

## **CURRENT ISSUES WRITING PRACTICE**

### **POST-TEST MATERIAL FOR CIWP – U**

**Q. 'If judicial review means anything, it is judicial restraint that does not allow everything.' Comment. Highlight the difference that exists between the judicial activism and judicial over reach.**

#### **Judicial Review**

- The Constitution of India provides for judicial review under Articles 32 (Supreme Court) and 226 (High Court). The Supreme Court has pronounced that judicial review is a fundamental feature of the constitution.
- The power of judicial review by courts therefore is not subject to amendment and thus has been effectively taken out of the field of Parliament's power to amend or in any way abridge. The judiciary has declared a "hands-off" command to the legislature.
- Judicial review is understood to be the revision of the decree or sentence of an inferior court by a superior court. Judicial review of executive or legislative actions is controversial, unlike the judicial review of judicial actions.

#### **Judicial Review and Judicial Restraint**

- The legislature, the executive and the judiciary are three coordinate organs of the state. All the three are bound by the Constitution. The ministers representing the executive, the elected candidates as Members of Parliament representing the legislature and the judges of the Supreme Court and the High Courts representing the judiciary have all to take oaths prescribed by the Third Schedule of the Constitution.
- All of them swear to bear true faith and allegiance to the Constitution. When it is said, therefore, that the judiciary is the guardian of the Constitution, it is not implied that the legislature and the executive are not equally to guard the Constitution.
- For the progress of the nation, however, it is imperative that all the three wings of the state function in complete harmony. A judicial decision either 'stigmatises or legitimises' a decision of the legislature or of the executive.
- In either case the court neither approves nor condemns any legislative policy, nor is it concerned with its wisdom or expediency. Its concern is merely to determine whether the legislation is in conformity with or contrary of the provision of the Constitution. It often includes consideration of the rationality of the statute.
- Similarly, where the court strikes down an executive order, it does so not in a spirit of confrontation or to assert its superiority but in discharge of its constitutional duties and the majesty of the law. In all those cases, the court discharges its duty as a judicial sentinel.
- Thus, it clearly proves that if judicial review means anything, it is judicial restraint that does not allow everything.
- The Supreme Court has on various occasions highlighted the importance of judicial restraint for the maintenance of the delicate balance of power of the different limbs in a democracy.
- Judicial restraint is consistent with and complementary to the balance of power among the three independent branches of the state. It accomplishes this in two ways.
- First it not only recognizes the equality of the other two branches with the judiciary, it also fosters that equality by minimizing inter-branch interference by the judiciary.
- Second, it tends to protect the independence of the judiciary. The touchstone of an independent judiciary has been its removal from the political and administrative process. Thus, judicial restraint complements the twin, overarching values of the independence of the judiciary and the separation of powers.

#### **Judicial Activism and Judicial Over Reach**

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- Courts of today are not remaining passive, with the negative attitude of merely striking down a law or preventing something being done.
- The new attitude is towards positive affirmative actions, and issuing orders and decrees directing remedial actions.
- In the estimation of an ordinary Indian citizen the legislature and the executive have failed miserably in their cherished duties towards the general public. The executive and the legislators are made accountable for their actions.
- Their nearness to the people generates high expectations from the public and attracts sharp criticism whenever their actions do not follow the expected lines. The common citizen feels that the administration has become so apathetic and non-performing that they have no other option except to approach the judiciary to redress their grievances.
- It is under this situation that the judiciary has taken an activist approach. Judicial activism has flourished in India and acquired enormous legitimacy with the Indian public.
- However, this activist approach by the judiciary is bound to create friction and tension with the other organs of the state. Such tension is natural and to some extent desirable.
- Judicial activism earned a humane face in India with the liberalising of access to justice and granting of relief to disadvantaged groups and the have-nots through public interest litigation (PIL).
- In various instances, the judiciary has called upon the executive to perform its obligations under the constitution and the laws.
- While this was and will continue to be desirable, it will be against the scheme and philosophy of the constitution if the judiciary oversteps and dons the mantle of the executive and the legislature.
- While in cases related to labour policy (eg minimum wages, working conditions etc) and also in respect of issues related to environmental and ecological matters judicial behaviour can be perceived to be proactive, judicial intervention in matters related to fiscal policy, (political affairs, internal proceedings of the legislature etc) can be categorized as judicial overreach.
- Frequent interventions tend to weaken the funding of those two wings of the constitution, which are expected to perform by themselves.
- In the words of Justice J S Verma (former Chief Justice of India): "...the judiciary should only compel performance of duty by the designated authority in case of its inaction or failure, while a takeover by the judiciary of the function allocated to another branch is inappropriate. Judicial activism is appropriate when it is in the domain of legitimate judicial review. It should neither be judicial 'adhocism' nor judicial tyranny."
- The acknowledgement of this difference between "judicial activism" and "judicial overreach" is vital for the smooth functioning of a constitutional democracy with the separation of powers as its central characteristic and supremacy of the constitution as the foundation of its edifice.

**Q. As India moves forward with the self-reliance initiative, what role can the Indian Diaspora play in making the 'Brand India' stronger? Justify with examples.**

The Indian Diaspora is a generic term used for addressing people who have migrated from the territories that are currently within the borders of India. They can play extensive role in making the 'Brand India' stronger in the background of the Self Reliance initiatives that are currently being undertaken in order to overcome the shockwaves created by the pandemic. It can be elucidated as below:

**National representation across the globe:**

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Diasporas are symbol of a nation's pride and represent their country internationally. They help in building country's value internationally through their huge success stories.

#### **Economic contribution:**

Many emigrants make huge investments into their home countries in domestic financial, real estates, services and technological sectors helping in huge inflow of capitals that boost local economy and create huge jobs acting as an "Agents of Change". Indians have become prominent businesspersons and corporate leaders in many western countries and big players in financial sector, which means they can now act as bridges for investment in Greenfield and brownfield manufacturing and in bringing in financial investment.

#### **Remittances:**

One of the greatest economic contribution of Indian diaspora has been in terms of remittances. According to Global Migration Report 2020, India continues to be the largest country of origin of international migrants with a 17.5 million-strong diaspora across the world, and it received the highest remittance of \$78.6 billion (this amounts to 3.4% of India's GDP) from Indians living abroad.

#### **Help in technology transfer:**

Today in the 21 Century we are looking forward to move in a different direction as far as manufacturing and economic growth is concerned. In Information technology sector, India due to the assistance of overseas India has become a knowledge economy and IT superpower.

Rolls Royce speaks of co-creation and co-development of light combat engine in India. JCB largest manufacturing base is in India not just for captive use for Indian operation but also export equipment all over the world. Another example is the COMCASA agreement, which is meant to provide a legal framework for the transfer of communication security equipment from the U.S. to India.

#### **Response to Pandemics:**

In health care many Indians are serving overseas and we get a real sense of how integrated the Indians are in Healthcare and pandemic response globally. India will continue to play its role as world's pharmacy & protect humanity from Covid-19 adding the world is not only waiting for Indian vaccine but everyone is watching how India runs world largest vaccination programme. The Oxford AstraZenica vaccine getting manufactured by Serum institute of India is classic example where research & development is happened in one country but manufacturing in our country not just for our captive requirement but for all-out all over the world.

#### **Diplomacy:**

An important advantage in having a large emigrant group is furthering of nation's diplomacy through people to people contact. Apart from being Competitive, a major advantage is by opening the door in a political way i.e in US or UK Indians have a voice and are in good position but we should not forget their loyalty would be to the country of their residence. However, as far as business is concerned compared to other countries, we can expect great amount of support from them & have significant control and communication with the people.

#### **Spread of indigenous culture and traditions:**

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Ex. the Sikh community. The Sikhs are one of the largest migrants from India to the UK, Canada and many other countries. They have very well maintained their culture and ethnic existence for decades.

#### **Political influence:**

Diaspora play important role in influencing policies and politics of its host country in favour of its country of origin and development of good ties and relations between both countries. India's permanent membership to the UNSC can become a reality with support from the diaspora.

#### **Help in boosting bilateral ties:**

Diaspora increasingly becoming prominent with getting prominent places in the high offices of their residing nations like UK, USA which further helps in building their economic linkages.

Thus, with initiatives such as Pravasi Bhartiya Divas etc. India should try to win the support of this community to as much extent as possible as they can be of significant help when it comes to achieving the dream of \$5 trillion, sustainable economy and healthy human resource.

**Q. ‘The inter-linking of rivers may bring water security that is otherwise unimaginable. Still that judgement cannot be made in secrecy and haste.’ Comment. Discuss in brief, the overall impact of inter-linking projects completed till date.**

The Inter Linking of Rivers project (ILR) in India aims to connect around 30 major rivers and is estimated to cost USD \$123 billion. The project is to be undertaken in two circuits: Himalayan and Peninsular. The idea behind ILR is to create dams and canals which in turn will create channels connecting rivers. These channels then will help transfer water from water surplus rivers to water deficit ones. The underlying science of arithmetic hydrology reasons that water is of value only to the extent of its utility. Therefore, the amount of water which cannot be utilized economically, including water that flows into the sea, is considered surplus. This is in contrast to holistic hydrology, which considers every drop of water to be fulfilling some ecological purpose along with the man-made ones. ILR seeks to harness the surplus which is not serving any economic utility presently.

Supporters believe there will be following benefits from ILR:

- Floods can be avoided by balancing water levels.
- Dams and canals will bring an additional 35 million hectares of land under irrigation. This will benefit agriculture and rural earnings.
- Power to the tune of 34,000 MW (10% of current installed capacity) will be generated.
- A fillip to tourism across the country.
- The canals will aid transportation by helping the government in its inland waterways project, a mode of transport which is hitherto underdeveloped.

#### **Framework for a Cost-Benefit Analysis**

The costs of ILR go beyond the budgetary expenditure involved in developing the project. There are heavy unaccounted for costs which must be kept in mind before the project is proceeded with. A precautionary framework consists of ranked criterions which help compare the threats and benefits of a project. They are as follows:

#### **Flood Control:**

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- It is imperative to grasp that rivers are complex ecosystems, as against mere carriers of water.
- Each river has its own identity, flow, habitat and complexities. Even floods are part of a river system, as against being mere disasters.
- It has been proven that infrastructure projects like dams can merely protect us against small-scale disruptions, not against terrible floods.
- Further, it is also accepted that megaprojects which try to completely distort the nature end up disturbing it.
- Oversized dams have been found to be collecting silts and forming a rocky surface in and around the dam. This reduces the sedimentation in other parts of the river.
- The resultant imbalance leads to increased flooding. This disturbance also leads to destruction of the river biosphere and marine life, one of the key controllers of water flow.
- Ex. The Detailed Project Report report of the Burhi-Gandak-Ganga-Noon says that only 10 per cent of the proposed flood discharge will be diverted and not the entire water.
- ILR consists of similar mega dams and channels, extended to every single river system of the country.
- Hence, while it is very unlikely that this project will lead to an extensive control over floods, the likelihood of it extenuating them is very high. What we instead need is a sustainable and holistic approach to control flooding, which is a natural phenomenon.

#### **Effect on Human Health**

- It is mentioned that the project will irrigate landmasses across India. Undoubtedly, there will be more land under irrigation. While more water for some will mean increased income for some, it is at the cost of others.
- The first ones to suffer are the ones who lose their lands and livelihood. Thousands die and millions are displaced in single infrastructure projects.
- ILR consists of more than dozens of such constructions. This is followed by the damage to public health due to inequity.
- Such projects while benefitting those residing in a certain area of the river (the upper riparian), take away from others (the lower riparian).
- Furthermore, dams and reservoirs serve as carriers of communicable diseases. This is a result of the still or slowed down flow of the river water.
- Finally, the construction of such large projects too cost human lives heavily. Widespread construction will result in toxic air, water, land and noise pollution. Large tracts of forests will be submerged, decreasing the already decaying forest cover.
- For Ex. 1. The approved Ken-Betwa link is set to submerge 6000 hectares of forest land, of which 4141 hectares lie in the Panna Tiger Reserve. 2. In the now constructed Polavaram project nearly 3500 ha of forest, including the Papikondalu Wildlife Sanctuary, was submerged. The health costs of such environmental destruction will be unimaginable.

#### **Immediacy**

- As listed above ILR aims to benefit disaster control, farm productivity, tourism, transport and electricity generation.
- While one may agree that all these sectors need urgent policy decisions, ILR is hardly the most efficient way to resolve the crisis these sectors are facing. As proven above, ILR doesn't aid disaster control.
- Farms will be better aided by funding restructuring of agro-markets, investing in technology, on infrastructure, etc.

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- Tourism too can be benefitted through more suitable means (cleanliness and urban planning are merely the starting points).
- Similarly, other avenues of transport and suitable individual waterways deserve more funds at the moment.
- Finally, electricity generation through solar and wind means should be at the forefront of our energy policy.

Therefore, it can be concluded that the ILR doesn't address the stated threats in the best possible manner and they can be urgently addressed through better means.

The possible dangers because of non-implementation of the ILR are that of flooding, drought and lost economic advantages. But its implementation will pose a huge threat to the environment in its totality and by extension, the human life. However, controlling natural disaster is ultimately linked to environmental balance and a sustainable partnership with nature. It is also accepted that economy and environment go hand in hand. Today, the one certain threat is that of the risks being posed to the environment as a whole.

Thus, it can be said that the judgement regarding inter linking of river can not be made in secrecy and haste and in-depth analysis of the pros and cons should be done.

#### **Example of Impact of ILR Projects:**

##### **The Ken-Betwa link:**

The Ken-Betwa Link Project is the first project under the National Perspective Plan for interlinking of rivers. Under this project, water from the Ken river will be transferred to the Betwa river. Both these rivers are tributaries of river Yamuna. According to the Union Jal Shakti Ministry, the project is expected to provide annual irrigation of 10.62 lakh hectares, drinking water supply to about 62 lakh people and also generate 103 MW of hydropower.

As a consequence of building a reservoir and dam on the Ken river, the KBLP is expected to submerge 4,141 hectares of Panna Tiger Reserve, a Protected Area, as per the EIA report. This is 7.6% of the core area of the Panna Tiger Reserve, home to tigers, leopards, hyenas and other animals. In all, more than 2.3 million trees and 5,258 hectares of forest land will be sacrificed to the project.

Another PA, the Ken Gharial Sanctuary, will also be affected, according to the report. The flow of silt in the Ken river will change owing to the dam and disrupt the ecosystem, impacting the breeding patterns of gharials and other aquatic life.