EMPOWER IAS

GENERAL STUDIES - 2

TEST CODE -2017

1. The 97th constitutional amendment act, 2011 has re-invigorated the cooperative societies. Examine the statement in the context of multiple challenges confronted by the cooperative societies in India?

2. The Doctrine of Separation of Power was adopted to ensure proper checks and balances between different organs of the state. How has the Executive used various tools and situations to undermine the authority of legislature? Suggest measures to ensure better parliamentary control over executive?

3. Why is president of India a "Nominal Head" and not a "Real Executive"? Is the President merely a rubber stamp in India? Critically analyze.

4. What is a National Court of Appeal? Analyse the significance of the proposal of setting up of a National Court of Appeal to hear routine appeals in civil and criminal matters from the high courts?

5. Elections in India is frequent and costs associated is enormous, do you think that the time has come to implement the idea of 'One India, one election'? Critically analyze.

6. There is widespread misuse of money power in Indian electoral process. State funding of political parties is important step towards electoral reforms to curb the menace of money power in India. Critically analyze.

7. What do you understand by "Tribunalisation of justice?" Give your opinion about "Tribunalisation of justice" highlighting its advantages and disadvantages.

8. Why the decisions taken by the presiding officers of the legislatures under Anti-Defection Law are generally contested before the courts of law? In this regard what suggestions do you make to reform Anti-Defection law? Do you think the concept of party whip goes against the idea of democracy?

9. "The time has come to decriminalise defamation and withdraw the sedition law from India's legal lexicon as they severely hamper the citizen's right to enjoy their freedom of speech and expression." Critically analyse the statement in the light of sedition laws in India.

10. Does the special power of the Lok Sabha on money matters make the Rajya Sabha the secondary chamber? Discuss the above statement in the light of the recent developments.

11. In Ashok Kumar Bhattacharya Vs Ajoy Biswas case (1985) the Supreme court held that to determine whether a person holds an office under the government, each case must be measured and judged in the light of the relevant provisions and sections. What are the issues surrounding Office of Profit? Critically analyze its significance and issues relating to its misuse?

12. "Union Territories, though centrally administered, enjoy an independent identity." What kind of independence do they enjoy? How would you compare it with that of the States?

13. The Union Ministry for Water Resources has for long been arguing for shifting 'water' as a subject to the Concurrent List of the Constitution. With the complexities increasing in water management in the country, how far do you think such a step would help solve the problems the country is facing?

14. Cooperative federalism, which is *sine qua non* to achieving any national goal in India, would require rejuvenating the virtually defunct Inter State Council. Examine the role that Inter State Council could play, especially in the light of bodies like NITI Aayog.

15. The separation of powers between the judiciary and the executive does not mean that both work in mutually exclusive directions. The executive – judiciary power struggle had held up crucial changes required in the Memorandum of Procedure (MoP) to usher in transparency and accountability in the process for selection and appointment of Judge's. Discuss. Suggest some steps to resolve this stalemate over appointment of Judges since the NJAC verdict.

16. It is often observed that the cherished constitutional rights are found subservient to economic goals and objectives. Critically evaluate the statement in the light of Right to Privacy and Aadhar debate in India.

17. From 2017-18, the Central government expenditure will be classified only as capital and revenue spends, the move is a part of the government's decision to do away with the classification of Plan and Non-Plan expenditure. Examine the reasons behind the government's decision to dismantle the plan and non-plan classification of expenditure. How will the new classification of schemes into 'core of the core', 'core' and 'optimal' address the challenges of the earlier classification?

18. Pressure groups play an essential role in a democracy as they complement and supplement electoral democracy in two main ways: first, by providing an important mechanism by which citizens can influence government between elections; and second by enabling opinions to be weighed as well as counted. What is a pressure group? Critically analyze the role of Pressure groups in an Indian democracy?

19. Analyse whether (RERA) Real Estate Regulatory Agency will prove to be a mere addition to existing problems as Independent Regulatory Authorities in India are facing serious challenges in delivering their mandate?

20. Questions over the credibility of the Electronic voting machines (EVM) have been raised by several quarters including political parties. In your opinion, should India revert back to the ballot paper system? Do you think introduction of Voter Verifiable Paper Audit Trail (VVPAT) would make the election process more transparent?

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GENERAL STUDIES 2018
TEST CODE 2017
(Model Answer)

1. The 97th constitutional amendment act, 2011 has re-invigorated the cooperative societies. Examine the statement in the context of multiple challenges confronted by the cooperative societies in India?

Ans: A cooperative society is an autonomous association of persons, united voluntarily to meet common social, economic and cultural needs. It is based on the principles of open voluntary membership, democratic control, joint ownership, autonomy, equity, self help and concern for community.

The cooperative movement in India has assumed a great significance, especially in rural areas in poverty removal and faster socio economic growth. They have been operating in various areas of the economy such as credit, production, processing, marketing, input distribution, hosing, dairying and textiles.

However, despite their immense potential, their failure is mainly attributable to:

- Lack of mobilization of internal resources and over dependence on government assistance, diluting the spirit of 'Self Help'
- Lack of professional management, poor accountability, delayed elections and credibility crises
- Bureaucratic control and interference in the management impacting democratic control
- Political interference and over politicization with boards of cooperative societies dominated by political leaders and affluent section. No representation to diverse section
- Predominance of vested interests resulting in non-percolation of benefits to a common member.

The 97th Constitutional Amendment Act seeks to overcome the above challenges faced by bringing cooperative societies under Article 19 (1) (c) of fundamental rights and Article 43 (B) of Directive Principles of State Policy, which further inserts a new part Part XI B in the constitution.

Positives of the 97th Constitutional Amendment Act

- Commitment to reform the act refer seriousness of purpose by making the right to form cooperative a fundamental right
- Professionalization and accountability of management – Act provides for mandatory annual audit, right of a member to get information and duty of ate to ensure autonomy article 43 B and provide for education and training of the members
- Timely conduct of elections under autonomous authority- Elections must be conducted before the expiry of the term of previous Board. Thus, officers/managers cant remain beyond their term of 5 years

- Wider Representation- Act provides for co-option of experts as members having experience in the field of banking, management, finance etc.
- Encourage democratic control and limit political interference- The cat limits total number of directors to 21, all to be elected. Members co-opted by state government cannot exceed two, with no voting rights.
- Safeguarding the interests of Members- Act provides for various penalties on officers and members to check nepotism, favouritism and partiality.

Although, 97th Amendment Act tries to correct above problems but such reforms are limited to administrative and management aspects. Cooperative societies continue to face various economic and political problems like lack of funds, limitation of membership, political rivalry, lack of efficiency in functioning etc. Vested interests and lack of political will may continue to act as a roadblock to the reforms.

This require that state perform its duty under DPSPs to build capacities of cooperative members, ensure effective supervision, assure autonomy in the real sense, check political interference and enforce the provisions of the cat in letter and spirit. Only then cooperatives can serve as successful vehicles for development of rural economy in particular, and Indian economy in general.

2. The Doctrine of Separation of Power was adopted to ensure proper checks and balances between different organs of the state. How has the Executive used various tools and situations to undermine the authority of legislature? Suggest measures to ensure better parliamentary control over executive?

Ans: A clear separation of power is a sine qua non of a democratic society to avoid misuse of power and despotic role, and to ensure rule of law, liberty and justice. This is provided by a system of "checks and balances" that ensures

- No organ usurps the power of other organs, and operates within its own stated jurisdiction
- No organ abdicates its responsibilities
- In case of violation of above, other organs move in to restrict usurper to act within its jurisdiction, or push it to fulfil its given mandate

Under the parliamentary democracy in India, the functions and domains of Executive, legislative and Judiciary have been kept separate, but they exercise adequate checks over each other. Executive is responsible to parliament and it loses its office if it loses the confidence of parliament.

However, through following tools and situations executive undermines the authority of lLegislature:

- **Ordinances under Article 123**: Re-promulgation of ordinances, without giving any chance to the house to pass it, undermines the legislature's primacy, for eg. Ordinances on land acquisition, insurance, citizenship, TRAI etc.
- **Passing of various important bills as Money Bill**: If a money bill is passed in Lok Sabha then, Rajya Sabha cant stop it from becoming law. For example- Aadhar Act etc
- **Anti-Defection Law**: This requires all legislators to abide by the party diktat on every vote in the legislature. Thus, the legislator cannot exercise independent judgement.
- **Office of Profit**: Non transparency in manner of designating a position as "Office of Profit" has made legislators amenable to executive's influence through temptations of office which can come in the way of independent discharge of their duties.
- **Delegated legislations**: These are the laws, rules, regulations etc. enacted by executive due to complexity of laws and lack of availability of time with parliament. In absence of adequate scrutiny by parliament, executive may usurp legislative powers to benefit themselves
- **State emergency under Art 356**: Under President rule, the state assembly can be suspended or dissolved. After suspension, all the administration is managed by the central executive. Thus, it works against the popular will of the people.
- **Presidential assent to state bills if they are reserved by Governor**: Many times duly enacted laws by state governments are reserved for Presidential assent which is in fact is the Central executive assent. That bill can't be passed, until central assent is not given. Thus, executive can undermine the state legislature's will.
- **Clear majority to executive in both houses**: In India, executive is drawn from legislature's, thus, if any political party enjoys majority in both the houses of parliament then it can pass or reject any law or motion it desires.
- **Parliamentary disruptions**: This results in very less time to discuss and deliberate on executive's performance. These disruptions have also increased the use of Guillotine to pass various laws without discussion.

A better parliamentary control over executive can be ensured through:

- Proper scrutiny of delegated legislation by parliamentary committees
- Elimination of "rule by ordinance"
- Amendment to anti defection law and legislative backing for "office of profit"

- Speaker to be given power to punish members who disrupt the parliamentary proceedings
- Strengthening the parliamentary committees and fixing timeframe for implementation of their recommendations
- Fixing minimum number of sittings days and working hours of the parliament to overcome excessive delegation to the executive due to time constraint

The doctrine of separation of power and checks and balances are hallmark of Indian democracy. Perhaps, the failure of parliament to check executive power has resulted in more Judicial activism to fill the void. However, all of these organs of state need to perform their functions within constitutional framework. Then only the ideals enshrined in preamble and objectives enlisted in DPSPs can be achieved.

3. Why is president of India a "Nominal Head" and not a "Real Executive"? Is the President merely a rubber stamp in India? Critically analyze.

Ans: According to Article 74, there shall be a Council of Minister to aid and advise the president who shall act in accordance with such advice. Thus, in Indian democracy, President was envisaged only as a ceremonial head of the state while real executive powers have been vested in council of minister headed by Prime Minister. The President of India represents the nation, but not rule the nation.

This arrangement was made because of following reasons:

- Poor experience with colonial administration: Under the British Rule, Governor General was head of state who used to take important decisions and had virtual veto over any officer or minister's voice. Thus, to make people's representative more powerful, President's post was given a ceremonial stature.
- Emphasis on institution rather than an individual: India is a very diverse country, thus, to give voice to every section, region etc. the institution of CoM, headed by PM, was made real executive so that diverse group can be represented.
- Avoiding twin power centres: Giving equal executive power to the President vis-a-vis PM/Com may lead to day to day conflicts over policy or operational issues.
- High cost of dual direct elections: In India, direct elections of Lok Sabha takes long time and requires huge resources whereas indirect election of President a one day affair. Thus, direct elections of both can lead to high cost to exchequer.

However, being a nominal head doesn't mean that President is merely a "Rubber Stamp" as can be seen under following circumstances where he can act independent of advice of CoM:

- Right to be informed under Article 78: Prime minister has the duty to inform President regarding all decisions of CoM relating to administrative and legislative affairs.
- Veto Powers:
  - Suspensive Veto – President can send any decision of CoM for reconsideration i.e. although, not an absolute veto, but merely use of such veto can trigger a public debate.
  - Pocket Veto – Where a President can't reject a law, then he also doesn't approve it.
- Interpretation of Fractured mandate: In case of hung assembly, his decision on who forms government or whether new elections will be conducted to decide mandate, is final.
- Test of Majority: He can direct to CoM to prove its majority if there is an indication that they may have lost it.
- Disqualification of Members of Parliament: He is the final authority to decide on disqualification of a sitting MP (Article 102) in consultation with the Election Commission.
- Friend, Philosopher and Guide: President is generally an experienced statesman who can guide CoM during difficult times. He also represents India at various bilateral and multi lateral forums.

Thus, President can exercise his powers as and when the situation warrants and he is not merely a "Rubber Stamp". Eventually, President is what that a President makes out of it. Whatever, may be the case, as he has taken the oath to "defend and protect the constitution", President has to take necessary action whenever rest of organs are deviating from constitution.

As rightly said by former President Venkataraman," The position of President of India is like an emergency lamp, it comes on automatically when there is a crisis, and goes off automatically when the crisis passes."

4. What is a National Court of Appeal? Analyse the significance of the proposal of setting up of a National Court of Appeal to hear routine appeals in civil and criminal matters from the high courts?

Ans: National Court of Appeals (NCA) with regional benches in Chennai, Mumbai and Kolkata is meant to act as final court of justice in dealing with appeals from the decisions from the High courts and tribunals within their region in civil, criminal, labour and revenue matters.

In 1986, the Supreme court had recommended establishment of an NCA to ease the burden of the Supreme court.

Need for separate National Court of Appeal

- Help ease burden and clear pendency – With 60,000 pending cases, Supreme court has been reduced to a normal court of appeal for all 24 High Courts in India, greatly limiting its bandwidth to take up significant constitutional matters in India.
- Help focus on real mandate and primal functions- The Supreme court's real mandate is that of a constitutional court , the ultimate arbiter on disputes concerning any interpretation of the constitution . However, the number of decision by constitutional bench is a paltry 0.12% in last decade.
- Enable adherence to constitutional provisions- Crucial cases requiring a full 5 member constitutional benches like Salwa Judum, electoral reforms, SIT on black money, decriminalization of homosexuality have been taken up by just two judges bench, going against the spirit of Article 145 (3)
- Reduce physical and financial difficulties- A single SC bench in Delhi restricts the accessibility and speedy justice for poor people and those in remote areas.
- Successful international examples- More than 50 countries including USA, South Africa, Canada etc. have a court of appeal, as separated from Constitutional court.

Challenges

- A separate National Court Of Appeal (NCA) fundamentally alters the character of Supreme court, its constitution, and aura as an Apex court.
- Setting up of NCA will require amending Article 130, which may not stand the test of basic structure.
- There are genuine concerns about sharing 'Special leave powers' (Article 136) with regional benches.
- The limited strength of Supreme court judges and scarcity of judicial talent will cause the existing judicial apparatus to spread thinner with a separate court.
- Both Supreme court and government later rejected the proposal of setting up NCA on the grounds that it is constitutionally impermissible.

Way Forward

- The idea of a National Court of Appeal requires consideration, but in a manner that would not undermine the undoubted authority of the Supreme court of India
- The four regional benches holistic judicial reforms such as rationalization of SLPs/PIL, subordinate judiciary reforms, improving judicial strength, timely appointments of judges both in HC and SC upgrading infrastructure quality of justice and accountability must be pursued.

However, in the interim, holistic judicial reforms such as rationalization of SLPs/PIL, subordinate judiciary reforms, improving judicial strength, timely appointments of judges both in HC and SC, upgrading infrastructure, quality of justice and accountability must be pursued.

5. Elections in India is frequent and costs associated is enormous, do you think that the time has come to implement the idea of 'One India, one election'? Critically analyze.

Ans: As per the Election commission's report, not even a single year passed in last 30 years without an election being held in the country. Frequent elections hamper long-term policymaking because every decision is seen as bait for votes.

Hence, to end this vicious cycle of elections, the desirability of holding simultaneous elections for the Lok Sabha and state assemblies is being discussed at various levels as a significant potential electoral reform. However, there is a need to assess its feasibility.

Merits of conducting simultaneous elections/demerits of frequent elections:

- Frequent elections take focus away from governance to winning of elections, and slow down implementation of developmental agenda.
- Repeated enforcement of Model of Conduct restricts administrative action. New schemes, appointments, transfers or postings cannot be made without Election commission's approval.
- A government in perpetual election mode tends to favour election winning populist policies i.e. short term visible goals rather than long term foundational goals.
- Cost implications- Frequent elections entail enormous cost in terms of time, financial and administrative resources.
- Politicization of legislative matters: Parliament is reduced to just another battle ground leading to logjam and deadlocks over crucial bills e.g. GST, labour reforms etc.
- International examples- Countries like South Africa and Sweden serve as the model examples, underlining the success of simultaneous elections, internationally.

Challenges to simultaneously elections:

- **Accountability:** Frequently elections ensure "continuous accountability" of politicians rather than "episodic accountability" every five years
- **Politician-Citizen link-** Multi level elections keeps politicians in touch with pulse of people and allows for "Course correction" at various points.
- **Impact on federal structure:** Local and national issues may get mixed up and distort voter's priorities, who may end up voting the same party. In voter's minds national issues might overtake state and local issues or vice versa.
- **Not easy to implement:** Even if desirable, it is not practically feasible in case of premature dissolution of Lok Sabha / State assemblies. Considering one old scenario when the Lok Sabha got dissolved in just 13 days (1998). For the sake of simultaneity all state assemblies with full or thin majority needs to be dissolved.
- **Conflict with constitutional provisions:** Passing a no confidence motion to conduct the election before expiry of the term will be unconstitutional. Under Article 83(2), it is state's prerogative to decide when to call for elections.
- **Administrative difficulty:** It will be very difficult to organize election at the national level because of issues of logistics, security, election and administrative personnels to organize nation wide, multi level simultaneous election.

Thus, the possibility of conducting "One India, One Election" or simultaneous elections to state assemblies and Lok Sabha needs further deliberation and consensus building across the board. Government's initiative inviting people's view on MyGov Portal is a step in the right direction.

However, a more permanent solution to make the election process more transparent, cost effective, peaceful and quick, lies only in carrying out a holistic electoral reform, including, reducing election duration to single day, curbing money power, implementing state funding of election, ban on all private/corporate funds, reducing operational duration of Model Code of Conduct, disallowing candidates to contest from more than one constituency, de-registering frivolous political parties etc.

6. There is widespread misuse of money power in Indian electoral process. State funding of political parties is important step towards electoral reforms to curb the menace of money power in India. Critically analyze.

Ans: According to Association of Democratic Reforms report, 69% of the income of political parties between 2004-05 and 2014-15 came from unknown sources. At the same time, NCRWC estimates current election funding expenditure to be 30-40 times the sanctioned limit. This

points towards the widespread misuse of money power in Indian electoral process which has led to corruption, cash for votes, money laundering, black economy, exclusion of honest candidates, and negative social impact.

Hence, to make Indian electoral process clean, transparent and just, state funding of political parties has been advocated as a significant electoral reform. Indrajit Gupta committee, Second ARC , Law commission of India etc. have recommended it in various degrees.

Benefits of State Funding of Election:

- **Provides level playing ground-** It allows candidates from all sections of society to start on an equal financial footing. This can encourage people with clean and honest image to join politics.
- **Restricts crony Capitalism:** It would reduce the dependence of political parties on private contributions, which usually comes from big corporate/business houses on a quid pro quo basis, thus, serve great public interest instead of private corporate gains and crony capitalism.
- **Ensures greater transparency:** Since the political parties would receive a substantial amount of their income from the state, they would be obliged to ensure greater transparency in disclosing their income and expenditure, there by help curb corruption.
- **Curtails black economy:** It will reduce use of black money and money laundering in the electoral process.
- **Promotes intra party democracy:** It would reduce the clout of moneybags within the political parties since members position will be based on merits and not wealth.
- **Strengthens democracy:** Candidates will be able to concentrate on important public issues rather than raising money, thus providing fertile ground for citizen centric governance.

Challenges associated with state funding of elections:

- Unless there is a mechanism to completely restrict private contributions, the state funding will fail to check misuse of money power.
- Biggest limitation for state party funding is lack of monitoring mechanisms for party expenditure.
- It is morally and economically untenable to use tax payer's money for funding elections, especially when urgent welfare programmes like health, education , poverty etc. face resource constraints.

- State grants of funds would erode the independence of political parties as they would be answerable to the state even for their internal working and management of funds.
- Government grants may incentivize even the non-serious parties to contest election leading to mushrooming of political parties, and overburdening the electoral apparatus.
- There is no clear and widely accepted formula to allocate fund to new party or independent candidate before election. For Example whether it will be full or partial funding, or in cash or kind, or to all or just national parties etc.

Political funding has been a source of funnelling black money, and cleaning up the poll process is necessary. State funding is a possible solution but it alone will not do away with the black money electoral politics nexus. State funding should not be considered unless some radical reforms are accompanied in areas such as de-criminalisation of politics, intra-party democracy, holistic electoral finance reforms, robust transparency and audit and strict legal regime for enforcement of anti-corruption laws.

7. What do you understand by "Tribunalisation of justice?" Give your opinion about "Tribunalisation of justice" highlighting its advantages and disadvantages.

Ans: A tribunal is a quasi-judicial body established by an Act of Parliament or State Legislature under Article 323A or 323B to resolve disputes that are brought before it. It is not a court of law, but enjoys some of the powers of a civil court, viz., issuing summons and allowing witnesses to give evidence. Its decisions are legally binding on the parties, subject to appeal.

Tribunalisation of justice means over reliance on tribunals to resolve disputes that may follow the letter but not the spirit of rendering justice to the people. Tribunalisation of justice is criticised for the following reasons:

(1) Under the Doctrine of Separation of Powers, the Judiciary is given the role of rule adjudication and functions independent of the executive and legislature. Since a tribunal is not a court of law it does not form part of judiciary. It is controlled and manned partly by the Executive. Thus it goes against the principle of separation of powers and allows the Executive to perform limited rule adjudication functions.

(2) Since the decisions of some of the tribunals, like National Green Tribunal (NGT) can be taken on appeal only before the Supreme Court, tribunalisation of justice may adversely affect the role of the High Courts as Courts of Appeal and deprive them of their power of judicial review. The superiority of the Constitutional Courts (HCs) over the statutory courts (tribunal) is compromised.

(3) The Constitution protects the independence of the judiciary in terms of qualifications, mode of appointment, tenure and mode of removal, which is not available to members

of tribunals. They come under the control of the Executive. The Executive is the largest litigant in the country and creates a conflict of interest wherever the government is a party to disputes before the tribunals.

(4) Due to direct appeal clause, the tribunals increase the pendency of cases before the Supreme Court.

Though the tribunals provide speedy justice and can handle technical issues like service, tax and environmental cases better, the benefits of establishing tribunals can be extended to the nation, if the Parliament makes use of Article 247 that provides for establishing additional courts for better administration of justice. Further the tribunals shall deliver justice and function under the appellate jurisdiction of the High Courts.

The Supreme Court in July 2016 referred the issue to the Law Commission of India to examine whether tribunalisation of justice is obstructing effective working of the Apex Court.

8. Why the decisions taken by the presiding officers of the legislatures under Anti-Defection Law are generally contested before the courts of law? In this regard what suggestions do you make to reform Anti-Defection law? Do you think the concept of party whip goes against the idea of democracy?

Ans: In an environment when money power can bring an elected government down, Anti-Defection law is a necessary legislation for promoting healthy democracy in India. However, it is seen that the decisions taken by the presiding officers of the legislatures are contested before the courts. Recent incidents in Arunachal Pradesh and Uttarakhand are cases in point.

The main reason is the doubtful objectivity, neutrality and impartiality of the presiding officers. It has been alleged that presiding officers have acted with bias. Moreover, presiding officers themselves, at times, have highlighted their inability to act as a tribunal and discharge the quasi-judicial function under the law. For example, the term 'anti-party activity' is highly subjective and it attracts disqualification under the law. Such interpretations are, perhaps, best left for a judicial mind to make.

The underlying principle of the party whip is that MPs are elected on a party ticket and voters have exercised their preference for a set of policies of the party. Thus, the MPs should be bound by the decision of the party.

However, this assumes that the MP is voted solely on the popularity of the party, akin to a List System of election. The fundamental principle of First-Past-The-Post-System is accountability of MPs towards the electorate. Anti-Defection law breaks that link as the MPs do

not have to justify their individual votes on issues that may be important to their voters. Moreover, Anti-Defection law removes the need for the government to build broad consensus for its decisions. It only needs to convince leaders of other political parties. Hence, the role of MP and hence democracy is diminished.

There is, hence, a need to reform the Anti-Defection law so as to realise its true objective and minimise misuse. Following reforms may be considered:

a) As recommended by the Election Commission, the National Commission for Review of the Constitution and Goswami Committee, decisions under Anti-Defection law shall be taken by the President/Governor on the advice of Election Commission, similar to other grounds of disqualification under Articles 102 and 191 of the Constitution of India.

b) The law be amended appropriately to reflect the Supreme Court's clarification (Hollohan vs Zachilhu, 1992) of limiting the law's applicability to only those votes of MPs where stability of the government is under threat and on major policy issues. For all other issues, the party whip shall not invoke disqualification under the Anti-Defection law.

9. "The time has come to decriminalise defamation and withdraw the sedition law from India's legal lexicon as they severely hamper the citizen's right to enjoy their freedom of speech and expression." Critically analyse the statement in the light of sedition laws in India.

Ans: Sections 499 and 500 of the IPC provide a remedy of criminal defamation, while Section124-A deals with the sedition law. The controversial defamation law has been used frequently – the recent being the cases of Subramaniam Swamy, Rahul Gandhi, Arvind Kejriwal etc.The dozens of defamation cases filed in Tamil Nadu to silence journalists from calling out mal-governance in the wake of Chennai floods shows that powerful politicians are using this as a weapon against each other.

Arguments Supporting Defamation and Sedition Law

- Sections 499 and 500 are constitutionally saved and they are to be read as reasonable restrictions on an individual's right to free speech. "The law is part of the state's "compelling interest" to protect the dignity and reputation of citizens. Also reputation of one cannot be allowed to be crucified at the altar of the other's right of free speech". (Subramaniam Swamy vs UoI 2016)
- The proponents deny the argument that criminal defamation had a chilling effect on free speech. It maintained that a person would be charged for criminal defamation only if his speech had neither social utility nor added to the value of public discourse and debate.

- Similarly, Section 124-A is shown as a reasonable restriction on individual's freedom of speech in favour of public order.
- Mere misuse or abuse of law, actual or potential, can never be a reason to render a provision unconstitutional. Penalising the statutory provision, rather than rectifying the systemic problems in our courts, is to throw the baby out with the bathwater.

Arguments Against Defamation and Sedition Law

- Criminal defamation (Section 499 and 500 of IPC) stifles freedom of speech and expression under Article 19(1)(a) of the Constitution, even if the speech made was truthful and meant to foster public debate of matters in the public domain. It is only when the truth is spoken for "public good" that exception may be made. Thus, it will lead to a chilling effect on speech.
- Critics have questioned the "reasonableness" of the restraint imposed on an expression based on truth. "The state has no compelling interest in restricting free speech under Article 19(1)(a) between or among private persons. Free speech restrictions under Article 19(2) must necessarily originate from compelling state interest, not private interest," it is argued.
- Misuse of Sedition Law: Despite the Supreme Court verdict in the Kedarnath Singh vs State of Bihar 1962 and the recent Shreya Singhal vs UoI 2014, the sedition law is being misused by government in power. In both the cases, the SC maintained that- speech, howsoever annoying, offensive, or inconvenient can't be prosecuted unless its utterance has a proximate connection with any incitement to disrupt public order. If used arbitrarily, the sedition law would violate freedom of speech and expression under Article19.
- The offence of sedition ranges from imprisonment for life to rigorous imprisonment for upto three years if the court determines that the seriousness of the offence is mitigated by circumstances. This gives excessive judicial discretion to a court in the matter of sentencing.
- These penal sections (499, 500, and 124-A) had been misused by those in power to settle political scores. They are used as a means to coerce the media and political opponents into adopting self-censorship and unwarranted self-restraint.
- It goes against the global trend of decriminalising crimes and institution of civil remedies. The United Kingdom, from whom India borrowed these pernicious provisions of the defamation law and sedition as well, had abolished criminal libel five years ago.

However, civil defamation alone cannot place sufficient deterrence on a 'defamer' who in this age of internet and social media may destroy the reputation of an individual that had been painstakingly built by him over his lifetime. The right to reputation of an individual is recognised under Article 21. We need to find a balance between free speech and right to reputation by

retaining criminal defamation. Similarly, to prevent the misuse of Section 124-A of IPC by the State, the principle laid down by the Supreme Court in the Kedar Nath case shall be incorporated under Section 124-A itself.

10. Does the special power of the Lok Sabha on money matters make the Rajya Sabha the secondary chamber? Discuss the above statement in the light of the recent developments.

Ans: The Constitution confers virtually the exclusive power on the Lok Sabha for the passage of a Money Bill. The Rajya Sabha can only delay the passage of a Money Bill for a period of not more than 14 days after a Money Bill is received by it, but it cannot reject or amend a Money Bill by virtue of its legislative power. Further the decision of the Speaker whether a Bill is a Money Bill or not is final and binding.

However, the objective behind conferring this special power on the Lok Sabha is not to render Rajya Sabha as the inferior of the two chambers. The government needs money sanctioned by the Parliament for the smooth administration of the country and also to fulfil the promises it has made to the people by way of implementing various welfare programmes. Since the mandate the government has got from the people is reflected in the Lok Sabha, to ensure that the Rajya Sabha does not delay or block the passage of Money Bills due to political differences, the Lok Sabha has been given special powers on Money Bills.

However, the Lok Sabha has great responsibility to ensure that this special power is used appropriately as per the objectives of the Constitution and not to be misused due to political differences with the opposition parties in the Rajya Sabha.

Recently a controversy had arisen when the government introduced and got passed the Aadhaar Bill 2016 as a Money Bill in the Parliament. Since the Aadhaar Bill, it was argued, also contained non-money matters it could at best be classified as a Financial Bill. By getting it passed as a Money Bill, it was argued that the government has deprived the Rajya Sabha of its constitutionally sanctioned legislative power. To prevent such controversies from arising in the future, the Office of the Speaker must be made more autonomous.

11. In Ashok Kumar Bhattacharya Vs Ajoy Biswas case (1985) the Supreme court held that to determine whether a person holds an office under the government, each case must be measured and judged in the light of the relevant provisions and sections. What are the issues surrounding Office of Profit? Critically analyze its significance and issues relating to its misuse?

Ans: An office of profit means a position that brings to the person holding it some financial gain, or advantage, or other benefits. The recent case of appointment of parliamentary secretaries in Delhi and other states has again raised the issue of Office of profit.

Significance of Office of Profit

The constitution under article 102 and 191 bars the MPs and MLAs, respectively, holding any office of profit under the Union or the State government.

The aim of the provision is to:

1. Maintaining separation of power and executive and legislative – It is the basic feature of Indian constitution. An Executive governs, while, a legislator's job is to hold the executive answerable.

2. Prevents executive influence over legislator- For example through perks of office. Accepting office under executive will affect their independence.

However, the issue of Office of Profit is complicated by following, leading to its misuse:

- There is no constitutional or statutory definition Office of profit example- RPA, 1951 etc.
- It is not easy to frame an all-embracing definition covering all the different kinds of posts which exist under government and those which might be created in future.
- Parliament, under Parliament (Prevention of Disqualification Act), has the power to exempt certain posts from being considered as office of profit.
- Such exemptions are often on ad hoc basis and often misused by executive to insulate certain posts from being considered as office of profit.

Way Forward

New offices are set up frequently and there is need to declare them as office of profit, or otherwise, on clear criteria (UK), otherwise it will paralyse legislature and vitiate relation between executive and legislature.

Various criteria have been evolved through several Supreme court verdicts for example Jaya Bachchan , Shibu Soren case. Election Commission recommendations, Second ARC and Joint Parliamentary Committee of Office of Profit like:

- All offices in purely advisory bodies, and of advisory nature be deemed as Not for profit
- All offices involving executive decision i.e. control of funds, policy decision, expenditure approvals, be deemed as Office of Profit

- Where minister is head of organization where close coordination with council of minister is vital example NDC, NITI Aayog it may be deemed as not for profit

The need of the hour is to amend the law to clearly define the Office of Profit.

12. "Union Territories, though centrally administered, enjoy an independent identity." What kind of independence do they enjoy? How would you compare it with that of the States?

Ans: Like several other federal countries, India too has centrally administered regions, named Union Territories (UTs). While States, in a federal nation, have a completely separate, independent and autonomous identity from the Union (Federal) Government, UTs do not have the same status. However, UTs do enjoy certain level of independence and autonomy based on the constitutional provisions such as Article 239 AA etc.

The independent identity of the UTs is due to recognition of their existence and some autonomy provided to manage the administrative affairs, subject to overall control by the Centre. The level of independence too varies between UTs, depending on if there is a separate legislature. For example, Delhi and Puducherry have their own Consolidated Fund and Contingency Fund, and the budgets are passed by their own elected legislatures. Whereas, accounts of Chandigarh, Lakshadweep and others form part of the accounts of Union Government.

Further, the legislative assemblies of Delhi and Puducherry can formulate their own laws on various subjects and the respective Governments can make their own policies though they may be overruled by Union anytime in case of discrepancy. However, the Advisory Committees of all other UTs can only advise Union Government regarding legislative, budgetary and policy proposal for the UT.

This is in contrast to the autonomy enjoyed by the States, which is Constitutionally secured. The subjects on which a State can legislate cannot be generally interfered by the Union. The policies of the State cannot be subverted by the Union arbitrarily. Rather, Centre always needs cooperation of States even to get its own policies implemented. So, persuasion, discussion and other tactics are used to convince the States.

In simple words, the independence of the States is like that of a Business Partner, while that of the UTs is like that of a child, subject to the overall supervision of the Union (parent). Hence, the independence does depend a lot on the equation with the ruling parties in both the UT and the Union Government.

Further Information:

The administrative head of the UTs is the President of India, who is represented in the UT by an officer designated as Administrator or Lieutenant Governor. The Government of Union Territories Act, 1963 requires all UTs to have a Council of Ministers responsible to an elected legislative assembly. Presently only Delhi and Puducherry have these entities. Though, Delhi's Council of Ministers and the legislative assembly derives authority from Article 239AA of the Constitution of India.

13. The Union Ministry for Water Resources has for long been arguing for shifting 'water' as a subject to the Concurrent List of the Constitution. With the complexities increasing in water management in the country, how far do you think such a step would help solve the problems the country is facing?

Ans: Water is increasingly becoming a contentious issue across the world, including in India. Long term planning on utilization of water, resolution of inter-state water disputes, climate change mitigation plan and better water management requires a collaborative governance approach in the country. However, one must keep in mind that water is not just river water. Ponds and lakes, springs, groundwater aquifers, glaciers, soil and atmospheric moisture, wetlands, and so on, are all forms of water and constitute a hydrological unity; and there is more to water than just irrigation.

The idea of shifting water as a subject to the Concurrent List of the Constitution appears, at the outset, to be necessary to empower the Centre with more say in management of water in the country. Even the World Bank has been pushing this idea through for several years. However, it would be seen as a retrograde step and in contrast with the accepted principle of decentralisation and enhanced federalism for effective governance. Water is a community resource and needs to be left under the discretion of the community.

Further, Centre already has the power to legislate in respect of inter-State rivers under Entry 56 of Union List but has not used that power. Under this provision, if Parliament considers it expedient in the public interest that the regulation and development of an inter-State river, say the Ganga or Yamuna or Narmada, should be under the control of the Union, it can enact a law to that effect, and that law will give the Union legislative (and therefore, executive) powers over that river. It seems sensible to use that enabling provision, and also re-activate the River Boards Act – a legislation made under Entry 56 but existing virtually as a dead letter.

The multi-faceted water conflicts in the country cannot be addressed by merely shifting water to the Concurrent List. Democratic institutions at various levels are needed which can decide on allocations, entitlements and uses. Moreover, local level participation in decision-making should be encouraged. For this, permanent water user associations could be set up at the local level to interact directly with the River Basin Commissions.

14. Cooperative federalism, which is *sine qua non* to achieving any national goal in India, would require rejuvenating the virtually defunct Inter State Council. Examine the role that Inter State Council could play, especially in the light of bodies like NITI Aayog.

Ans: Unity in diversity is said to be the biggest strength of Indian democracy. Unless managed well, the diversity can create more problems than good for the nation as a whole. While different aspirations compete together, there must be a common integrated approach to take the country forward as a whole. Thus, a federal system needs interactions between the various levels of government, i.e. the union, state and local. Inter State Council (ISC) finds its place in governance in this context, more so when there is a strong single party having clear majority in Centre.

A meeting of the ISC was recently convened after 10 years and this has reinvigorated the need of this institution and of strengthening Centre-State relations. With more issues requiring close cooperation between Centre and the States as well as among the States, such as implementation of GST, intelligence sharing for internal security, devolution of more share from central pool of tax revenue, the ISC can act as the platform to provide the much needed integration in governance.

While institutions like NITI Aayog and the GST Council have specific mandate, but are sometimes not seen by the States as a participative platform, ISC as a Constitutionally (Article 263) mandated platform for coordination, cooperation, dispute resolution and evolution of common policies must be strengthened. While NITI Aayog could become the think tank for economic growth of the nation, the ISC could become an effective instrument to strengthen democracy, society and polity in general.

To make ISC an effective forum of cooperative federalism:

- It may be given all the powers contemplated in the Constitution. Clause 'a' of Article 263, which gave the Council the power to investigate issues of inter-state conflict, was dropped in the Presidential order establishing the ISC.
- It may provide greater opportunities to civil society institutions and the corporate sector to make their representations.
- ISC and NITI Aayog may be merged into one constitutional forum to improve the participation of state governments in inter-governmental affairs. It will enhance the institutional status of the NITI Aayog as well.
- To make the ISC a truly federal rather than a central body, its secretariat may be shifted from the Union Home Ministry to the Rajya Sabha secretariat. It would be under the direction of a neutral federal functionary, the Vice-President of India rather than the Union home minister.

15. The separation of powers between the judiciary and the executive does not mean that both work in mutually exclusive directions. The executive – judiciary power struggle had held up crucial changes required in the Memorandum of Procedure (MoP) to usher in transparency and accountability in the process for selection and appointment of Judge's. Discuss. Suggest some steps to resolve this stalemate over appointment of Judges since the NJAC verdict.

Ans: Since the NJAC verdict in 2015, there has been deadlock between Executive and Judiciary over finalisation of Memorandum of Procedure (MoP) for selection and appointment of judges.

The main disagreements are as follows:

- Seniority & Merit: The government's proposal is that in promotion preference should be given to Chief Justices of the High Courts keeping in view their "inter-se seniority". However, in Judiciary's view, seniority is, a factor but it should be subject to "merit and integrity".
- Reasons in writing: The government has proposed that in case of a senior judge being overlooked for elevation to the Supreme Court, the reasons for the same be recorded in writing. This is necessary for the sake of transparency and to ensure there is no favouritism. The Collegium's counter-argument is that this will be counter-productive" as the reasons specified may mar the judges' prospects of being elevated to the Supreme Court at a future point of time and may become a permanent blot on his/her career.

- The government thinks that merely recording that "judge has outstanding merit" is not enough — and not acceptable as it does not ensure that no favouritism has taken place when judges with seniority in High Courts are ignored.

- Three-judge quota: The government proposed that up to three judges may be appointed from the Bar or from distinguished jurists with proven track records. And that all judges of the Supreme Court should be open to recommend names for these postings. But the judiciary says that this "upto three" tantamounts to "either restricting the intake from the bar or fixing a quota of the bar". And in neither case does it fall within the framework of the Constitutional provisions.

- Committee & Secretariat: Government proposes to set up an institutional mechanism in the form of a committee consisting of two retired judges of the Supreme Court and an eminent person/jurist (to be jointly nominated by the Chief Justice of India and the government) to assist the Collegium in evaluation of the suitability of prospective candidates. The Collegium feels that's not necessary.

- The government has also proposed that there be a secretariat that maintains a database of judges, schedules Collegium meetings, maintains records and receives recommendations and complaints related to judges' postings. The judiciary hasn't rejected the idea of "a permanent secretariat" but it believes that forming and functioning of it should be left to the wisdom of the CJI and it should be under the ambit of the Registrar of the apex court.

- Surely, the binding nature of the Collegium's recommendation is another issue. As per the existing system, the Collegiums' recommendations can be sent back but if it reiterates then the same, it is binding on the President. The government argues that it is only a matter of Healthy Convention and not a legitimization of the judiciary to "ride roughshod" on the appointments.

The Collegium is a judicial innovation which is not mentioned in the constitution. To resolve the deadlock, following steps should be considered:

- In the short-term, the selection process should be open and the names being considered should be disclosed in public.
- Wider consultation process should be adopted especially consultation with Bar to know the credentials of the person being considered for the post.
- Steps should be taken to ensure a regional balance with adequate representation including of women.

- Appointment of Judicial Ombudsman for time bound probe on allegations of misconduct on Supreme Court and High Court judges or the persons who are being considered for the judgeship in the Supreme Court and High Courts.
- As a long term measure, India should start Indian Judicial Service through the a National Judicial Service exam for recruitment of judges.
- Like Railway Board there should be a Judicial board which should oversee all the working of courts. Supreme Court should be entrusted with only the judicial aspect of cases and not administrative works.

These steps should ensure harmony between Executive and Judiciary which is prerequisite for smooth functioning of the polity.

16. It is often observed that the cherished constitutional rights are found subservient to economic goals and objectives. Critically evaluate the statement in the light of Right to Privacy and Aadhar debate in India.

Ans: Aadhar is a 12 digit number by Unique Identification Authority of India to every Indian Resident irrespective of gender and age. It contains biometrics and demographic information of the resident. There is no doubt that Aadhar may lead to Economic development of India like reducing the subsidy burden, better identification of beneficiaries, efficient delivery of benefits and increase in tax compliance but this economic development may also cost us our right to privacy.

Right to Privacy is more important

The privacy is the requirement of every individual. Indian constitution provides for Right to life under Art 21 and privacy is an integral part of a dignified life. In the context of Aadhar despite many benefits it offers there are many concerns for realizing economic benefits at the expense of privacy of an individual:

- With such a huge database and all required information government can monitor any time any individual and can encroach on private space and activity thus jeopardizing the right to privacy. It has the potential of becoming instrument of mass surveillance.
- There is no comprehensive law for safeguarding the privacy in India. It is often prone to misuse of information.
- This can be used by investigating agencies to tap a phone, getting sensitive medical information etc. which may create an environment of fear in people.

Why Aadhar number is more important over Right to Privacy:

- In a country like India, where majority of people find its difficult to meet their basic requirement, for them economic development is more of priority then their right to exercise privacy.
- As said by UIDAI, that Aadhar database is just used to identify beneficiary and their public data is not shared anywhere, then there is no right to privacy being hampered
- In today's world, when we are all surrounded by internet for all things, and our all information is all over internet, then this debate over privacy is anyway meaningless

Right now, Supreme court has qualified right to privacy as fundamental right in K S Puttaswamy case. Government should develop the instrument like Aadhar for efficient governance and economic development but concerns must be addressed regarding cherished constitutional rights provided by the constitution.

17. From 2017-18, the Central government expenditure will be classified only as capital and revenue spends, the move is a part of the government's decision to do away with the classification of Plan and Non-Plan expenditure. Examine the reasons behind the government's decision to dismantle the plan and non-plan classification of expenditure. How will the new classification of schemes into 'core of the core', 'core' and 'optimal' address the challenges of the earlier classification?

Ans: In 2010, a panel led by the former Prime Minister's Economic Advisory Council Chairman C Rangarajan had also suggested doing away with the artificial classification. Panel argued that Plan and Non-Plan classifications should be done away with and the focus should be on improving the quality of government spending by focussing on the end use of the funds.

Earlier, government expenditure had two components:

- Plan expenditure - Any expenditure that is incurred on programs which are detailed under the current (Five Year) Plan of the centre or centre's advances to state for their plans is called plan expenditure. It denotes the more productive use of government resources as investment in various programs and schemes, but forms a small chunk of the total spending bill.
- Non-Plan expenditure - Used for interest payments, subsidies, wages and grants to States, it constitutes all expenditure other than plan expenditure of the government. It forms the majority of the government spending.

However, the government has now decided to remove the existing Plan and non-Plan expenditure classifications from future Budgets. The government was of the view that-

- Plan/Non-Plan bifurcation of expenditure leads to a fragmented view of resource allocation to various schemes, making it difficult not only to ascertain cost of delivering a service but also to link outlays to outcomes.
- At present, non-Plan expenditure constitutes 70-75% of the gross expenditure at central and state levels. Even in the Plan section, the revenue expenditure component accounts for 70% of the expenditure, puncturing the impression that Plan expenditure leads to creation of capital assets.
- Plan expenditure did not include upkeep and maintenance of assets and hence paucity of funds for the purpose. This had led to practice of creating new assets while neglect of existing ones.

Therefore, from 2017-18, the Central government expenditure will be classified only as capital and revenue spends- a better indicator of productive and general expenditure.

To further optimize the Centre's spending, centrally-sponsored schemes (CSSs) too have been rationalized.

- Apart from decreasing the number of CSS from 66 to 28, they have been divided into three categories:
    - Core of the Core – schemes for social protection and social inclusion having 75:25 Centre-State expenditure allocation formula.
    - The Core schemes - comprise essential interventions for achieving National Development Agenda having 60:40 expenditure allocation formula.
    - Optional Schemes - Schemes where States would be free to choose the ones they wish to implement having 50:50 expenditure allocation formula.

    The classification is trying to segregate the schemes by importance and re-organise them into outcome-based Umbrella programmes to avoid thin spread of resources.
- The flexi-funds component of the CSSs would be increased to 25% for the state governments to programme so that the implementation can be better attuned to the needs of individual State.
- The release of a tranche of funds would no longer be dependent on producing a utilization certificate of the previous instalment which hindered smooth flow of funds. It has huge relevance for transfer of funds to the lower levels of government, and directly affects implementation.

This system is based on the recommendations of a sub-committee of chief ministers formed by NITI Aayog for the rationalisation of the CSS.

The focus of these initiatives is on improving the quality of government spending by focusing on the end use of the funds. This will lead to effective outcome based monitoring of implementation of the programmes and schemes and ensure optimum utilisation of resources.

18. Pressure groups play an essential role in a democracy as they complement and supplement electoral democracy in two main ways: first, by providing an important mechanism by which citizens can influence government between elections; and second by enabling opinions to be weighed as well as counted. What is a pressure group? Critically analyze the role of Pressure groups in an Indian democracy?

Ans: A pressure group is an organized group which works to either secure certain interest for its members or support a cause, by influencing public opinion or government policies. Unlike political parties, pressure groups seek to influence from outside and do not aim directly to control or share political powers.

Types of Pressure groups:

- Business and industry, professional pressure groups: ASSOCHAM, SIAM,FICCI, Trade Unions etc.
- Peasant Pressure groups: All India Kisan Union, Bhartiya Kisan Sangh etc.
- Community associations: Vishwa Hindu Parishad etc
- Linguistic groups: Hindi Vikas Mandal, Telugu Sangh etc

Positive role of Pressure Groups:

- **Political representation**: Pressure groups have an important role in enriching the democracy as they give voice to different opinions and sections of society, especially the neglected and vulnerable sections. Example LGBT, women, disabled, street children, Dalits etc.
- **Political participation**: They allow opportunity to large number of people to participate in politics, on a continuing basis, without being part of any political group for example through petitions, protests, marches, social campaigns, public meetings etc.
- **Government Accountability:** They ensure continuous accountability by asking for information on different issues, highlighting administrative gaps, underscoring

grievances of people, evaluating government policies, publishing reports etc. for example Pratham's ASER report on rural education.

- **Source of Reforms**: Pressure groups have campaigned for and participated in new legislations such as Right to Education act, MNREGA, the Domestic Violence Act (2005), the food security act, Sexual Harassment of women at workplace act, 2013. Association for democratic reforms (ADR) helped in bringing electoral reforms in India.
- **Public Awareness**: They create public awareness regarding various government initiatives and people's rights through political debates, discussion, research publications, editorials etc for Example India against Corruption (IAC) created consciousness about corruption.
- **Policy formulation**: Pressure groups are vital source of information and advice to the government and are regularly consulted on key policy matters. Example- SEWA, CII, MKSS, FICCI etc.

However, some experts have highlighted the non-democratic tendencies of the pressure groups

- **Increase political inequality**: Some pressure groups may be more powerful than others and have greater resources, finances, experts, privileged links to be more dominant than environment groups in influencing policy outcomes
- **Exercise of non-legitimate power:** Pressure groups are not popularly elected and are not accountable to people and yet, exercise considerable influence over them.
- **Lack of transparency**: Functioning of pressure groups is not transparent. They also lack internal democracy in their functioning and may not be representative of all the members.
- **Vested Interests:** Sometimes, pressure groups are guided by ulterior motives, adversely impacting public and national interests. For example – Anti-Kundakulam protests impacting the developmental agenda.
- **Divisive tendencies:** Some pressure groups like caste, religion or language based groups have led to ethnic strife in different parts of country for example- 'Son of the soil' movement promoting regionalism, gau-rakshak brigade etc.
- **Political nexus:** Instead of pressure groups influencing political decision, they themselves become a tool in the hands of political class. For example- Groups demanding reservations, religious groups.

Despite the criticism, pressure groups are potent tool for democratic expression, advancement, and betterment of people. Various steps can be initiated to overcome the limitations of their

functioning such as , better regulation and monitoring, regular financial audit, transparent disclosure norms, bringing suitable legislations and guidelines.

19. Analyse whether (RERA) Real Estate Regulatory Agency will prove to be a mere addition to existing problems as Independent Regulatory Authorities in India are facing serious challenges in delivering their mandate?

Ans: Globalization and economic liberalization has resulted in increasingly complex market environment necessitating the setting of independent regulatory bodies to ensure a balance between business and consumer interest. As a result, Independent Regulatory Authorities like Competition Commission of India, SEBI, IRDA, TRAI etc. have been formed. These agencies differ from the conventional regulatory system as they are separated from executive wing of the government and enjoy a greater degree of autonomy.

Tasked with the mandate of facilitating smooth market functioning, promoting level playing field, ensuring quick dispute redressal, consumer protection and ease of doing business, these regulatory agencies, however, have been running contrary to their intended objectives due to following factors:

- Proliferation of independent regulatory authorities with overlapping jurisdiction, thus causing lack of coordination. For Example- SEBI vs IRDA
- Fragmented regulatory approach with absence of holistic regulators for a particular sector for example for Power sector only electricity regulator, multiple regulators in transport sector like Railways, civil aviation etc.
- Ineffective mechanisms to ensure accountability for their performance to the parliament.
- Lack of transparency in appointment and removal.
- Absence of a grievance redressal mechanism.
- Once a Independent Regulatory Authorities is established, it continues to operate irrespective of its performance.

The recently passed Real Estate (Regulation and Development) Act provides for state level Real Estate Regulatory Authorities (RERA). It is being termed as game changer in real estate to provide affordable housing because of following provisions:

- **Single regulator for real estate sector:** Clearly delineated functions, duties, and powers will bring clarity, ensure fair practices that would protect the interests of buyers, and also impose penalties on errant builders.

- **Addresses Consumer Issues:**
  - **Delays:** RERA will check completion of project on time.

- ❖ **Quality of construction:** Buyers will get the property as per the specifications they have been promised.
- ❖ **Monitoring:** No promoter can advertise or offer for sale a project without registering with authority. RERA will check diversion of funds to other projects.
- ❖ **Transparency:** details of all registered projects will be put up on a website for public access.
- ❖ **Grievance redressal:** Complaints of buyers have to be disposed within 60 days.

- **Ensure Promoters benefits:**
  - ❖ **Procedural simplification:** Online registration facility, registration withn 30 days.
  - ❖ Buyer is liable to pay interest if dues are not paid on time.
  - ❖ Real Estate Appellate Tribunals in every states/UT to appeal against the decisions of RERA, with decision within 60 days.

- **Overall sectoral growth:** The law is likely to restore credibility of real estate sector, stabilise housing prices, and lead to enhanced activity in the sector.

However, to ensure that RERA is not inflicted by same maladies as the other independent regulatory bodies, following steps are necessary for its success:

- There is need to assure its financial and functional autonomy through transparency in appointment and removal of members, freedom to determine its staff and compensation and formulate own budget etc.
- A comprehensive performance framework should be evolved and third party should be assigned the task of performance appraisal
- It has to ensure ease of doing business through e-governance, single window, time bound grievance redressal etc.
- Every RERA should publish its annual report that must be discussed in parliament and should be made public.

Thus, if above steps are effectively implemented, RERA will enhance consumer confidence, investor confidence and investment in sector, which can subsequently lead to success of Smart city projects and Housing for all by 2020

20. Questions over the credibility of the Electronic voting machines (EVM) have been raised by several quarters including political parties. In your opinion, should India revert back to the ballot paper system? Do you think introduction of Voter Verifiable Paper Audit Trail (VVPAT) would make the election process more transparent?

Ans: Ever since the advent of EVMs on the electoral scene, certain aspersions on its use have been cast from various quarters including political parties and individuals. In the recently concluded state elections, political parties have again raised questions on the credibility of the EVMs, alleging their tampering, non transparent paperless procedure, manipulation of software programming, technical default, political associations of manufacturers etc.

The use of EVMs is an amalgamation of technology and trust, tradition and modernity. EVMs were adopted over ballot paper system due to following reasons:

- Simplicity: EVMs are simple machines that can be operated easily by both polling personnel and the voters
- Reliability: It is auditable, transparent, accurate, secure and helps reduce human error. EVM randomization maintains the secrecy in allotment of EVMs to a particular area.
- A check on electoral frauds: EVMs can register only five votes per minutes, thus for electoral fraud, a polling booths had to be captured for a longer period of time to rig elections.
- Decreased time and cost of elections: It gives faster results in hours, which is particularly relevant in large countries like India. Also there is decrease of 23% on the re poll orders by Election Commission.
- Sturdy machine: It is able to withstand rough handling and variable climate conditions. It does not run on electricity and can work with erratic and no power supply.
- Environment friendly: It is paperless and avoids felling of trees , unlike the ballot system.
- Social empowerment: Introduction of the new technology has led to greater participation of women and SC/ST. Fair elections provide the electorate a means to improve the responsiveness of elected officials by making them more accountable.

At the same time, ECI has termed the allegations of tampering as “misplaced fear”, citing following reasons:

- EVMs are standalone machines and are not networked either by wire or by wireless, to any other machine or system. Hence, they cannot be influenced or manipulated by signals from any source.
- Program which controls the functioning of the control unit is burnt into a micro chip on a one time programmable basis. Once burnt it cannot be read, copied out or altered.

- As an additional precautionary measure, the machines prepared for a poll are physically sealed in the presence of candidates and guarded by CRPF.
- Two-stage randomization is done, to make sure nobody is able to determine constituency EVM mapping.
- Various judgements of different High Courts and the Supreme Court of India have upheld the reliability of EVMs

However, to ensure further reliability of EVMs, ECI has introduced VVPAT in a phased manner, that will entail following advantages:

- It will allow voters to verify if their vote was cast correctly by generating the EVM slip.
- It will provide an additional security layer against faulty voting machines as paper records cant be changed without human intervention.
- In case of any dispute, the paper slips in the VVPAT can be tallied with the buttons pressed on the EVM.
- It will check fraud and manipulation of election machinery and revitalize trust among the voters and political parties alike

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The introduction of VVPAT is certainly a step in the right direction, further strengthening transparency in the electoral system. Being the most populous democracy in world India must move forward in innovation and technological aspects of elections, while being committed to holistic electoral reforms.