

EDGE IAS



**Lakshya - Mentorship Program
2024**

**Indian Polity –
NCERT Based Test (NBT)
(Model Answer)**

1. Discuss the process of election of President of India. Justify the indirect election process despite India being a Republic.(150 words/10 marks)

Approach

- Discuss the election process of President.
- Explain how indirect elections are justiciable in India.
- Conclude briefly.

Answer

President is the head of the Indian Union and is considered as the first citizen of India.

Election Process of President

Article 54 and 55 of the constitution deals with the election of the President of India."

The President is elected not directly by the people but by members of the Electoral College consisting of:

1. The elected members of both the Houses of Parliament;
2. The elected members of the legislative assemblies of the states; and
3. The elected members of the legislative assemblies of the Union Territories of Delhi and Puducherry

The system of the election - The President's election is held in accordance with the system of proportional representation by means of the single transferable vote and the voting is by secret ballot. A candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.

Also, in the election process, uniformity in the scale of representation of different States is maintained and at the same time, equality between the States as a whole and Parliament is also ensured.

Why indirect election?

1. The indirect election of the President is in harmony with the parliamentary system of government envisaged in the Constitution. Under this system, the President is only a nominal executive and the real powers are vested in the council of ministers headed by the prime minister. It would have been anomalous to have the President elected directly by the people and not give him any real power.
 2. The direct election of the President would have been very costly and time- and energy-consuming due to the vast size of the electorate. This is unwarranted keeping in view that he is only a symbolic head.
- However, despite being indirectly elected and acting only as nominal head of the country, the position of President is of considerable importance and a symbol of India as a republic

2. Can Parliament destroy the Basic Structure of the Constitution by expanding its amending power (150 words)

In *Minerva Mills v. Union of India* : The Parliament, through the Constitution (42nd Amendment) Act, 1976, attempted to circumvent *Kesavananda Bharati* by making Parliamentary power unlimited.

Immediately after the decision of the Supreme court in *Kesavananda Bharati* and *Indira Gandhi's* case, the parliament introduced the 42nd Amendment and added the word secular and socialist in the preamble, and added clauses 4 and 5 to Article 368 of the Constitution.

It indirectly declares that there is no limitation on the power of the parliament regarding the Amendment.

The Court in this case struck down the amendment on the grounds that the judicial review of Parliamentary enactments, and the limitation of Parliamentary power to amend the Constitution, were themselves part of the basic structure of the Constitution.

However, it was not until much later that the Supreme Court ruled on the question of whether an addition to the Ninth Schedule would make the listed statute immune from the requirement of not infringing on a fundamental right.

In *I. Coelho v State of Tamil Nadu* : The Supreme Court held that all laws were subject to the test of being consistent with fundamental rights, which are a part of the basic structure.

Hence we can summarize that: Parliament has limited powers to amend the constitution. Parliament cannot damage or destroy the basic features of the Constitution. The procedure prescribed for the amendment is mandatory. Non-compliance with it will result in the invalidity of the amendment.

Clauses (4) and (5) inserted in Art. 368 by the 42nd Amendment Act is invalid because they take away the right of judicial review. Parliament cannot increase its amending power by amending Art. 368.

However, experts have had major objections against the doctrine of basic structure like

- Amending power is not necessary to amend non-essential parts of the constitution. This power is needed to make changes in the basic features of the constitution.
- The doctrine leads to the uncertainty in the mind of the parliament as to where it stands as to the extent of its amending power.

One certainty that emerged out of various SC judgments is that all laws and constitutional amendments are now subject to judicial review and laws that transgress the basic structure is likely to be struck down by the SC. In essence Parliament's power to amend the Constitution is not absolute and the Supreme Court is the final arbiter over and interpreter of all constitutional amendments

3. What is the significance of the right to life and personal liberty? How have the courts expanded its meaning over the years? (10 Marks/ 150 words)

Approach :

- Introduce an answer by referring to article 21.
- Explain the significance of the right to life with dignity.
- Discuss the expansion of the domain of this right with the liberal interpretation of the courts.

Answer :

Right to life and personal liberty is a composite right which ensures a right quality life, personal freedom and security. It is guaranteed by article 21 of the Indian Constitution.

Article 21 declares that no person shall be deprived of his life or personal liberty except according to procedure established by law. This right is available to both citizens and non-citizens.

In *Gopalan case* (1950), the Supreme Court has taken a narrow interpretation of Article 21.

It held that the protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action. This means that the State can deprive the right to life and personal liberty of a person based on law. This is because of the expression 'procedure established by law' in Article 21, which is different from the expression 'due process of law' contained in the American Constitution.

But, in *Menaka case* (1978), the Supreme Court overruled its judgment in the *Gopalan case* by taking a wider interpretation of Article 21. Therefore, it ruled that the right to life and personal liberty of a person can be deprived by law provided the procedure prescribed by that law is reasonable, fair and just.

In other words, it has introduced the American expression 'due process of law'.

It also ruled that the expression 'Personal Liberty' in Article 21 is of the widest amplitude and it covers a variety of rights that go to constitute the personal liberties of a man. It constitutes the difference between a police state and a constitutional state.

Apex court in various verdict has clearly said that doctrine of due process of law is an intrinsic part of article 21 so what was written in the original constitution that is a doctrine of procedure established by law has been re-interpreted and its scope has been enlarged.

The Supreme Court has declared many rights as inferred fundamental rights as per Article 21 like a right to clean environment (Subhash Kumar v. the State of Bihar), right to speedy trial (A.R.Antule Vs.

R.S.Nayak), right to shelter, right to a dignified death (Passive euthanasia), right to privacy (decriminalisation of section 377), right to safe working place (Vishakha Guidelines), right to sleep, right to corruption-free administration etc.

As per Supreme court, right to life has been expanded to mean a right to a dignified life. It can be seen that all fundamental rights and directive principles aim to ultimately provide for this right. Thus article 21 is regarded as the backbone of part III and part IV and popularly said as the "fundamental of all fundamental rights"

4. Explain the Right to Equality provided under Article 14 with special emphasis on the "Equality Before Law" and "Equal Protection of Law". (150 words/10 marks)

Approach:

- Introduce with the Right to Equality under Article 14.
- Explain the "Equality Before Law" and "Equal Protection of Law".
- Conclude accordingly.

Answer:

Article 14 of the Indian Constitution highlights that State shall not deny to any person equality before the law or equal protection of Laws. The language is negatively worded right and It imposes the limitation on the State. Article 14 has used any person that means citizens as well non-citizens. Thus Article 14 is available to both citizens as well non-citizens. This is based on the concepts of Equality before Law and Equal Protection of the Law.

Equality Before Law

Equality before Law is a British concept that means that the Law is supreme and everyone is equal in the eyes of the law. In a broad sense, it means the absence of any special privileges in favour of any person.

It also means that no one is above the law and there should be no discrimination between two people. This concept emanates from the Concept of the Rule of Law given by Professor A V Dicey.

Rule of Law: It means Law is supreme.

- Law would be equally applicable to everyone.
- The constitution is a result of the Rights of the People.

In the Indian context, the first two principles are applicable. The third element of Rule of Law is not applicable to India as in India Constitution is the source of the Rights and not vice versa.

Equal Protection of the Law

The concept of the Equal protection of the law emanates from the USA and highlights that laws should not be applied universally. This concept recognizes the principle that people placed in unequal circumstances should not be treated equally.

The reservation for the marginalized communities is an example of the equal protection of laws. It allows the state to make positive discrimination in favour of the people who are placed in a disadvantageous position.

Thus, it allows for providing 'affirmative action' to the weaker section or creating differential tax rates for different income categories of people.

Many laws like the Juvenile Justice Act, Child Labour Protection Act, Prevention of Atrocity Act etc. have been passed to safeguard the interest of special groups of the society.

In a society like India that is highly unequal has no meaning of Equality before the law if we are not providing for the Equal protection of the law. Thus, the founding fathers of the Indian Constitution gave it special importance by including it under the Preamble of the Indian Constitution

5. "Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features". Critically Examine.

Approach:

- Describe features of Unitary State and Federal State.
- Write the constitutional provisions in this regard.
- Justify your opinion based on the Constitutional provisions.
- Conclude the answer.

Answer:

Article 1 of the Constitution of India describes India as a Union of states rather than as a Federation of states. There are two meanings associated with it:

- Federation is not an agreement among the states
- States have no right to secede from the Union

On the basis of Constitutional provisions the federal and unitary features can be listed down as below:

- **Federal Features Unitary Features**
- Dual Polity: Strong Centre
 - Union List has more subjects
 - Residuary power vests with Center
- Written Constitution 2. Article 3: States are not indestructible. The boundaries of states are not sacrosanct.
- Division of Powers
- Single Constitution for both Center and States
- Supremacy of the Constitution 4. Flexible amending procedure for most of the constitution.
- Rigid Constitution(Amendment of Federal provisions)
- States are not equally represented in the Rajya Sabha.
- Independent Judiciary 6.Emergency Provisions(Art:352;Art:356;Art:360)
- Bicameralism
- Single Citizenship
- Integrated Judiciary
- All India Services
- Appointment of Governor by the Centre

We can infer that there are more unitary features in our constitution compared to the Federal features. The Indian model of federalism resembles that of Canadian model as far as the centralizing tendency is concerned.

The need for centralism:

Dr BR Ambedkar’s perspective: The Constitution avoids the tight mold of federalism and could be both unitary as well as federal according to the demand of the situation.

Supreme Court in SR Bommai Case:

o The centralizing tendency is an exception and not a rule. We have federalism of own kind where every state freely shares its revenue, ideas and power with centre. For example: GST, inter-state council represents the evolving character of federalism, which is based on cooperative and competitive federalism and reflect unique model in the world.

Thus, although the unitary features are embedded in our Federal setup, it does not violate the basic federal principle of existence of a dual polity wherein the States and the Center derive their independent authority from the Center.

6. “Parliament’s power to amend the constitution is a limited power and it cannot be enlarged into absolute power”. In the light of this statement explain whether parliament under article 368 of the constitution can destroy the basic structure of the constitution by expanding its amending power? (250 Words/15 marks)

Approach:

- Introduction: briefly state what the basic structure doctrine of the Indian Constitution is.
- Main Body: Elaborate how plain reading of article 368 seems to place no explicit limit on the power of the Parliament while acting as a constituent body- mention 368 (1) and 368 (2).
- Conclusion: Stress how this limit on the power of the Parliament acts as a deterrence against the Legislative excesses.

Answer:

The case of Kesavananda Bharati v. State of Kerala (Kesavananda Bharati) is perhaps the most well known constitutional decision of the Supreme Court of India (Supreme Court). While ruling that there is no implied limitation on the powers of Parliament to amend the Constitution, it held that no amendment can do violence to its basic structure (the “Basic Structure Doctrine”). Further, it established the Supreme Court’s right to review and, therefore, established its supremacy on constitutional matters.

Basic Structure of the Constitution Doctrine:

The “basic features” principle was first expounded in 1953, by Justice J.R. Mudholkar in his dissent, in the case of Sajjan Singh v. the State of Rajasthan.

In 1967, the Supreme Court reversed its earlier decisions in Golaknath v. State of Punjab. It held that Fundamental Rights included in Part III of the Constitution are given a “transcendental position” and are beyond the reach of Parliament. It also declared any amendment that “takes away or abridged” a Fundamental Right conferred by Part III as unconstitutional.

Kesavananda Bharati’s case- was considered a historical landmark case, where the first-time Supreme Court recognized the basic structure concept.

In this case, the validity of the 25th Amendment was challenged by the 24th and 29th Amendments. The court by majority overruled the judgment of the Golaknath case.

The inherent ambiguity of the doctrine, as well as that of the ratio in Kesavananda Bharati, resulted in various challenges both to and under the doctrine before the Supreme Court.

The period following Kesavananda Bharati was one where the doctrine evolved on a case-to-case basis, resulting in a gradual expansion of the doctrine.

In Indira Gandhi v. Raj Narain, a Constitutional amendment to regularise Prime Minister Indira Gandhi's election was struck down citing the basic features of democracy, rule of law, and equality.

From 1975 onwards, the courts have interpreted and expanded the doctrine to include judicial review of decisions by the High Court and Supreme Court under Articles 226 and 32, secularism and federalism, the freedoms under Article 19, judicial independence, and recently, judicial primacy in the judicial appointment process to the basic structure and framework of the Constitution.

7. Panchayats can discharge their functions only if they have sufficient financial resources. What are the financial issues faced by the Panchayats? Suggest some measures in this regard.

Approach:

- Explain the present sources of Finance available to Panchayats.
- Highlight the problem areas.
- Suggest some measures to overcome these problems.

Answer:

The 73rd amendment act of 1992 gave a practical shape to Article 40 of the Indian constitution. The objective was to bring a 3rd tier of governance at the grass root level in villages and to enable them to function as units of self-government.

In this regard, there are various sources of finance available to the panchayats. The availability of financial resources to the Panchayats depends upon the will of the State government.

Sources of Finance available to Panchayats

1. The State Government may authorize the panchayats to levy, collect and appropriate taxes.
2. The state government may assign taxes and duties collected by the State.
3. The state government may provide grants-in-aid to the panchayatas.
4. The state government may constitute specific funds for the development of panchayats.

Apart from this, there exists a Finance Commission at the State level which recommends various issues with respect to augmentation of financial resources of the panchayats.

Issues with Finance:

Although political decentralization exists on paper, the process fiscal decentralization has not been co-terminus with the political counter-part.

- The panchayats do not have enough resources and powers for revenue generation.
- PRIs are not trained to augment their resources.
- The recommendations of State Finance commission are not taken seriously.
- Action Taken Report is not submitted within 6 months in most of the states
- Objective and transparent norms for devolution are not taken into consideration.

Suggestions to improve the Finances of Panchayats

- It is necessary to broaden the revenue base of panchayats and to expand the tax domain.
- The share of royalty from minerals needs to be flown into the panchayat treasury.
- The untied funds should form a significant share in transfer of funds from the center. This gives some flexibility to the panchayats.
- The panchayats should be allowed to borrow from the banks and financial institutions.

For the effective governance at the grass root level, political and fiscal decentralization should go hand in hand. Mere transfer of power with inadequate funds can cripple the functioning of panchayats.

8. Write a note on the doctrine of “Procedure Established by Law” and the doctrine of “Due process of Law”. Give a reference to the changing trend post Maneka Gandhi Case in this regard.

Approach:

- Introduce the two doctrines
- Differentiate between the two doctrines in the context of judicial review.
- Conclude with the change brought about by Maneka Gandhi case.

Answer:

Introduction

Procedure established by law doctrine is explicitly mentioned in the Constitution of India. The Doctrine of Due Process of Law is followed in America, but in light of recent Supreme Court judgement, the difference between the two in narrowing down in Indian context.

The Doctrines

- The American Constitution provides for „due process of law“ against that of „procedure established by law“ which is contained in the Indian Constitution.
- The difference between the two is: the „due process of law“ gives wide scope to the Supreme Court to grant protection to the rights of its citizens. It can declare laws violative of these rights void not only on substantive grounds of being unlawful, but also on procedural grounds of being unreasonable.

Our Supreme Court, while determining the constitutionality of a law, however examines only the substantive question i.e., whether the law is within the powers of the authority concerned or not. It is not expected to go into the question of its reasonableness, suitability or policy implications. Thus, the scope of judicial review in India is narrower than that of what exists in USA.

Post Maneka Gandhi Case

However, The Supreme Court considerably widened the scope of judicial review in India through its judgement in Maneka Gandhi’s case. In this case, the Supreme Court accepted the concept of natural justice as one essential component of law thereby importing the American concept of „due process of law“ into our Constitution.

9. "Prime Minister represents the executive government in a way that no single member of the Council of Ministers (CoM) or even the entire CoM can." Discuss. 150 Words (10)

Approach:

- Introduction about PM in Westminster model of govt.
- Importance of PM in comparison with council of minister
- Conclusion

Answer:

Under the Indian Constitution the executive power of the Union vests in the President and is exercised by him through officers subordinate to him. However, in exercising his executive power the President is bound to act according to the aid and advice rendered to him by the Prime Minister and the Council of Minister.

Under Article 74 it is required that, " There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in exercise of his functions, act in accordance with such advice".

In Westminster model , PM is Primus inter pares (First among equal) but in Indian model of govt , PM enjoy more power than rest of the council of minister.

The PM is the linchpin of the Govt. of India. He has an edge over CoM in executive govt. because of the following reasons:

1. He is the head of govt. and all major appointments – political and permanent- are made under his guidance. Example- He head cabinet committee on appointment. He appoints head of several important institution like NITI aayog.
2. He is the Leader of Cabinet and any member having difference with the PM can be dropped if he does not change his mind.
3. He is the link between President and CoM. The PM acts as the main communication channel in between the council of ministers and the President of India.
4. He is also leader of the Parliament and in a Parliamentary form of govt. this very fact infuses great powers in him.
5. Though MEA executes the foreign relation, but it is the PM who is Chief spokesperson in foreign relations.
6. He is, more often than not, the leader of his political party and all the other members of CoM follow his command.

Despite the fact PM enjoy greater power in respect to council of minister , CoM still contribute in creating check on PM power and enhances the spirit of collective decision making.

10. 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. 250 Words (15)

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.