergency, Parliament acquires the power to legislate with respect to matters in the State list.
- **Article 252:** When the legislature of two or more states pass resolution requesting the Parliament to enact laws on a matter in the state list, then Parliament can make laws for regulating that matter. A law so enacted applies only to those states which have passed the resolutions .
- **Article 253:** The Parliament can make laws on any matter in the State list for implementing the international treaties, agreements or conventions.
- **President's rule:** During President's rule in a state, Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that state.

14. Explain the significance of the concept of 'separation of powers' in a democracy. What can be the reasons for India not following the doctrine in the strict sense?

Approach:

- Briefly explain the doctrine of separation of powers.
- Explain how it has not been adopted in strict sense in India
- Discuss some of the important judgments of SC in context with separation of power.

Answer:

The doctrine of separation of powers is traceable to Aristotle, but the writings of Locke and Montesquieu gave it a base on which the modern attempt to distinguish between legislative, executive and judicial power is grounded.

According to this doctrine there should be a clear-cut division of power between the three organs of the state i.e. Executive, Legislative and the Judiciary in such a manner that:

- The same person should not form part of more than one of the three organs of the government. For e.g., ministers should not be a part of the Parliament.
- One organ of the government should not interfere with any other organ of the government. For e.g. the Judiciary should be independent of the Executive.
- One organ of the government should not exercise the functions assigned to any other organ. For e.g. the Ministers should not be assigned any legislative powers.

Its significance in a democracy:

- It ensures that power is not concentrated in a single person's hand or a group of people.

- It ensures government of law rather than wills and whims of the officials.
- It ensures an independent judiciary and hence a fair government and proper justice to the people.
- It ensures checks and balances in the system.

In India, separation of powers has been considered as one of the basic features of Indian Constitution. Article 50 also puts an obligation over the state to separate judiciary from executive. However, functional and personnel overlap can be observed, such as:

- Executive is part of the Legislature and are responsible to its lower house.
- Judiciary can declare a legislation and an executive action as void or unconstitutional.
- Executive has a role to play in appointment of judges.
- Legislature may also perform judicial functions, for example if the President is to be impeached both houses of Parliament are to take an active participatory role.

This shows that instead of adopting a rigid separation of power like that in USA, India opted for a unique separation of power with sufficient checks and balances. The reason behind this are:

- Indian Constitution is pro-responsibility rather than having stability at the centre. A non-parliamentary executive tends to be less responsible to the legislature. Thus, current scheme ensures a more responsible government.
- Functions of various organs of the government have been meticulously differentiated in the constitution and no organs can usurp the power of the other.

The doctrine of separation of powers in its true sense is very rigid and therefore, Indian constitution makers have made it more fluid by ensuring sufficient number of checks and balances on the powers of various organs of the government.

15. Explain the grounds on which a National Emergency can be declared and highlight its effects on Centre-state relations and Fundamental Rights.

Approach:

- Briefly explain the meaning of National Emergency as envisaged in the constitution.
- Mention the grounds on which the National Emergency can be declared.
- Discuss the effects of National Emergency on Centre-state relations and Fundamental Rights separately.
- Briefly conclude the answer recommending its minimal use.

Answer:

The provision of National Emergency was inserted in the constitution to enable the Central government to meet any abnormal situation effectively and to safeguard the sovereignty, unity, integrity and security of the country.

Under **Article 352**, the President can declare a national emergency when the security of India or a part of it is threatened by war or external aggression or armed rebellion after receiving a written recommendation from the cabinet. It can also be declared pre-emptively (in case of imminent danger). It has been proclaimed only three times so far —in **1962, 1971** and **1975**.

Effect of National Emergency on Centre-State Relations – It converts the federal structure into a unitary one without a formal amendment of the Constitution. Specifically, consider the effect on:

- **Executive** – The Centre becomes entitled to give executive directions to a state on ‘any’ matter unlike in normal times where executive directions can only be on certain specified matters. Thus, the state governments are brought under the complete control of the Centre, though they are not suspended.
- **Legislative** – The Parliament is empowered to make laws on any subject in the State List. Although the legislative power of a state legislature is not suspended, it becomes subservient to the Parliament. The President can also issue ordinances on the state subjects, if Parliament is not in session.

- **Financial** - The President is empowered to modify the constitutional distribution of revenues between the centre and the states. Hence, the President can either reduce or cancel the transfer of finances from Centre to the states.

Effect of National Emergency on Fundamental Rights – It allows the Centre to curtail or suspend freedom of the citizens, as is detailed below:

- **Under Article 358**, the six Fundamental Rights under Article 19 are automatically suspended, requiring no separate order.
- **Under Article 359**, the remaining Fundamental Rights (except Article 20 and 21) can be suspended only through a specific order of the President. These rights are not suspended, but only the right to seek remedy or their enforcement is suspended.

The state can make any law or take action that takes away the rights under Article 19 or other specified right under Article 359. Any such law or executive action cannot be challenged on the ground of inconsistency. Further, the legislative and executive actions during the emergency cannot be challenged even after the emergency ceases to operate.

When the National Emergency ceases to operate, Article 19 is automatically revived. Any law made during Emergency, to the extent of inconsistency, ceases to have effect.

The proclamation of emergency is a serious matter as it disturbs the normal fabric of the Constitution and curtails the rights of the states (federal structure) as well people (fundamental rights) and hence, must be used sparingly.

16. Analyze how the CAG ensures financial accountability of the Executive to the Legislature while working as an independent Constitutional body.

Approach:

- Give brief introduction about the CAG under constitution of India.
- Discuss how it ensures financial accountability of the Executive to the Legislature by holding various authorities under the Union and State governments accountable through various audits.
- Highlighting its power in this regard, mention how the independence of the CAG is maintained through various provisions included in the constitution.
- Briefly conclude highlighting the importance of the Office.

Answer:

The Indian Constitution provides for an independent office of the CAG under Articles 148-151. The CAG is the guardian of the public purse and controls the financial levels of the country at the central and state levels.

The CAG ensures financial accountability of the Executive to the Legislature through audits of almost every spending, revenue collecting or aid/grant receiving unit of the Union or State Government. CAG's audit domain covers all union and state departments, public commercial enterprises, non-commercial autonomous bodies as well as all bodies and authorities substantially financed from the central or state revenues.

The CAG **audits the accounts related to all expenditure** from the Consolidated Fund of India, Consolidated fund of each state and UT having a Legislative Assembly, Contingency Fund of India and states as well as the Public Account of India and public accounts of states.

Through its audit, the CAG **ensures that assessment, collection and proper allocation of revenue are done as per the mentioned rules and procedures**. He/she can also conduct **proprietary audit** i.e. look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the extravagance of such expenditure.

The CAG **submits the audit report** on appropriation accounts, audit report on finance accounts and audit report on public undertakings to the President, who then lays them before the Houses of Parliament. The appropriate accounts and audit report are **scrutinized by the Public Accounts Committee** and the

report on public undertakings is scrutinized by the **Committee on Public Undertakings** of the Parliament. This further enhances financial accountability of the Executive to the Legislature.

In exercise of all the above powers, CAG can inspect any office or organisation subject to his/her audit, examine all transactions and question the Executive and call for any records, papers, documents from any audited entity. In this scenario, **independence of the CAG assumes great importance and is safeguarded by the Constitution through various means such as:**

- Security of tenure and special procedure for removal (like a Supreme Court Judge) – Thus, not subject to the pleasure of President, although appointed by him/her.
- Salary and expenses are charged upon the Consolidated Fund of India – Thus, not subject to voting in the Parliament.
- Disallowing his/her holding of any other Government office after his/her term expires – Thus, minimising the chances of quid pro quo.
- Salary and service conditions are determined by the Parliament - Also, his/her salary, pension, retirement age etc. cannot be altered to his/her disadvantage after appointment.
- No minister can represent the CAG in the houses of Parliament or take any responsibilities for any action done by him/her.

Dr B. R. Ambedkar deemed the CAG to be the most important officer under the Indian Constitution and one of the bulwarks of the Indian democratic system.

17. Highlight the veto powers of the President of India. How does the veto powers of the Governor differ from that of the President?

Approach:

- Introduce by giving a brief account on the veto powers of the President of India.
- Bring out the differences between the veto powers of the Governor and the President.
- Use appropriate facts wherever needed.

Answer:

The power of veto refers to the power of the executive to override any act of the legislature. This is a very special privilege. Under **Article 111** of the Constitution, all bills passed by the Parliament can become an act only if it receives the assent of the President. Hence, the President enjoys a veto power, by withholding his assent to a bill.

Veto power of the President of India can be of the following types:

- **Absolute Veto:** It refers withholding of assent to the Bill passed by the legislature. It was used by the President in case of **PEPSU Appropriation Bill in 1954** and **Salary, Amendments and Pension of Members of Parliament (Amendment) Bill in 1991**.
- **Suspensive Veto:** It is veto which can be overridden by the legislature with an ordinary majority. The President of India used it in case of **Office of Profit Bill in 2006**.
- **Pocket Veto:** It empowers the President to not take any action on the Bill passed by the legislature. The President of India used this veto in case of **Indian Post Office (Amendment) Bill in 1986**.

The President enjoys all three vetoes with respect to ordinary bills but in case of money bill, he/she only has absolute veto. The President cannot return a money bill for the reconsideration of the Parliament.

The governor also has similar powers at the state level with respect to the state bills – ordinary and money bills. However, in both the cases, governor has an additional veto power of reserving the bill for consideration of the President. When a bill is **reserved for the consideration of the President** he has following options:

- **With regard to the State's ordinary bill:** The President can either give his/her assent to the bill or use his/ her absolute or suspensive or pocket veto. If the bill is passed after reconsideration by the concerned State Legislature in case of suspensive veto then the President may give his assent to a

bill or even withhold his assent. The Governor does not have any further role in the enactment of the bill.

- **With regard to the State's Money bill:** The President can either give his/her assent to the bill or use his/ her absolute veto. The President cannot return a money bill for the reconsideration of the state legislature similar to what happens in the case of Parliament.

18. Even though the parliamentary system of government in India is largely based on the British parliamentary model it never became a replica of the British system. Elaborate.

Approach:

- Briefly explain the parliamentary system of government.
- Explain the differences between the Indian system and the British system.

Answer:

The Indian Constitution establishes the parliamentary government both at the center and the states. The Parliamentary system is based on the principle of cooperation and coordination between the legislative and executive organs, and not watertight separation of powers between the two organs.

India opted for the Parliamentary system of Government based on Britain. Thus, both exhibit certain common features such as:

- Presence of nominal and real executives
- Collective responsibility of the executive to the legislature
- Membership of the executive in the legislature
- Dissolution of the lower house
- Majority party rule, with the leadership of the Prime Minister

However, Indian parliamentary system never became a replica of the British model and modified its features suiting Indian polity. Thus, there are a few fundamental differences between the two systems:

- **Constitutional Sovereignty and not Parliamentary Sovereignty** – In India, unlike Britain where Parliament is supreme and can amend constitution without any restrictions, the Parliament enjoys restricted powers due to a written Constitution, federal system, judicial review and fundamental rights.
- **Elected Nominal Executive** – The Indian state has an elected head, i.e. the President (Republican form of Government). The British state, on the other hand has a hereditary head (monarchy).
- **No restriction on PM to be a member of Lower House only** - In India, the Prime Minister may be a member of any two houses of Parliament, while in Britain the Prime Minister should necessarily belong to the Lower House of the Parliament.
- **No restriction on minister of being an MP on appointment** - In India, a person who is not a member of Parliament can also be appointed as minister, for a maximum period of six months, pending election to either of the houses of the Parliament. In Britain, the members of Parliament alone are appointed as ministers
- **No legal responsibility of ministers** - The ministers in India do not have individual or legal responsibility – i.e. they are not required to countersign the official acts. Britain has this system, such that every minister is individually responsible for the acts passed.
- **No shadow cabinet:** The Shadow cabinet is a feature of the British cabinet system. It is formed by the opposition party to balance the ruling cabinet and to prepare its members for future ministerial office. There is no such institution in India.

Based on these features, it is evident that there are many differences between Indian Parliamentary system and British Parliamentary System. Thus, Indian system is not completely based on the latter.

19. *A number of judicial pronouncements and constitutional amendments have altered the balance between Fundamental Rights and Directive Principles of State Policy since the commencement of the constitution. Analyse.*

Approach:

- Give brief introduction highlighting the basic reason for conflict between FR and DPSPs.
- Give an account of the changing relationship between FRs and DPSPs due to various judicial cases as well as Constitutional amendments.
- Conclude citing the final position seeking balance between the two.

Answer:

The justiciability of Fundamental Rights on the one hand and the moral obligation of the state to implement directive principles, without them being justiciable, on the other hand have led to a conflict between the two. Since the commencement of the Constitution, the various judicial pronouncements and constitutional amendments have tried to alter the nature of relationship between Fundamental rights and Directive Principles:

- **Fundamental Rights supreme but amendable:** In **Champakam Dorairajan case (1952)**, the first case regarding the conflict between Fundamental Rights and DPSP, Supreme Court ruled that the supremacy of fundamental rights would prevail in case of any conflict between the two. However, it also held that the Fundamental Rights could be amended by the Parliament by enacting constitutional amendment acts to implement the Directives.
- **Fundamental Rights sacrosanct:** In **Golaknath case (1967)**, the Supreme Court ruled that the parliament can't take away or abridge any of the Fundamental Rights which are sacrosanct in nature, which meant that the Fundamental Rights can't be amended for the implementation of the Directive Principles.
- **Fundamental Rights amendable and laws implementing certain directives immune from some Fundamental Rights:** As a reaction to the judgement in the Golaknath case, Parliament enacted 24th amendment (1971) and 25th amendment (1971).
 - **24th amendment** made it clear that Parliament has the power to amend any part of the Constitution including Fundamental Rights.
 - **25th amendment** inserted a new Article 31 C, which provided immunity to laws enacted for implementing the directives **under Article 39(b) and 39(c)** from any challenge on the grounds of violation of Article 14, 19 and 31. Further such a law, would not be open to judicial review.
 - **Kesavananda Bharati case (1973)** accepted the supremacy of two directives over certain Fundamental Rights. However, held the undermining of judicial review as unconstitutional citing violation of basic structure.
- **Supremacy of Directive Principles:** Under, **42nd Constitutional Amendment Act** in 1976, Parliament amended Article 31C and accorded primacy to **all Directives** contained in Part IV of the Constitution over Fundamental Rights conferred under Article 14, 19 and 31.
- **Balanced relationship between Directive Principles and Fundamental Rights:** In **Minerva Mills case (1980)**, the Supreme Court struck down the extension of supremacy to all Directives as unconstitutional and restored Article 31C in its original form. It held that the balance between part III and part IV is integral for the constitution as they together constituted the core of commitment to social revolution.

Thus, the present position is that the fundamental rights enjoy supremacy over the directive principles. However, the parliament can amend the Fundamental Rights for implementing Directive Principles, so long as the amendment doesn't affect the basic structure of the Constitution.

20. *Highlight the powers and functions of the Election Commission of India (ECI). Also, discuss the issues regarding the independence and impartiality of the ECI.*

Approach:

- Give a brief introduction about Election Commission of India (ECI).
- Highlight its administrative, advisory and quasi-judicial powers and functions.
- State the provisions regarding the Commission's independence and discuss various issues surrounding it.

Answer:

The Election Commission is a permanent and an independent body established by the Constitution of India directly to ensure free and fair elections. The Commission has got the jurisdiction throughout India over elections to Parliament, State legislature, Offices of President and Vice President.

Powers and functions of the Election Commission of India

- **Administrative:** The Commission has been given powers for determining the territorial areas of the electoral constituencies, preparing electoral rolls, notifying the dates and schedules of elections, granting recognition to political parties, allotting election symbols to parties, determine the code of conduct in times of elections etc.
- **Advisory:** ECI is empowered to advise the President and Governor on matters relating to the disqualifications of the members of Parliament and state legislature respectively.
- **Quasi-judicial:** It also acts as a court for settling disputes related to granting of recognition to political parties and disputes arising out of the allotment of election symbols to them.

Independence and impartiality of the ECI

Article 324 of the Constitution contains several provisions to safeguard and ensure the independent and impartial functioning of the Election Commission such as:

- Chief Election Commissioner (CEC) cannot be removed from office on account of political reasons and enjoys protection at par with the judges of the Supreme Court.
- Service conditions of the CEC cannot be varied to his disadvantage after his appointment.
- Election Commissioners cannot be removed from office except upon the recommendation of the CEC.

Despite these provisions, there are some issues regarding which hinder its complete independence and impartiality:

- **Appointment issues:**
 - **No prescribed qualifications in Constitution:** Members are appointed without any defined criteria or processes.
 - **Appointments liable to politicization:** At present, the appointment is done unilaterally by the government of the day, which raises the potential for partisan appointments, thus diluting its credibility.
- **Security of tenure:** The Constitution has not specified the term of the members of the Election Commission. Further, Election Commissioners are not given the same level of security of tenure as that of CEC.
- **Post-retirement appointment:** The Constitution has not debarred the retiring Election Commissioners from taking up an office of profit under the state or joining a political party after retirement.
- **Financial autonomy:** At present, the budget of ECI is not charged on Consolidated Fund of India which tends to reduce its independence and autonomy.

In light of this, it is essential to impart requisite institutional protection and independence so that public faith in the EC is strengthened. This bolsters the case for the removal of any political bias in the appointment of the CEC and ECs and the same should be channeled in a manner ensuring adequate participation of all the relevant stakeholders.