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1) Highlight the significance of 72nd & 73rd constitutional amendment acts.
Also, discuss some of their important provisions.

Ans
With 72nd & 73rd constitutional amendments Indian constitution became first constitution to provide constitutional status to 3rd tier governments.

~~→ Significance:~~ 72nd CA established PRIs
a) and 73rd established Municipal bodies
i.e. ULBs (Urban local bodies):

→ Significance:

- It transitioned from ~~participative~~ representative to participative ideas democracy.
- Based on Grandhian, idea of Swaraj & decentralisation.
- Empowers women & promotes their political mobilisation due to compulsory 1st seats reservation to them.
- It marked a significant shift from centralised planning approach.

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e) It allows to ~~be~~ factor in local issues & approaches.

f) As deemed by Balwant Rai Mehta committee, it could be a way out of fallouts of community development programme 1952.

g) Preserves local autonomy & culture by electing power to gram sabhas.

h) It made Ar. 40 of DPP a practical shape.

⇒ Some important provisions:

a) 73rd amendment added Ar. 243-2430, 11th Schedule & 74th added Ar. 243F-243ZG, 12th Schedule.

b) It establishes State Election Commission (SEC) for conducting regular elections to these local bodies at every 5 years interval.

c) It ~~establish~~ empowers Governor to form State Finance Commission (SFC) at 5 yrs interval to confer sound financial matters.

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- d) Ar. 243 D & Ar. 243 T provides reservation for SC/ST/women in PRL & ULB respectively.
- e) It provides for functions to these bodies listed in 11th & 12th schedule
- f) It organises gram Sabha in every village.
- g) There are various voluntary provisions too. like - reservation for OBCs, granting power to levy & collect taxes to these bodies etc.

These bodies are also plagued by many ills:

- a) Lack of adequate devolutions on 3Fs - Funds, Functions & Functionaries
- b) 2nd ARC commission noted they have thin tax domain.
- c) women reservation is turned impotent by Sarpanchpati Paj.
- d) Elections are not held periodically.

Thus, 2nd ARC recommendations - SEC submitting annual reports to Election commission, organising State Panchayats etc. - could be a way forward.

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2) Explain importance of parliamentary privileges, discuss need for their codification.

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Ans. Ar. 105 of constitution deals about parliamentary privileges, extended to all MPs & Attorney General.

Parliamentary Privileges includes collective and individual privileges.

~~collective~~

→ importance:

- It allow legislatures to work freely like - by Right to Freedom of Speech in parliament.
- It ensures secrecy. No outsider is allowed to publish reports or insiders of any secret sitting.
- It also empowers parliamentarians to punish for breach of privilege & contempt of court, thus ensuring code of conduct of parliament.
- It ensures no unnecessary hurdles obstructs law making process.

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By providing individual parliamentarians immunity from civil proceedings in arresting of ~~from~~ & after 40 days of session of parliament.

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e) ~~It~~ It protects Parliamentarians from responsibility of ~~as~~ from fallouts ~~as~~ unlike in England, where a minister signs the bill along with the Monarchical head. To take blame, if thing goes wrong, as 'king can do no wrong'.

→ ~~Also~~ → Need for codification.

a) They could be misused by parliamentarians for self-serving purposes.

b) ~~or~~ In current form they are very vague thus creeps in subjectivity.

c) The fact that they stem from multiple sources like - Constitutional law by parliament, Rules of Houses, Parliamentary conventions, etc., makes them prone to deter from

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their purpose & overpower them.

d) Privileges like punishing for contempt gives ^{extra-ordinary} power to Speaker (Presiding officer) & it could be misused for political gains.

e) ~~A~~ Prevention from civil proceedings often becomes tool for corruption & malpractices.

way forward:

- NCRWC suggested Ar. 105 must be amended to clarify it does not provide immunity in corruption ~~acts~~.
- Proper delineating of contours of privileges by statutory backing
- multiple sources of privileges must be reduced to single exhaustive source.

Similarly, Ar. 194 must also be amended to counter similar problems in State legislatures.

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3.) Mention the objectives & composition
of the National Human Rights Commission.
Also, throw light on its effectiveness.

Ans. NHRC is a statutory body formed
by act - Protection of Human Rights Act.
It also setup SHRC.

⇒ composition:

It contains 5 members.

- Retired CJI / Supreme court Judge
- Serving / Retired Judge, Chief Justice of HC.
- 3 persons of knowledge & eminence.
(at least one of them must be a woman).

These are appointed by President
on recommendation of a committee.

- PM
- Speaker of Lok Sabha
- Deputy chairman of Rajya Sabha
- Leader of opposition in Lok Sabha
& Rajya Sabha
- Home Minister

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⇒ Objectives:

- To ~~take~~ inquire into any violation of Human rights.
- To take suo-motu cognisance of all such matters.
- To visit Jails & detention centres for ensuring all legal safeguards.
- To undertake research in Human rights.
- To ~~take~~ collaborate with civil societies for Human rights causes.
- To motivate people of their rights.

⇒ Effectiveness:

In current times due to multitude of reasons its effectiveness has not been upto the mark, this is evident in surge in cases of Human rights violations.

→ NCRB 2017 - 6 dalit women are raped every day.

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- NCRB ²⁰²⁰ - Crime against children, women, SC, ST increased by 4%, ~~25%~~, ~~25%~~, 7.3%, 7.3%, 26%
- Heinous crimes - Haryana rape case
- custodial violence - Father-son duo killed in TN. due to custodial violence.
- Surge in Police Encounters - Ex-Vikas Dube Encounters (UP).

way forward:

- 2nd ARC recommended merging such bodies (NCSC, NEST, NHRC etc) as they have overlapping roles in smaller States.
 - 2nd ARC found NHRC has been handicapped due to being understaffed.
 - 2nd ARC recommended creating electronic databases & a common format of complaints for all statutory commissions.
- Thus, by aforementioned suggestions, its effectiveness could be increased.

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4) Discuss significance of the Preamble of Indian constitution. Can it be amended like any other provision of constitution?

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Ans Preamble of constitution is the last part added to it. It is on the lines of objective resolution adopted by constitution & it is a preface to constitution.

⇒ Significance:

- a) It is a key to minds of founding fathers of constitution.
- b) It envisions to make a socialist, secular, democratic & sovereign Republic India, thereby building all social cleavages.
- c) It could be used by Judiciary in checking constitutionality of any executive legislative action under their role in Art. 13, 32 & 226.
- d) Though it is non justiciable, but

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- enshrines the aim of Republic -
Justice, Equality, liberty & Fraternity.
- e) It rolls out that source of power of constitution is people thus is people-centric.
 - f) can act as common-manifesto & ideology of all political parties, pressure groups etc.
 - g) It also mentions date of adoption of constitution - 26 Nov 1949, which enables favour of secular religion.

⇒ Amendment:

Historically, there were different stances at amendment of constitution.

- a) Berberi Union case (1960) - It considered Preamble, though is ~~an~~ a important & integral part of constitution but it is key to minds of founding fathers but it is NOT amendable.
- b) Kesavananda Bharti case (1973) - It held that Parliament is an integral part of constitution.

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thus under Ar. 368 it could be amended.
However, the amendment must
not alter the basic feature of
constitution.

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c) In LTC India case, Supreme court
again reiterated the amendability
of preamble laid in Kesavananda
Bharti case.

Consequently 42nd amendment
amended preamble & added 3 words -
Secular, Integrity & Socialist.

This, current scenario is
Preamble can be amended, but within
the doctrine of basic structure of
constitution.

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5.
Ans
Explain the significance of & analyze
scope of Judicial review in India.

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Judicial review, refers to reviewing
of ~~exec~~ the constitutional validity of
executive & legislative actions. It
stems from Judicial activism & originated
from U.S.A. It is a basic feature of constitution.

There are enabling provisions of
Judicial review - Ar. 13, 32, 226, etc.

⇒ Significance:

a) It acts as a bulwark against
the tyranny of Executive actions.

b) It maintains separation of power.
Ex- 100th constitutional amendment
& NJAC was declared Ultra-vires
in fourth Judges case, 2015.

c) It helps ~~con~~ Supreme court to
realise its responsibility of
guarantee of Fundamental Rights of
citizens.

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- d) It protects rights & liberties of individual. ~~Ex~~
- e) It protects arbitrary legislations.
Ex- In J.R. Welto case (2007),
Supreme court ruled that there cannot be any blanket ban of gm Schedule.
- f) It upholds the supremacy of constitution.
Ex- Kesavanand Bharti case (1973),
Supreme court doled out basic structure of constitution doctrine.

⇒ Scope of Judicial review:

The Indian constitution works on procedure established by law, unlike due process of law of USA, which gives latter judicial supremacy. But in India, scope gets narrowed down.

There are only 3 grounds of Judicial review:

- Infringement of Fundamental rights.
- To ensure supremacy of constitution.

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→ act by legislative/Executive is outside its competency.

However, In Mewaka Gandhi case, Supreme court overruled its judgement of Gopalan case & followed due process of law approach in deducing Ar. 21.

Thus, scope of Judicial review is balanced, as in extreme case it may lead to Judicial adventurism, breaching separation of powers & making Supreme court - a "super-legislature".

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6. What are functional principles on which our constitution is based? why do you think it was important to codify them in form of written document?

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Ans Indian constitution is the lengthiest & most detailed constitution ever formed & is based on multiple principles.

⇒ Functional principles:

a) Federalism - Indian constitution nowhere uses word "federal", but uses "union". It is on similar lines of Canada's constitution. It is best called as co-operative Federalism.

b) Parliamentary form of govt. - Ar. 74 & 75 enables this.

c) Republic - ~~an~~ Head of the state is elected & not hereditary like in U.K.

d) Integrated Judiciary - A single lineage of courts decides on both Federal & State matters unlike in USA.

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- e) Socialist - a freedom struggle legacy became explicit part of constitution by 42nd amendment.
- f) Secular - Fundamental rights Ar. 25-28 gives Right to freedom of religion to every citizen & even alien.
- g) Supremacy of constitution - unlike Parliament sovereignty (U.K) or Judicial supremacy (USA) Indian constitution has a blend of both.
- Most of aforementioned are either enshrined in Preamble or also called as basic feature of constitution in landmark cases - Bombay case, Kesavananda Bharati, Minerva Mills etc.
- Importance of codification:
- To avoid subjectivity in interpretation in clauses of constitution.
 - Empowers SC & HC to act as guardian of constitution & of Fundamental rights, task derived

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- by Ar-13, 32, 226 etc.
- c) To maintain the separation of power by clearly outlining specific roles each part has to play.
 - d) To make amendments, e. feasible and reasonable, making it a living entity
 - e) Discourage Judicial adventurism by provisions like Ar. 122.
 - f) To protect minorities from any tyranny of majorities by special provisions detailed in Ar. 330-342A.
 - g) To ~~not~~ take cognizance of multiple social cleavages in a multicultural society thus making constitution a social engineer.

Many nation-states with almost similar historical trajectories (Ex- South Asian countries) were not able to sustain democratic govt., a situation India avoided due to a well-codified constitution;

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7.) Explain concept of Federalism, mention the key features of Federalism in India.

Federalism refers to decentralisation of power among States & stands opposite to ~~unitary~~ unitary. It is defined as a basic feature of constitution in Bombay case.

⇒ Key Features:

a) In Indian constitution Federalism has been nowhere used ~~to~~ instead union of States in Ar-1 has been incorporated.

It follows Canadian constitution in this aspect.

b) Written constitution - unlike Britain's constitution that is unitary, India has a detailed written constitution like USA.

c) Rigid constitution - Indian constitution is not very easy to amend and under Ar-368 federal provisions

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needs to be ratified by 50% of state legislative assemblies too, ~~and~~ giving it a rigid touch.

d) Supremacy of constitution - constitution is considered as Fundamental law of land & any arbitrary Executive/legislative unconstitutional act would be declared ultra-vires ~~and~~ by SC/HC under Ar. 13, 32, 226 etc.

e) Independent Judiciary - SC is entrusted as Guardian of Fundamental rights of citizen & final interpreter of constitution thus given adequate safeguards. Ex-
- Security of tenure, Salary charged on CFI, etc.

f) Poicameralism - Parliament has 2 Houses. House of people (Ar. 61) & upper House (Ar. 60). Similarly state legislatures too could adopt a legislative council along with legislative assembly.

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However, many facets of constitution also shades an unitary form:

- Strong centre
- All India services
- Flexibility of some constitutional amendments
- More & important issues in Union list than of subject list
- overriding powers of Parliament & secondary powers too devolved to it
- Ar. 352, 356, 360
- Integrated Judiciary
- Single citizenship
- Single constitution.

Despite all these, Fed. Indian constitution is undoubtedly Federal, & could be described as Federalism with a unitary leaning what Braville Austin called "cooperative Federalism".

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Q. Give an account of the composition of interstate mandate & functioning of Inter-state council of India.

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Ans. Ar. 263 of constitution deals about interstate councils. However Sarkaria commission recommended a permanent inter-state council formation. consequently Janata gout established one in 1990.

⇒ composition:

- Prime Minister (cheirperson)
- chief ministers of all states.
- CM of all Union territories with legislative assembly
- governor of states under President rule.
- Lt. governor / Administrators of other Union territories.
- 6 Union cabinet Ministers including Home Minister.

It also has a Standing committee (chaired by Union Home Minister & members including 5 Union cabinet Minister & 9 CM), & a secretariat called Inter-state council secretariat.

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→ Mandate:

- It has to ~~be~~ meet ~~at~~ at least thrice, a year.
- It has to work for ensuring & strengthening cooperative federalism.
- To resolve inter-state disputes (other than water disputes)
- To enforce solidarity at state level, at particularly at times of alamity.

→ Functioning:

- A chairperson (PM) nominates 5 other cabinet ministers. He also decides the date of meeting.
- Secretariat performs all the paper work for council
- Standing committee acts as cadre for implementing decisions of council
- A council investigates & discusses subjects in which States/centre may have a common interest
- making recommendation on upon any such subject for better coordination of policy & action on it.

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→ Deliberating upon other matters of general interest to states as referred by chairman.

Recently, there have ~~to~~ been many issues like - Stubble burning, territorial disputes (Belagau) etc. In such background such council could be potent tool to rejuvenate unity of nation.

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Q.) Although Indian constitution gives Rajya Sabha some special powers, yet on most matters the Lok Sabha exercises supreme power. Discuss.

Ans. Ar. 80 & 81 of Indian constitution deals with Rajya Sabha (upper house) & Lok Sabha (lower house) respectively, being a bicameral legislature.

⇒ Special powers of Rajya Sabha (RS):

a) Resolution to make All-India services could only be passed by RS.

b) Rajya Sabha's resolution can empower parliament to make law on State subject of IV schedule.

c) It can have ~~to~~ some men of eminence, scientific knowledge etc. unlike Lok Sabha.

d) If Lok Sabha is not in session/dissolved RS being a permanent chamber, can allow proclamation to be passed under Ar. 352, 356, 360.

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e) only RS can initiate impeachment of Vice-president of country.

Yet, Lok Sabha (LS) exercises
supreme power on most matters;

- a) In case of Money Bill (Ar. 110), RS can only delay it for ^{14 days} ~~6 months~~ & it can't reject it or even its suggestions to amendments are also advisory.
- b) Speaker of LS decides what is money bill or not. Thus many times just to circumvent RS many ordinary bills are designated as Money bill.
- c) In case of a joint sitting, Speaker of ~~both~~ LS presides & rules of LS are the medium for conducting ~~the~~ business.
- d) Speaker of LS is allowed to vote (not casting vote) even when her impeachment is in process unlike chairman of RS.
- e) RS can only discuss Budget (Ar. 112) Any demand for grants can only be

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made by LS.

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f) A resolution of ~~motion~~ discontinuance of National emergency can only be adopted by LS.

g) RS can't pass / adopt No-confidence motions as ~~the~~ council of Ministers is only responsible to LS (Ar. 75)

h) Adjournment motion, cessure motion can't be adopted in RS.

i) Estimate committee can't have any RS members & Public undertaking committee can't have chairman from RS.

Though on multiple footings - ordinary laws, constitutional amendments, becoming a minister, RS is ~~or~~ equal to LS. ~~But~~ ^{Thus} overall RS has an important role to play as it ensures Federalism in Parliament.

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Q) What is role of comptroller & Auditor General (CAG) of India? Mention constitutional provisions to ensure its independence.

Ar. 148 of constitution provides for an independent office of CAG, he is a guardian of public purse.

→ Role of CAG:

a) under Ar. 149, Parliament may prescribe duties & powers to CAG.

a) By Ar. In Ar. 150, CAG advises President of India of the form in which the accounts for centre & States shall kept.

b) He audits all accounts ~~co. CAG~~ contingency funds, consolidated fund & Public accounts fund of Union as well as State.

c) He audits all receipts & expenditures of centre & states.

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- d) He audits all transactions of central & State governments related to debt, sinking funds, deposits, etc.
- e) He audits accounts of any authority when requested by President / Governor. Ex. of local bodies.
- f) With respect to Public corporations his role is limited. For some he audits completely, for some he may ~~be~~ audit in supplement to ~~some~~ auditing by a ~~for~~ private auditing professional & in some he do not get engaged in auditing at all.
- g) ~~not~~ He submits reports -
'An. on appropriation accounts, public undertaking & finance accounts' to President / Governor in Ar. 151.
- h) He also acts as a friend / guide / philosopher to Public accounts committee.
- i) Since 1976, w.r.t to central govt. his audits & accounts functions got separated.

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⇒ constitutional provisions for Independence:

a) Administrative expense of office of CAG is charged upon CFI.

b) He does not hold his office under pleasure of government & has a security of tenure.

c) He is not eligible for further office under Govt of India or State Govt.

d) His salary & allowances can't be changed to his disadvantage (unless in Art. 86).

However, CAG in India is criticised as being reduced only to Auditor unlike UK. Also a report had a down view of CAG of being an over-exaggerated role. Despite, Ambedkar considered CAG as the most important office.

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14) It is often argued that state legislative council is an ornamental & superfluous body. Do you agree?

Ans
Ar. 169 deals with abolition or creation of state legislative council (SLC).
It could be done by a simple majority thus not accorded as constitutional amendment under Ar. 368.

⇒ An ornamental & superfluous body;

- a) ~~It~~ It could be created/abolished by a resolution passed by State Legislative Assembly (SLA), thus entire existence of SLC depends on SLA.
- b) Money bills & Finance Bills can't be introduced in SLC.
- c) Presiding officer of SLC has NO say in deciding whether a bill falls under Ar. 110 or not.
- d) SLC can only discuss Budget & can't make any demand for grants.

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- e) There is no concept of Joint sitting as SLC has no 'real' power with regard to any bills.
- f) SLC can merely delay an ordinary bill for 4 months & Money bill for 14 days.
- g) Council of ministers ~~to~~ are not responsible for SLC ~~and~~, thus vote of no-confidence can't be adopted in SLC (Ar. 164)
- h) SLC can't pass cut-on-motions in Budget & or even adjournment & censure motion etc.

Main reasons for this unequal treatment;

- Its composition - it is not representative enough like Rajya Sabha.
- It is in accordance with principles of democracy i.e. SLC must yield to SGA.

Thus clearly SLC seems to be a superfluous body. However it is still very important as in

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Parliamentary democracy it is entrusted with following tasks:

- a) To check hasty, ill-considered actions of SLA.
- b) To encourage more inclusive discussion & bring diverse viewpoints to fore.
- c) In case of an arbitrary legislation it can delay it for 4 months (ordinary bills) thereby giving other stakeholders of democracy - civil societies, pressure groups to play their part.
- d) It provides a platform for eminent persons of eminence, who couldn't had faced elections.

So, despite all limitations SLA can't be termed as superfluous or ornamental body due to the basic and irreducible functions it performs.

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12. Compare discretionary powers the governor
of a state & President of India.

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Ans. Ar. 52 & 153 of constitution deals
with President & Governor respectively.
They are union & State executives thus
accorded with many powers.

→ Discretionary power of President of India:

President does not have any
constitutional discretionary powers as:

- Ar. 74 - holds there will always be
a council of Ministers (COM) headed
by PM to aid its advise on
President, who shall always act on
his advise.
- Supreme court held this advise ~~is~~
can't be reviewed or questioned by
anyone.
- 42nd constitutional amendment made this
advise binding. However 44th
amendment laid that President can
ask COM to reconsider their advise one time.

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However there are situational discretionary powers enjoyed by President:

- a) In case of hung assembly, ~~he~~ she can call for a leader to form govt. & prove majority support.
- b) If ~~let's say~~ COM are no more collectively responsible to LS (under Ar-75) President can dissolve it.

→ Discretionary power of Governor

Unlike President, Governor do have constitutional discretionary powers:

- Ar. 200 - To reserve any bill for President's consideration.
- Ar. 355, Ar. 365 - If Governor feels state is not adhering to constitutional machinery, it can recommend President's Rule (Ar. 356)
- Determining amount payable to Assam, Meghalaya, Tripura, Mizoram to autonomous tribal district council &

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→ pay royalty for mineral exploration.
→ while administering an adjoining
Union-territory.

Apart, Governor also have
Situational discretionary power on
similar lines as that of President.

So, Discretionary power of governor
is wider than that of President
of India.

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13. The Indian constitution is a synthesis of British principle of Parliamentary sovereignty & American principle of Judicial supremacy. Discuss.

Ans

Indian constitution have been based on ~~a~~ delegate a fine balance between Parliamentary Parliament sovereignty refers to: superior most power of parliament that is not accountable to outside & unchallenged from inside of state, while Judicial supremacy means Judiciary acts as the superlegislature / Executive & can check any excess of other two State apparatus.

Indian constitution maintains a fine balance between both:

⇒ Parliamentary sovereignty:

- a) Parliament can make laws on all subjects of union list, State list (in special cases) & has overriding power on concurrent list of 7th schedule.

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b) Residuary powers of constitution are also devolved to Parliament.

c) If Executive is no more collectively responsible to Parliament (Lok Sabha, specifically), it can be disolved under Ar. 75.

d) Parliament through various parliamentary committees - Departmental Standing committees, Finance committees checks acts of Executive.

e) Ar. 122 bars courts to interfere in Parliamentary proceedings.

→ Judicial Supremacy - ;

a) ~~Integra~~ SC/HC can declare any arbitrary executive/legislative action as ultra-vires.

Ex- Kesavananda Bharati case, SC

ruled out if doctrine of basic structure that is to be maintained.

b) Judicial review under Ar. 13, 32, 226.

is used to counter executive and legislatures' ill-considered decisions. Ex- In J.R. Welton case (2007)

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SC ruled there could be no blanket
ban ~~on~~ by 9th schedule on Judicial review.

c) Judiciary has been accorded significant
autonomy by provisions like- their salaries
are charged on CFI. In 4th Judge
case (2015) SC declared 10th amendment
of NJAC ultra-vires.

d) SC is the final interpreter of constitution.

e) SC have final say in disputes of
elections of President, vice president.

f) In Mandla Gandhi case, SC took
an 'due process of law' approach
in interpreting Art. 21, thereby increasing
scope of Judicial review.

Thus, due to factors like-
written constitution, Fundamental rights,
Judicial review, Federal system, both
of these factors are in a fine
balance giving a synthesis of two.

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14. Though non-justiciable, why are directive principles of State policy considered fundamental in governance of country?

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Ans. Ar. 39-51 of constitution deals about DPPs. They are non-justiciable i.e. there is no legal obligation/ remedy for their enforcement. They are birthright, Marxian or liberal-intellectual.
⇒ Fundamental in Governance.

- While Fundament rights were negative in fashion, DPPs are positive.
- DPPs fills the vacuum created by Fundamental rights (FRs), as latter only ensure political democracy & not socio-economic.
- They lays base of constitutional morality.
- They acts as common manifesto for all political parties.
- Ar. 37 enforces a moral obligation on states to implement them.

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- f) They aims for social Justice.
Ex - Ar. 39A - free legal aid for poor
Ar. 39 - Eliminating child labour.
- g) They also envisions Jawahar's international policies. Ex - Ar. 51 - calls for
aiming International peace & security.
- h) In current time of environment crisis, their importance further
increases. Ex - Ar. 48 calls for
protection of environment.
- i) They aids Judiciary to check
constitutionality of Executive/Legislative
actions for Ar. 13, 32, 226.
- j) They marks shift from 'Police' to
'welfare' state.

Reasons for being non-justiciable

- Lack of sufficient fiscal resources
- Diversity of country would act as
barriers in their implementation.

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way forward: → 2nd ARC - They should be
renamed as Directive
Principle Policy & Action
→ contemporarily important
issues. Ex - Population Stabilisation
should be added on them.

~~Despite~~ being non-justiciable does
not subjugate them to Fundamental
rights, they too are equally (if not
less) important. Minerva Mills case
noted Indian constitution is laid
on bedrock of balance between
both DP & Fundamental rights

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15)

Discuss the emergence of the concept of 'Basic Structure' vis-a-vis power of Parliament to amend constitution.

Ans

Indian constitution is a perfect blend of rigidity (USA constitution) & flexibility (UK constitution) of constitution.

Ar. 368 empowers Parliament to amend constitution.

There could be 3 kinds of amendments - By simple majority, By special majority, By special majority and ratification by 50% legislatures through simple majority.

However ~~the~~ there has been little consensus of amending power of constitution.

→ Evolution:

a). Shankari Prasad case (1951) -

SC held Parliament can amend any part of constitution including

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Fundamental rights, as they are not
covered in Art. 13.

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- b) Golak Nath case (1967) - SC
overruled its previous position of
Shankari Prasad case & held
amending power is limited &
Fundamental rights are sacrosanct
thus can't be amended.
- c) Govt. of India retacted by
24th & 25th constitutional amend-
ment thereby ~~etc~~ adding under
Art. 368 Govt. can amend any
part of constitution.
- d) Kesavananda Bharati case (1973)
- SC. held that doled out the
doctrine of basic structure, holding
that Parliament can amend
any part of constitution including
Fundamental rights but without
breaching this doctrine.

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e) Indira Gandhi case (1975) &
Woman Rao case SC again
reiterated doctrine of basic
structure in amending constitution.

f) Minerva Mill case (1980) → SC
SC held limited power to
amend constitution is itself a
basic feature of constitution.

g) ~~IR Coelho case (2007)~~ SC held
~~that there could~~

Thus, present scenario is
same as hold in Kesavananda
Bharati case over ~~20~~ years.

• Basic feature has been defined
by SC as - Federalism, Secularism,
Unity etc (Bommai case) &
conducting free & fair elections
(Kihoto-Hollohan case) etc.

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Q. 16) It is not absolute separation of powers but a system of checks & balances with regard to three organs of state that the Indian constitution envisages.
Elucidate.

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Ans. Indian constitution unlike USA's constitution is NOT based on 'strict' separation of powers, rather based on interdependence of organs of state:
Executive, legislative & Judiciary

As, President & C.M. that are union executives are also part of legislature, this is a clear non-adherence to absolute separation of powers.

→ checks & Balances.

a) Legislative checks exercises & ensures executive accountability at multiple stages.

→ By devices - Question hour,
Zero hour, half hour discussions.

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- By adopting motions - calling attention motion, adjournment motions.
- By Parliament committees - DRs, Financial committees.
- By various reports of CAG, CVC, NESC, NCBC etc.

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- b) Legislative may also dilute any Judicial excess. The Ex-Shah Bano Judgement of SC. hurted religious sentiments of Muslims. So a new law was enacted to counter that.
- c) Executive President (Union executive) under Art. 75 may dissolve Lok Sabha (Legislature) if CM loses confidence of Lok Sabha or if PM advises President for the same.
- d) Judiciary can declare any arbitrary executive/legislative action as ultra vires by Art. 13, 32, 226.

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In I R Coelho case (2007) SC held
this judicial review is a basic
structure of constitution & thus
there ^{can be.} no blanket ban on it by
9th Schedule.

e) SC in 4th Judge case 2015
declared 17th & 100th constitutional
amendment as unconstitutional.

Thus Indian constitution
envisages an harmonious blend of
checks & balances between all
3 organs of state. However this
may be prone to vulnerabilities
like - Judicial adventurism, political
opportunism, populism etc.

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17. Distinguish between pressure groups & political parties, discuss how pressure groups exert influence on politics in India.

Max Weber defines political parties as group of people who formally come together to acquire power by competing elections. Pressure groups on other hand are associations who try to influence govt. decision making in favour of their members, without itself contesting elections.

Political parties

Pressure groups

- contest elections
- registered bodies. Ex In India, with ECI under RPA, 1951
- Rigid ideologies
- represents broader interest
- use constitutional means for power capturing

- do not contest elections
- most often not registered.
- vague / issue-specific ideologies.
- sectional & parochial interests
- also may use extra-constitutional means.

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→ Ex - BJP, INC, etc | → Ex - RSS, GLF etc

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⇒ ways used by Pressure groups to exert influence in India:

- Electioneering → placing those candidates in public offices who are favourable in their ~~not~~ cause's support.
- Lobbying → Persuading public officers to extend support for their cause.
- Propagandizing - It is an indirect tool, it includes mobilizing public opinion to influence ~~public~~ govt. decision. As in democracy mandate of people is most important.
- Resorting to Judicial support - By PIL, petitions etc.
- Illegal & unethical methods - corruption, bribery etc.
- Protests, processions - Rail roko, rasta roko, makha jam etc.

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Recently farmers & unions are protesting & farm laws by these methods only.

9) Govt themselves ~~take~~ consult Pressure groups as they are grassroot associations & thus could be better represent aspirations of people.

However IB (Intelligence Bureau) reported that many foreign funded groups stalls development projects thereby impacting 2-3% annual GDP growth. Thus FCRA 2020 has tried to regulate them more efficiently.

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The Legislature in a parliamentary system ensures executive accountability at various System Stages. Discuss in context of India.

Ar. 74 & 75 of Indian constitution ~~do~~ outlines the parliamentary system which ensures accountability of Executive to legislatures at multiple Stages as:

- a) ~~union~~ executive stays in power as long as it holds confidence of Parliament (Lok Sabha, specifically) under Ar. 75. Thus if it ~~loses~~ it, council of Ministers ~~can~~ will be dissolved.
- b) Through multiple devices - Question hour (first hour), Zero hour, legislatures asks questions from Executives.

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c) Legislative may adopt motions like - adjournment motions, ~~to~~ calling attention motion to bring important issues on table of House to seek answers/explanations from executives.

d) Parliament through its parliament-ary committees, particularly DRSC & Finance committees ensures financial accountability of Executives.

e) Through various reports ~~are~~ being presented in House like - CAR, CVC, NCB etc, Parliament also entails ~~at~~ a check on Executives.

f) Lok Sabha can pass resolution in order to discontinue ~~under~~ National Emergency (Ar. 356).

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~~Despite all these~~

Aforementioned points just tends to aim
proper & smooth functioning of
constitution machinery & not
subjugate Executive.

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18-19
Why is the 42nd amendment of Indian constitution often referred to as mini-constitution?

Ans

4^{2nd} constitutional amendment was adopted in 1976 (Emergency Era) mostly based on Swaran Singh committee's recommendations.

→ Reasons for being called as 'mini-constitution'

- Quantum - It led to a large quantum of change in constitution.
- It changed/amended almost most of the parts of constitution.

→ Fundamental Duties - They were added in Part IV-A under Ar 51A. They are now justiciable in nature.

→ Preamble - As ⁱⁿ Kesavananda Bharati case (1973) SC ~~held~~ uphold the amendability of preamble.

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consequently 42nd amendment added
'Secular', 'Integrity' & 'Socialist'
in Preamble.

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→ President - It made advise tendered
by council of ministers (COM)
final & binding on President
under Ar. 74.

→ Tribunals - added Ar. 323A
(for administrative tribunals - CAT, SAT)
& Ar. 323-B (for other purposes)

→ Judicial review - It narrowed down
the scope of Judicial review
of constitutional amendments.

→ DPP → Provided any law aiming
to supplement any DPP cannot
be declared ultra-vires on ground
of violation of fundamental rights.

→ Provided for creation of All-India
Judicial Services

→ Raised tenure of Lok Sabha
& State legislative assembly
from 5 yrs → 6 yrs.

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Due to such a forementioned changes it is called a "mini-constitution"

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Thus, a Janata Govt. adopted 44th constitutional amendments to
try to rectify many errors in 42nd
amendment terming them as
politically ~~of~~ motivated in aftermath
of Emergency.

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29) Elucidate the relation between President & council of Ministers as provided in Indian constitution.

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Ans President & ~~the~~ council of Ministers (COM) are union executives. President is de-jure head of state, while COM headed by PM is de-facto head.

⇒ Relation between President & COM:

- Ar. 53 - It holds that power of executive lies in President.
- President appoints COM (including PM). Though she can't appoint any one PM as per her wish, she is bound to appoint leader of ~~large~~ majority seats seeking party as PM & appoints other COM as per consultation (binding) of PM.
- Ar. 74 - There will always be a COM to tender advice to

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President. 42nd amendment made this advise final & binding. However 44th amendment allowed President to ask COM to reconsider the ~~extended~~ advise only for once.

d) Ar-75 - COM is collectively responsible to Parliament (Lok Sabha specifically) thus if it loses its confidence in Parliament, it ~~had~~ could be dissolved by President.

e) Ar-78 - It deals about the duty of PM to ^{furnish} ~~transfer~~ information to the President, as the latter deems.

f) SC holds that there shall always be a COM to advise President. Anywhere if constitution deems opinion of President, it shall be only in consultation (binding) of COM.

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~~Sec 60~~ The advice tendered by can't
be questioned in any court.

g) Due to a continued COM, President
has no constitutional discretionary
powers & only situational discretionary
ex-in being assembly.

Thus, the relation between
both of these union executive is
very organic. on similar lines is
the relation between Governor &
State COM.

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