



APPROACH – ANSWER: G. S. MAINS MOCK TEST - 2341 (2024)

Answer all the questions in NOT MORE THAN 200 WORDS each. Content of the answers is more important than its length. All questions carry equal marks. **12.5X20=250**

1. **Highlighting the significance of the Preamble to the Indian Constitution, discuss whether it is a part of the Constitution.**

Approach:

- Give a brief introduction about the Preamble of the Constitution.
- Mention the importance of the Preamble to the Indian Constitution.
- Discuss whether the Preamble is a part of the Constitution.
- Conclude accordingly.

Answer:

The term 'Preamble' refers to the introduction or preface to the Constitution. It contains the summary or essence of the Constitution. It is based on the 'Objectives Resolution', drafted and moved by Pandit Nehru, and adopted on 22nd January, 1947 by the Constituent Assembly.

Significance of the Preamble to the Indian Constitution:

- It embodies the **basic philosophy and fundamental values** – political, moral and religious- on which the Constitution is based.
- It reveals the **source of authority of the Constitution** i.e., the people of India.
- The terms sovereign, socialist, secular, democratic, republic in the Preamble suggests the **nature of the Indian state**.
- It **reveals the objectives of the Constitution** as the ideals of justice, liberty, equality and fraternity.
- It stipulates November 26, 1949 as the **date of adoption of the Constitution**.
- It contains the **grand and noble vision of the Constituent Assembly**, and acts as a guiding source for the judges **to understand the minds of founding fathers during** interpretation of the Constitution and review of the laws.

After independence, a controversy arose whether the Preamble is part of the Constitution or not. The **Supreme Court in different cases** has dealt with this question as follows:

- In the **Berubari Union case (1960)**, the Supreme Court said that the Preamble shows general purposes behind several provisions in the Constitution, however, **the Court didn't consider it as a part of the Constitution**. It is also neither justiciable nor it indicates a source of power or prohibition upon the powers of legislature.
- In the **Kesavananda Bharati case (1973)**, the Supreme Court rejected the earlier opinion and **held that Preamble is a part of the constitution**. It observed that Preamble is an **essential part of Constitutional Law**. It provided following facts which were not noticed in Berubari Union case:
 - It has been adopted by the Constituent Assembly in the **same manner** as other parts.
 - The motion by which the Preamble was adopted said: "The question is that Preamble stands part of the Constitution".
- In **S. R. Bommai case (1994)**, the Supreme Court again held that the Preamble is an integral part of the Constitution.

Thus, the Preamble stands as an important part of the Constitution, which in the words of an eminent jurist is '**identity card of the Constitution**'.

2. What are Parliamentary privileges? Discuss the need for codifying them.

Approach:

- Give a brief introduction about Parliamentary privileges.
- Write about various Parliamentary privileges.
- Bring out the need to codify Parliamentary privileges.
- Conclude accordingly.

Answer:

Parliamentary privileges are **special rights, immunities and exemptions** enjoyed by **members of the Parliament, individually and collectively**, so that they can “**effectively discharge their functions**”. These also extend to individuals such as the Attorney General and Ministers who speak and participate in Parliamentary proceedings. When any of these rights or immunities is disregarded, the **offence is called a breach of privilege and is punishable under law of Parliament**. These special privileges are enshrined under **Article 105 (for Parliament)** and **Article 194 (for state legislature) of the Constitution**. These privileges are of **two types**, which are as follows:

Collective Privileges

- Exclude strangers from proceedings and hold a secret sitting of the legislature.
- Prohibit press to publish true reports of Parliamentary proceedings in case of secret sittings.
- Only Parliament can make rules to regulate its own proceedings.
- Courts are prohibited from making inquiry into the validity of any proceedings of the house on ground of any alleged irregularity of procedure.

Individual privileges

- No arrest during session and 40 days before and 40 days after the session in civil cases.
- No member shall be liable to any proceedings in any court in respect of anything said in the Parliament.
- The members are exempted to appear as a witness before a court when the Parliament is in session.

It has been pointed out that Parliamentary privileges can be used as a tool against critics – the civil society and the media endangering the fundamental right to speech and expression.

Need for codification of Parliamentary privileges:

- In order to remove their vagueness, uncertainty and inscrutability.
- **Article 105(3)** is transitional in character and the Constituent Assembly contemplated that a statute would be made in due course.
- The privileges of the House of Commons that have largely defined the rules in India are themselves under review.
- Countries such as Australia, USA, New Zealand and Canada have also codified privileges.
- These Privileges may be misused to hide misdeeds like corruption and may have far-reaching implications for a clean public life. For example, in 1998, a constitutional bench of the Supreme Court in P.V. Narasimha Rao vs. CBI held that bribe takers who had taken bribes and voted against the no confidence motion were immune from prosecution.
- The absolute power of freedom of speech and expression for the parliamentarians *vis-à-vis* imposition of restrictions for the public is against the ideals of a democracy.

However, codification of privileges can also be problematic as it would make the privileges subject to fundamental rights and hence, judicial scrutiny and evolution of new privileges would become difficult. In this context, there is a need to balance the rights of citizens vis-à-vis parliamentary privileges. The privileges should no longer be allowed to remain uncertain and vague and must be invoked in rare circumstances to prevent real obstruction in legislative functioning and not in a way that sets lawmakers above ordinary comment and criticism.

3. *Discuss the role of the Finance Commission in governing the financial relations between the Union and the states in India.*

Approach:

- Give a brief introduction of the Finance Commission.
- Elaborate the functions of the Finance Commission to maintain financial relations between Union and states.
- Conclude by mentioning the challenges faced by the Commission and measures to address them.

Answer:

The Finance Commission is a **constitutionally established body set up under Article 280** of the Constitution. Its core responsibility is to evaluate the state of finances of the Union and state Governments, recommend the sharing of taxes between them, and lay down the principles determining the distribution of grants in aid among States.

The Finance Commission acts as a **balancing wheel of fiscal federalism** by governing Vertical Devolution (devolution of taxes of the union to states) and Horizontal Devolution (allocation between the states) of taxes. In this regard it has following functions:

- The distribution between the Union and the states of the **net proceeds of taxes**, which are to be, or maybe, divided between them and the allocation between the states of the respective shares of such proceeds.
- The principles, which should govern the **grants-in-aid** of the revenues of the states out of the Consolidated Fund of India.
- The Commission decides the basis for **sharing the divisible taxes by the Center and the states** and the principles that govern the grants-in-aid to the states every five years.
- The Commission's recommendations along with an **explanatory memorandum** about the actions taken by the government on them are laid before the Houses of Parliament.
- As per the Code of Civil Procedure 1908, the Commission has all the **powers of a Civil Court**. It can call witnesses, ask to produce a public document or record from any office or court.
- Any other matters referred to the Commission by the President in the interests of sound finance.

However, there are certain challenges that the Finance Commission faces:

- **Term of reference:** The terms referred to for the consideration of the 15th Finance Commission have raised doubts over the cooperative spirit of the Centre. It is argued by some that the use of 2011 census as the basis for resources allocation between states by the 15th Finance Commission would disadvantage states that performed better in controlling their population over the decades.
- **Nature of funds:** The nature of transfers to states has also changed with the recommendations of the 14th finance commission. A larger share of transfers has been in the form of unconditional devolution to states. The **share of statutory grants** paid to the states has correspondingly declined. While this has allowed greater discretion to states, it has also made them more vulnerable to fluctuations in the centre's tax revenues
- **Demand for permanent status:** Different Commissions have adopted different approaches on tax devolution and making grants to states. This makes the flow of funds to the states uncertain. Thus, there is a need for permanent Commission especially since the Goods and Services Tax (GST) has come into operation.

To maintain the balance between Union and state fiscal responsibilities and revenue power, the Commission will be required to have a long-term vision while accommodating the changing developmental needs and aspirations of the nation.

4. *Identifying the issues associated with judicial accountability in India, suggest measures to address these issues.*

Approach:

- Give a brief introduction about judicial accountability and provisions to ensure it in India.
- Identify the issues associated with judicial accountability.

- Suggest measures to address these issues.
- Conclude accordingly.

Answer:

The term judicial accountability means that the judges are responsible for the decisions they deliver. It also means that judges be held accountable for their conduct. Following are the provisions that ensure accountability in the Judicial System in India:

- **Article 124 (4):** It provides for **removal of the judges of higher courts** only on the grounds of proved misbehaviour and incapacity through a resolution to be passed in each House of the Parliament by a special majority.
- **Article 235:** Under this, the **control of the subordinate and district courts** has been vested in the High Courts.
- **Judicial Charter:** In 1997, the Supreme Court of India adopted a 16-point charter called the **Restatement of Values** to serve as a guide and a complete code of the canons of judicial ethics.
- **RTI Act, 2005:** After the SC judgement in 2019, the office of the CJI has been brought under the ambit of RTI.

However, judiciary in India is not subjected to the same level of accountability as the executive or the legislative wings of the government leading to various issues associated with judicial accountability in India:

- **Appointment of judges of SC and HCs:** The existing collegium system where judges appoint judges leads to concentration of power in the hands of a few, making the higher judiciary susceptible to become a self-perpetuating oligarchy.
- **Opacity in the day-to-day functioning:** There are several shortcomings in the in-house procedure as there is no statutory backing for the procedures related to allocation of cases, judicial appointments, disciplinary actions etc.
- **Conduct of judges:** There is constitutional restriction (**Article 121**) on discussion of the conduct of judges in the Parliament. Judiciary scrutinizes itself in cases of misconduct by judges, allegations of bribery etc.
- **Information asymmetry:** The right to know under the RTI Act is not absolute and has to be balanced with the right of privacy of judges.

In this regard, **following steps can be taken to enhance judicial accountability in India:**

- The Parliament must bring a **Bill to amend the Collegium system** and bring more representation and transparency to it.
- Bringing a statutory law for **Judicial Standards and Accountability**, which can fix and plug gaps in ensuring judicial accountability.
- **Setting up a permanent secretariat in the Supreme Court** for maintaining records of high court judges and finetuning the **memorandum of procedure** to bring more transparency in judicial appointments.
- **Enhanced usage of technology** so that the legal process of an entire life cycle of cases can be digitized as well as monitored.
- **A more formal and comprehensive code of conduct** for judges should be put in place, which is enforceable by law.
- Also, an **annual report on functioning and efficiency** should be published to foster accountability as recently done by Orissa High court.

A balanced approach is the need of the hour where judicial independence should not be marred in the name of judicial accountability; however, it should also be ensured that one of the pillars of democracy should not go unanswerable.

5. *Despite the considerable British influence in the making of the Indian Constitution, there are many differences in the constitutional scheme of both countries. Discuss.*

Approach:

- Give a brief introduction about the British influence on Indian Constitution.
- Explain differences in the constitutional scheme of India and the United Kingdom.
- Give a balanced conclusion.

Answer:

Though the Indian Constitution has taken several provisions from different constitutions across the world, its bulk is constituted of the **Government of India Act, 1935**. Various features such as **federal plan, judiciary, governor's office, emergency provisions, public service commissions** and most of the **administrative details** are drawn from this Act. Besides that, the British influence is also observed in terms of adopting the **Parliamentary form of government, the idea of single citizenship, concept of rule of law, institution of the Speaker and the legislative process**.

Despite such profound British influence, there are considerable differences in the constitutional scheme of both the countries:

- **Written Vs. Unwritten Constitution:** Indian Constitution is the **lengthiest written constitution**, framed by a Constituent Assembly whereas, the **Constitution of UK is unwritten** and is based on legislations, conventions, political traditions and Crown's prerogative.
- **Republic Vs. Constitutional Monarchy:** The **nominal head of the State in India is the indirectly elected President** whereas, in the UK, it is a **hereditary Monarch**.
- **Rigid Vs. Flexible:** Indian constitution is a **blend of rigidity and flexibility** as some provisions can be amended easily, some require special majority and ratification by states and some basic structure provisions, which cannot be changed at all. In the **UK, the Constitution is highly flexible** as there is no distinction between ordinary and constitutional laws and therefore all amendments require only a simple majority.
- **Federal Vs. Unitary:** India has provincial autonomy, where powers and functions have been allocated to States through a separate State list. In the UK, all legislative powers vest in the British Parliament. England, Scotland, Wales etc. are all administrative units and not politically autonomous.
- **Constitutional Supremacy Vs. Parliamentary Sovereignty:** In **India, the Constitution is supreme**, as the powers of legislature are checked through a written constitution via judicial review, whereas **in the UK, the courts generally cannot question the validity of the law** passed by the British Parliament.
- **Provisions related to Ministers:**
 - **Members of either House** of the Parliament **can become a PM in India**, whereas the PM of the UK has to be a member of the Lower House only.
 - In India, a person who is not a member of Parliament can also be appointed as minister (maximum period of six months). In the UK, **only MPs can become ministers**.
 - UK has the system of **legal responsibility** of the ministers, while Indian ministers are not required to countersign the official acts of the Head of the State
 - Opposition party creates a **Shadow Cabinet in the UK** to balance the ruling cabinet and to prepare its members for future ministerial office, whereas no such system exists in India.
- **Speaker:** In the UK, the Speaker's constituency remains unchallenged. Once appointed, the **Speaker gives formal resignation from his political party**. Whereas in India, it is neither necessary for the Speaker to resign from his party, nor is there any provision that he will be elected uncontested.

While **both India and the UK are representative democracies**, there are basic differences between the ideals of these nations. For instance, the Indian Constitution is **republic in nature** and it strictly adheres to the principles of **democracy, secularism and socialism**, whereas in UK, there still exists **Monarchy, the institution of the House of Lords, and Christianity** as official state religion.

6. *In light of the role played by pressure groups in India, discuss whether they have become increasingly influential over the years.*

Approach:

- Introduce by defining pressure groups and their role in democracy.
- Discuss with examples, whether pressure groups have become more influential over the years.
- Give a balanced conclusion.

Answer:

A pressure group is an **organized group of people having common interests**. In the democratic functioning of a polity, pressure groups play a vital role. They seek to **promote, discuss, debate and mobilize public opinion** on major public issues. In this process, they **educate people and widen their vision, enhance their democratic participation and raise and articulate various issues**. These groups try to bring changes in public policy through appeals, petitions, demonstrations, lobbying, and processions.

There are arguments that pressure groups have been becoming increasingly influential, as witnessed by the following:

- **Human rights awareness:** It has increased pressure-group activity focused on legislative reforms through courts, interests of minorities, civil liberties etc. For example, recent **Supreme court judgements on LGBTQ rights (Naz Foundation), Triple talaq (BMMA) etc.**
- **Administrative reforms:** Reforms like Right to Information Act, Pre-Legislative Scrutiny, digitisation, etc. has strengthened pressure groups demanding accountability from the government. Recently, the government had to revise the **Draft Data Protection Bill** to accommodate concerns highlighted by civil society organisations such as **Internet Freedom Foundation (IFF)**.
- **Liberalization of economy:** Due to liberalization, businesses are able to exert greater leverage on governments in influencing taxes and corporate regulation. For example, the **government consults business bodies like FICCI, CII etc.** before budget formulation.
- **Globalization:** Global businesses and NGOs are becoming major actors in influencing the policies in India.
- **Women's participation:** Increasing literacy and subsequent empowerment of women has led to an increase in their participation in pressure group activity. For example, **SEWA** has been in the forefront for demanding women workers' rights.
- **Alternative to political parties:** Cause groups offer a more promising route for bringing about political change as compared to political parties. For example, the anti-corruption movement by **India Against Corruption group**.
- **Devolution of power:** Pressure groups have become more influential at the local/grassroots levels, especially after the 73rd/74th Constitutional Amendment Act.

However, there are others who argue that the influence of pressure groups has declined in recent past due to the following reasons:

- **Government action due to FCRA violations:** Several international and well-known NGOs such as Compassion International, Greenpeace India, Amnesty International, and Ford Foundation have come under the government's scanner for **alleged violations of FCRA**.
- **Serving political interests:** In India, some pressure groups have been accused of becoming tools to sub-serve political and foreign interests. An **IB report in 2016 highlighted that 2-3% of India's GDP gets compromised each year** due to protests by vested interests against projects integral for economic growth.

Overall, pressure groups have now become an indispensable element of the democratic process. Due to the highly complex nature of society, individuals cannot pursue their interests on their own. Thus, it is important for the government to consult these organised groups at the time of policy formulation and implementation.

7. *The CAG is argued to be the most important office in the Constitution of India as it ensures the financial accountability and transparency of the government. Discuss.*

Approach:

- Give a brief introduction about the importance of CAG.
- Discuss how it ensures financial accountability and transparency of the government.
- Give a brief conclusion.

Answer:

The Comptroller and Auditor General of India is an independent office provided under **Article 148** of the Constitution of India. He is the **head of the Indian Audit and Accounts Department**. He is the **guardian of the public purse** and **controls the entire financial system** of the country at both the levels—the Centre and the state. This is the reason why Dr. B R Ambedkar said that the CAG shall be the most important officer under the Constitution of India.

It ensures financial accountability and transparency of the government in the following ways:

- **Auditing the accounts:** The CAG is responsible for auditing the financial transactions and accounts of the central and state governments, including those of government-owned companies and other public sector undertakings.
- **Ensuring compliance with laws and regulations:** CAG upholds the Constitution of India and the laws of Parliament in the field of financial administration.
- **Holding executive accountable:** The accountability of the Executive (i.e., council of ministers) to the Parliament in the sphere of financial administration is secured through audit reports of the CAG.
- **Reporting to the President and the legislature:** The CAG prepares reports on the government's financial management and performance, which are presented to the President and then laid before the Parliament and the State Legislatures. These reports are widely considered to be an important source of information for the public and for members of the legislature.
- **Efficient use of resources:** The CAG ascertains whether money shown in the accounts as having been disbursed was legally available for and applicable to the service or the purpose to which they have been applied or charged and whether the expenditure conforms to the authority that governs it.
 - Additionally, CAG can also look into the 'wisdom, faithfulness and economy' of government expenditure and comment on the wastefulness and extravagance of such expenditure.
- **Performance Audit:** CAG also conducts Performance Audits of various government schemes and programs, to evaluate their effectiveness and outcomes.

Overall, the CAG acts as a bulwark of the democratic system of government in India, as it serves as a check and balance on the Executive branch of government and ensures financial transparency in their functioning.

8. *Tracing the evolution of the local government in India, highlight the changes brought about by the 73rd Amendment Act to the Panchayati Raj Institutions (PRIs).*

Approach:

- Give a brief introduction about the importance of local government.
- Give the evolution of local government in India.
- Highlight the changes brought about by the 73rd amendment in Panchayati Raj institutions.
- Give a brief conclusion.

Answer:

Self-governing village communities existed in India from the earliest times in the form of '**Sabhas**' (village assemblies). These village bodies took the shape of Panchayats, which resolved issues at the village level. Their role and functions kept on changing at different points of time.

In modern times, the evolution of local government can be traced as follows:

- Elected local government bodies were created **after 1882 by the initiative of Lord Rippon**, Viceroy of India at that time. They were called the **local boards**.
- Following the **Government of India Act 1919**, **village panchayats** were established in a number of provinces. This trend **continued** after the **Government of India Act of 1935**.
- **After India's independence in 1947**, the government of India adopted a **centralized approach to governance**, with most powers and resources concentrated at the central and state levels. Local governments were largely seen as an extension of the state government and had limited autonomy.
- **In the 1960s**, there was growing recognition of the need for more effective and responsive local government in India. The government of India appointed several committees and commissions to study the issue, including the **Balwant Rai Mehta Committee (1957)** and the **Ashok Mehta Committee (1978)** which recommended significant decentralization of powers and resources to local governments.
- In 1989, the central government introduced two constitutional amendments. Later in 1992, the **73rd and 74th constitutional amendments** were passed by the Parliament.

The **73rd Amendment Act** brought about the following changes in Panchayati Raj Institutions (PRIs):

- **Three Tier Structure:** All States now have a uniform three tier Panchayati Raj structure. At the base is the 'Gram Panchayat, at intermediary level is the Panchayat Samiti and at the apex is the Zila Parishad.
- **Elections:** If the State government dissolves the Panchayat before the end of its five-year term, fresh elections must be held within six months of such dissolution, thus ensuring continuity.
- **Reservations:** One third of the positions in all panchayat institutions are reserved for women. Reservations for Scheduled Castes and Scheduled Tribes are also provided for at all the three levels.
- **Transfer of Subjects:** The 11th Schedule of Indian Constitution was added in 1992 by the 73rd Constitution Amendment Act. This schedule contains 29 subjects. These subjects are to be transferred to the Panchayati Raj institutions. However, the actual transfer of these functions depends upon the State legislation.
- **State Election Commissioners:** The State government is required to appoint a State Election Commissioner who would be responsible for conducting elections to the Panchayati Raj institutions.
- **State Finance Commission:** The State government is also required to appoint a State Finance Commission once in five years which would examine the financial position of the local governments and review the distribution of revenues between the State and local governments.

In nutshell, the amendment has led to the presence of these local institutions across India, which is a significant achievement and has created an atmosphere and platform for people's participation in governance.

9. ***Bringing out the salient features of the Gram Nyayalayas Act, 2008, discuss its significance for India.***

Approach:

- Start with the concept of Gram Nyayalayas.
- Mention the salient features of the Gram Nyayalayas Act.
- Highlight the significance of Gram Nyayalayas for India.
- Conclude accordingly.

Answer:

The **Gram Nyayalayas Act, 2008** has been enacted to provide for the **establishment of the Gram Nyayalayas at the grassroots level**. According to this Act, the **Gram Nyayalaya shall be the court of Judicial Magistrate of the first class and its presiding officer** (Nyayadhikari) shall be appointed by the State Government in consultation with the High Court.

Major features of the Gram Nyayalayas Act, 2008

- **Setup:** The Gram Nyayalaya shall be established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district or where there is no Panchayat at intermediate level in any State, for a group of contiguous Panchayats.
- **Judicial Powers:** The Gram Nyayalaya shall be a **mobile court and shall exercise the powers of both Criminal and Civil Courts.**
- **Seat:** The seat of the Gram Nyayalaya will be located at the headquarters of the intermediate Panchayat, they will go to villages, work there and dispose of the cases.
- **Jurisdiction:** The Gram Nyayalaya shall try **criminal cases, civil suits, claims or disputes** which are specified in **the First Schedule and the Second Schedule to the Act.**
- **Procedural aspects:** The Gram Nyayalaya shall **not be bound by the rules of evidence** provided in **the Indian Evidence Act, 1872** but shall be guided by the **principles of natural justice** and subject to any rule made by the High Court.

Significance of the Gram Nyayalayas

- **Access to Justice:** Article 39A of the Constitution directs the State to ensure that the operation of the legal system promotes justice, on a basis of equal opportunity and shall provide free legal aid to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.
- **Procedural Simplification:** In the recent past, the Government has taken various measures to strengthen the judicial system, inter alia, by simplifying the procedural laws; incorporating various alternative dispute resolution mechanisms such as arbitration, conciliation and mediation. Gram Nyayalayas are a step in this direction.
- **Speedy Justice:** The **114 Report of Law Commission of India** on Gram Nyayalaya suggested establishment of Gram Nyayalayas so that speedy, inexpensive and substantial justice could be provided to the common man. The Gram Nyayalayas Act, 2008 is broadly based on the recommendations of the Law Commission.
- **Affordable Justice:** Justice to the poor at their doorstep is a dream of the poor. Setting up of Gram Nyayalayas would bring to the people of rural areas speedy, affordable and substantial justice.

Gram Nyayalayas have a positive role in providing access to justice to the poor and reaching out to marginalized sections of the society.

10. *Explaining the meaning of the term 'secularism', discuss how the provisions of the Constitution of India reflect secular values.*

Approach:

- Introduce by explaining the meaning of Secularism.
- Give examples of provisions that reflect secular ideas in the Constitution.
- Conclude accordingly.

Answer:

Secularism, as it emerged in the West, is understood as the separation of religion from civil affairs and the state, involving diminishing role of religion in the public sphere. There are distinct traditions of secularism in the world. **Indian secularism** refers to **equal treatment** of all religions and **no discrimination** on the basis of religion. There is **no clear-cut demarcation between state and religion in India**. Also, positive intervention of the state in religious matters is not prohibited. Hence, it is also known as a **positive model of secularism**. On the other hand, **Western secularism** involving **complete separation of the state and religion**, can be termed as a **negative model of secularism**.

Although the term 'secular' was not incorporated in the Indian Constitution upon its inception, it was included in 1976 through the 42nd Amendment. However, in spirit, the values of secular character were interwoven in the constitutional fabric of India from the very beginning.

Following are the secular ideas that are reflected in the Indian Constitution:

- **Preamble:** The Preamble envisions a **secular republic** that secures to all citizens of India **liberty of belief, faith and worship**.
- **Fundamental Rights:**
 - **Right to Equality:** The State shall not deny to **any person equality before the law or equal protection of the laws** (Article 14).
 - ✓ The State **shall not discriminate against any citizen on the ground of religion** (Article 15).
 - ✓ **Equality of opportunity for all citizens** in matters of public employment (Article 16).
 - **Right to freedom of religion:** All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate any religion (Article 25).
 - ✓ Every **religious denomination** or any of its sections shall have the **right to manage its religious affairs** (Article 26).
 - ✓ **No person shall be compelled to pay any taxes for the promotion of a particular religion** (Article 27).
 - ✓ **No religious instruction** shall be provided in any educational institution **maintained by the State** (Article 28).
 - ✓ Any section of **the citizens shall have the right to conserve its distinct language, script or culture** (Article 29).
 - ✓ **All minorities shall have the right to establish and administer** educational institutions of their choice (Article 30).
- **Directive Principles of State Policy (DPSPs):** DPSPs also reflect secular values. For example, the provision for the **Uniform Civil code under Article 44**.
- **Universal Adult Franchise:** Every citizen **who is not less than 18 years of age has a right to vote without any discrimination of caste, race, religion, sex, literacy, wealth** and so on.

Further, secularism has been a part of **the basic structure** of the Constitution provided by the Supreme Court in the landmark Kesavananda Bharati Case.

- 11. *Timely disposal of court cases is essential for maintaining the rule of law and providing access to justice. In this context, discuss the reasons behind judicial pendency and mention the steps taken to address this issue.***

Approach:

- Discuss why timely disposal of cases is imperative for ensuring rule of law.
- State the reasons for pendency of cases in India.
- Mention the steps taken to address this issue.
- Conclude accordingly.

Answer:

Access to justice is a basic right that guarantees protection of law to all. It also includes the right to timely justice as “justice delayed is justice denied”. Moreover, it is integral to rule of law as judicial delay hampers public trust in the Judiciary, which in turn, weakens the democratic institutions. Further, it is guaranteed under **Article 21** of the Indian Constitution.

However, according to data by the **Department of Justice**, over 4.70 crore cases are pending in various courts in the country. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, while nearly 1,82,000 cases have been pending for over 30 years.

Reasons for judicial pendency in India are:

- **Poor state of subordinate Judiciary:** District courts across the country suffer from inadequate infrastructure and poor working conditions.
- **Disruptions due to the coronavirus pandemic:** It further clogged the overburdened Indian judicial system. Though the courts eventually went digital with the initial lockdown restrictions in place, a slower disposal rate resulted in more pending cases. For instance, the National Judicial Data Grid shows that courts saw an increase of over 27% in pendency between December 2019 and April 2022.

- **Shortage of judges:** There are merely 20 judges per lakh population in the country, which is alarmingly low. The sanctioned strength of judicial officers in the subordinate and High Courts saw a gradual increase, however, by April 2021, 411 of 1,080 positions (38%) were vacant in High Courts.
- **The government being the biggest litigant:** The former Chief Justice of India (CJI) N.V. Ramana termed the governments as the biggest litigants, accounting for nearly 50% of pending cases. Also, many of these are actually cases of one department of the government suing another.
- **Vague drafting of laws:** There are obsolete laws that are part of the statute books. Further, faulty or vague drafting of laws, and their multiple interpretations by several courts are the reasons behind prolonged litigation.

Steps taken to address judicial pendency of cases include:

- **Reduce litigation by the government:** Various steps have been taken to reduce litigation by the government, such as:
 - **Legal Information Management & Briefing System (LIMBS):** A web-platform for the purpose of monitoring litigation of the Union of India.
 - **Administrative Mechanism for Resolution of Disputes (AMRD):** For the resolution of inter-ministerial/ departmental disputes.
- **Establishment of fast track courts:** The government has established fast track courts to provide speedy justice and dispose a large number of pending cases in a specified time.
- **Promoting Alternative Dispute Resolution (ADR) mechanisms:** The government and the Judiciary are promoting ADR mechanisms like arbitration, mediation, etc., which have the potential to change the judicial landscape and settle grievances without protracted legal proceedings.
- **Use of technology:** The **e-Courts Mission Mode Project** was launched with the objective of improving access to justice using technology by streamlining the district and subordinate courts.
 - Further, **SUPACE** (Supreme Court Portal for Assistance in Court Efficiency) was launched for improving efficiency by encapsulating judicial processes that can be automated through Artificial Intelligence.

Apart from these, a better court management system, reliable data collection with regard to cases, improving infrastructure of subordinate courts and establishing the All India Judicial Services is required to address pendency of cases.

12. Throw some light on the significance and limitations of the 'doctrine of basic structure' in the Indian Constitution.

Approach:

- Introduce by discussing the evolution of the 'doctrine of basic structure'.
- Briefly explain the significance of this doctrine.
- Highlight the limitations of this doctrine.
- Conclude accordingly.

Answer:

The Indian Constitution is a living document with a dynamic approach, which needs to be updated time and again in response to the changes in the society. For this, the provisions to introduce amendments to the Constitution were laid down under **Article 368**. But, on apprehension of 'politicisation of the Constitution', the Judiciary in the case of **Kesavananda Bharati vs State of Kerala (1973)** introduced certain provisions, which form the basic structure of the Constitution and **restricted the amending power of the Parliament under Article 368**.

Some of the elements of the 'basic structure' of the Constitution include supremacy of the Constitution, separation of powers between the Executive, Legislature and Judiciary, rule of law, federal character of the Constitution, etc.

The 'doctrine of basic structure' is significant in the following ways:

- The basic structure doctrine is an affidavit of the **theory of constitutionalism**, which prevents the damage to constitutional values by the brute majority of the ruling party.
- The basic structure doctrine **protects the Indian democracy** by acting as a limitation to the unlimited power of the Parliament, which might turn India into a totalitarian state.
 - For instance, in the **Minerva Mills case (1980)**, the Supreme Court highlighted that the Parliament cannot, under Article 368 of the Constitution, expand its amending power so as to acquire for itself the right to destroy its basic features.
- It further helps in **delineating true 'separation of powers'** where all the three organs of the government, the Executive, the Legislature and the Judiciary have separate functions and powers, and one organ does not interfere in the functioning of the other organs.
- The doctrine has strengthened Centre-state relations by clearly stating federalism as a part of the basic structure, as per the Supreme Court judgement in the **S.R. Bommai case (1994)**.

Though the '**basic structure doctrine**' has evolved over time, it has several **limitations, which include:**

- In **Waman Rao vs. Union of India (1980)**, it was categorically held that the application of the doctrine stands **prospective in nature** and amendments subsequent to the date of the Kesavananda Bharati case (24th April, 1973) can only be challenged for their constitutional validity.
- The basic structure theory is criticized as "**vague and an undefined concept**". Further, it has been held that it leads to the exercise of 'limitless power' by the Judiciary, which deflects the balance of power decisively in favour of the Judiciary at the cost of the Parliament.
- Judicial review is fundamental to the rule of law. However, while reviewing the constitutionality of the law, **the court should not consider itself as a "super Legislature"** and sit in judgement on the wisdom of the policies adopted by the Legislature.

The 'basic structure doctrine' proves its essentiality as a **protective shield between the power-ridden Parliament, the citizenry and the application of judicial mind** and should be applied judiciously.

13. While a wide range of powers have been conferred on the Governors of states in India, there are certain limitations imposed on them as well. Discuss.

Approach:

- Introduce by writing about the constitutional position of the Governor.
- State the wide range of powers that have been conferred on the Governors of states in India.
- Discuss the limitations imposed on their power.
- Conclude accordingly.

Answer:

Articles 153 to 167 of the Constitution deal with the role and powers of the Governor. It is an independent office, which functions as a vital link between the Union government and the state governments.

A wide range of powers - **executive, legislative, financial and judicial** – has been conferred on the Governors of states in India, which include the following:

- **Executive powers: All Executive actions** of the state government are formally taken in the name of the Governor.
 - His/her Executive powers include **appointments and determination of conditions of the offices** of various important posts including that of the Chief Minister, the State Election Commissioner, etc.
- **Legislative powers:** He/she ensures that the **Annual Financial Statement (State Budget)** is laid before the State Legislature. The Governor also has the power to **promulgate Ordinances**.
 - Money Bills can be introduced in the State Legislature **only with the prior recommendation of the Governor** and no demand for a grant can be made except on his/her recommendation.

- **Judicial powers:** He/she can **grant pardons, reprieve, respites and remissions** of punishments or suspend, remit and commute the sentence of any person convicted of any offence against any law relating to a matter to which the Executive power of the state extends.
 - He/she is consulted by the President while **appointing the judges of the concerned state High Court** and makes appointments, postings and promotions of the district judges in consultation with the state High Court.
- **Discretionary powers:** He/she has **constitutional discretion**, which include the reservation of a Bill for the consideration of the President, recommendation for the imposition of the President's Rule (under Article 356) in a state, etc.
 - He/she has **situational discretion** as well such as the power to appoint the Chief Minister (CM) when no party has a clear-cut majority, the CM in office dies suddenly with no obvious successor, etc.

However, the **open confrontation between the Governors and state Ministers, misuse of Article 356 of the Constitution, the Governors not acting timely upon Bills passed in the Assemblies, mindless re-promulgation of Ordinances, misuse of discretionary powers, etc.** have been issues of contention. In this light, certain **limitations on the powers of the Governor** have also been specified, **which are:**

- **Article 154(2)(a)** of the Constitution prohibits the Governor from exercising any function "conferred by existing law on any other Authority".
- **Article 163** of the Constitution categorically provides that "there shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor."
- **The S. R. Bommai vs. Union of India (1994) case** limited the Governor's powers in dismissing a state government under Article 356 of the Constitution. The floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.
- **In the Rameshwar Prasad case (2006)**, it was held that the Governor cannot decide based on his subjective assessments on the proclamation of President's Rule and the dissolution of the Assembly.
- **In D.C. Wadhwa vs. State of Bihar (1986)**, the Governor's power on re-promulgating Ordinances for an indefinite period of time was limited. It was held that the Governor cannot take over the power of the Legislature.

The office of the Governor is important in the Indian federal system. The Governor's office should facilitate maintenance of internal security, ensure communal harmony and welfare of Scheduled Castes and Scheduled Tribes and rise above partisan politics while discharging the Constitutional obligations.

14. Discuss the effectiveness of Parliamentary oversight to ensure Executive accountability in India. What measures can be taken to further strengthen it?

Approach:

- Introduce by highlighting the need and tools for Parliamentary control over the Executive.
- Discuss the effectiveness of Parliamentary oversight to ensure Executive accountability in India.
- Suggest measures to strengthen Parliamentary oversight over the Executive.
- Conclude appropriately.

Answer:

In a Parliamentary system, the Parliamentary control over the Executive is provided to ensure that the Executive is responsible to the Parliament for its policies and acts and does not exercise unlimited powers and in turn act in an arbitrary manner. In this regard, the Parliament uses tools of **deliberations and discussions** including Question Hour and Zero Hour, **approval and refusal of laws, financial control** including different Committees like the Estimates Committee, Public Accounts Committee, and various Departmentally Related Standing Committees (DRSCs), and different **motions** like the No Confidence Motion, Adjournment Motion, etc.

However, these measures have not been as effective as envisaged in leading to a more responsive Executive, as seen below:

- **Majority party rule:** Since the ruling Executive is drawn from the party having the majority in the Parliament, its wish tends to prevail in the House, even when there is substantial opposition to a Bill.
- **Reduced deliberations and discussions:** Barring the last few sessions of the Parliament, the Parliament has rarely been able to work for its allotted time as deliberation and discussions have been replaced by disruptions. For instance, as per a report by PRS Legislative Research, the 16th Lok Sabha (2014-19) lost 16% of its scheduled time to disruptions.
- **Laws being passed without adequate scrutiny:** Bills are often passed without referring them to the Parliamentary Committees for effective scrutiny. For example, only 25% of the bills introduced were referred to the Committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively.
- **Use of guillotine:** Due to the technical nature of requests and lack of sufficient time to discuss the Budget, it is regularly being approved through the guillotine mode, thus reducing the financial control over the Executive.
- **Growth of delegated legislation:** Delegated legislations have reduced the role of the Parliament in making detailed laws and have increased the powers of the bureaucracy.

The following **measures** can be taken to **strengthen Parliamentary control over the Executive**:

- **Greater role for the Opposition:** A greater role for the Opposition parties to **decide the agenda of the House**, like in the UK and Canada, can be considered which can hold the government accountable more effectively.
- **Accountability measures on the floor of each House: Rules of procedures** can be amended to ensure that the Prime Minister answers questions related to issues across different Ministries and the Committee reports are discussed at the floor of the Houses of Parliament.
- **Power to the Parliament to convene itself:** Currently, the Parliament is convened at the behest of the President (on the aid and advice of the Council of Ministers). A **constitutional amendment** to allow the Parliament to convene at the request of a requisite number of Members of Parliament (MPs) can be considered to address important issues.
- **Strengthening the Committee system:** It can be done by making the **appearance of the Ministers** mandatory before the Committees, increasing **transparency** by having video-recorded meetings, increasing **public participation** in Committee proceedings, etc.

Strengthened Parliamentary oversight over the Executive not only holds the government accountable but also ensures that the policies are efficient and serve the needs of the citizens. Further, it leads to overall improvement in governance.

15. Giving an account of composition of the Competition Commission of India, discuss its role in ensuring fair competition and improving business environment in the country.

Approach:

- Provide a brief context for the establishment of the Competition Commission of India (CCI).
- Give an account of its composition.
- Discuss its role in ensuring a fair and competitive business environment in the country.
- Conclude appropriately.

Answer:

The Indian economy has undergone transformation with the government gradually loosening its control over private sector participation and foreign investments. **The Competition Commission of India (CCI)** was created under the Competition Commission of India Act, 2002 to promote competition, prevent anti-competitive practices and protect consumer rights.

Composition of the CCI:

The CCI consists of **one Chairman** and **not more than six other members**, appointed by the Central government, whose eligibility are as follows:

- The Chairperson and every other Member shall be a person of ability, integrity and standing.
- They should have special knowledge and experience of not less than fifteen years in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters, including competition law and policy.

The role of the CCI in ensuring fair competition and business environment in the country is as follows:

- **Investigation of anti-trust practices:** The CCI is guided by the principle of natural justice. It takes suo-moto cognisance and can examine cases relating to anti-competitive agreements (including cartels and bid rigging) and abuse of dominant position by the diverse sectors of the economy.
- **Penalties and other measures:** The CCI issues cease and desist orders and imposes penalties in case of violation of provisions of the Competition Act, 2002.
- **Consumer welfare:** It ensures fair and healthy competition in economic activities. It also ensures that the markets work for the benefit and welfare of consumers.
- **Approving combinations:** The CCI approves the proposals of various mergers and acquisitions after examining them for potential impact of monopolistic practices or abuse of dominant position and facilitates a better business environment in the country.
- **Awareness:** The Advocacy Division of the CCI undertakes a wide array of activities viz. seminars, conferences, workshops, interactive sessions, moot court competitions, internships, road shows, competitions assessments of legislations, essay competitions, publications of comprehensive advocacy material on various aspects of competition law, etc. to spread awareness and ensure greater competition compliance.
- **Market studies:** It undertakes various market studies to identify sectors with potential competition issues, such as pharmaceuticals, film distribution chain in India, etc.

The Commission has adjudicated more than 1,200 anti-trust cases and has come up with several innovations like the 'Green Channel' provision for speedy and automated approval on combinations/transactions. However, the **Competition Law Review Committee headed by Mr. Injeti Srinivas** submitted its report in 2019 and identified various issues in the effective functioning of the CCI relating to the Appellate Authority, investigation, powers, penalties, settlements and commitments, etc.

The major recommendations of the Committee were incorporated in the Competition (Amendment) Bill, 2022. The Bill should be passed at the earliest to promote and sustain an enabling competition culture through engagement and enforcement that would inspire businesses to be fair, competitive and innovative, enhance consumer welfare, and support economic growth.

16. Discuss the significance of the Representation of The People Act (RPA), 1951, in the smooth functioning of the Indian democracy.

Approach:

- Briefly introduce the Representation of The People Act (RPA), 1951.
- With the help of its key provisions, explain how it helps in the smooth functioning of the Indian democracy.
- Conclude with a way forward.

Answer:

Under **Article 327**, the Constitution of India empowers the Parliament to make provisions regarding matters related to elections to either House of the Parliament and the State Legislatures, preparation of electoral rolls and delimitation of constituencies. The government therefore introduced the **Representation of The People Act (RPA), 1950** (concerned with delimitation and electoral rolls) and the **Representation of The People Act (RPA), 1951** (concerned with the smooth conduct of elections) in this context.

Some of the key provisions of the RPA, 1951 that helps in the smooth functioning of the Indian democracy are:

- **Decriminalization of Indian politics:** The Act provides for the **qualifications and disqualifications** for membership to the Houses, the **corrupt practices** and other offences at or in connection with elections to the Houses of Parliament and State Legislatures and the decision of doubts and **disputes** arising out of or in connection with such elections.
 - It ensures that only qualified candidates who are not convicted for certain crimes such as promoting religious disharmony, untouchability, bribery, etc., enter the Legislatures, thus decriminalizing Indian politics.
- **Accountability and transparency:** Under Section 77 of the Representation of the People Act (RPA), 1951, every candidate shall keep a separate and correct account of all expenditure during elections. This ensures the accountability and transparency of a candidate in the use of public funds or misuse of power for personal benefits.
- **Clear delineation of election responsibility:** It establishes the **administrative machinery for the conduct of the elections** including the **delegation of functions** by the Chief Election Commission and the **general duties and responsibilities** of other officers like the District Election Officer, Observers, Returning Officers, Presiding Officers, etc.
- **Declaration of political donations:** The Act provides for the **registration of political parties**, which are to take part in the elections and their entitlement to accept **contributions** and **declaration** of the donation received.
- **Participatory democracy:** It provides for the **right to vote as a statutory right** and declares the **manner of voting** at elections, provisions for voting machines and **special procedure of voting** for certain classes of persons, etc. Thus, encourages and empowers people to play an active role in choosing appropriate candidates.
- **Dispute redressal mechanism:** It provides for **dispute resolution** by providing the manner in which **election petitions** will be filed and empowers the **High Courts to try election petitions**.
- **Other provisions:** It explains the **general procedures to be followed after the death of a candidate** of a recognised political party before elections, the **process of vacation of seats** when a person is elected to more than one House, etc.

Fair elections are the essential tenet of a robust democracy. In this regard, certain recommendations have been provided by the **Umesh Sinha Committee in 2019**, such as changes in the Model Code of Conduct and taking help of social media platforms to evolve mechanisms for violation of electoral offences. The Election Commission of India has also asked the Parliament to introduce **Section 58B in the RPA, 1951 to deal with 'voter bribery'** in lines of Section 58A, that deals with booth capturing. Adequate measures need to be adopted to further strengthen the RPA, 1951.

17. The 42nd Amendment Act brought forth a number of significant changes in the Indian Constitution. Discuss.

Approach:

- Briefly introduce the 42nd Constitutional Amendment Act (CAA).
- Discuss the major changes introduced through the 42nd CAA.
- Conclude appropriately.

Answer:

The **42nd Constitutional Amendment Act, 1976 (CAA)** is known as the "**Mini Constitution**" because of the large number of revisions it made to the Constitution of India. It also sought to change the basic structure of the Indian Constitution through broad amendments that impacted many aspects of the Constitution.

Some major changes brought to the Constitution by this Act are the following:

- **Changes in the Preamble:** Firstly, it changed the characterization of India to "**sovereign, socialist secular democratic republic**" from "sovereign democratic republic." Secondly, the words 'unity of the nation' was changed to '**unity and integrity of the nation**'. Though various

provisions of the Constitution already reflected the same, insertion of these terms explicitly established the changed character of the Indian Constitution.

- **Changes in the 7th Schedule:** Five subjects including 'Education', 'Forests', 'Administration of Justice', etc., were moved **from the State List to the Concurrent List**. This has often led to federal tensions between the Central and state governments.
- **Insertion of Fundamental Duties:** Ten Fundamental Duties under Article 51A were added to the Constitution. Though non-justiciable, they give a sense that along with rights, come responsibilities.
- **Changes in the power of the Judiciary:** The judicial review power and writ jurisdiction of the High Courts and Supreme Court were curtailed. Also, the constitutional amendments were kept beyond judicial scrutiny thereby impacting the system of checks and balances.
- **Changes in the Directive Principles of State Policy (DPSPs):** Three new DPSPs were added and one was amended. They provided legal assistance to the underprivileged (Article 39A), ensured workers' rights (Article 43A) and had bearings over environmental protection (Article 48A).
 - Article 31C was amended to give primacy to all Directive Principles over the Fundamental Rights.
- **Formation of Tribunals:** The 42nd CAA ensured cheaper and quick justice and eased the burden of ordinary courts by inserting Part XIV-A, which included "Tribunals for Administrative Matters" (Article 323A) and "Tribunals for Other Matters" (Article 323B).
- **Changes in the Parliament:**
 - It amended Article 74 of the Constitution explicitly providing that the President shall act in accordance with the aid and advice of the Council of Ministers. But, no such provision was made with regard to the state Governors.
 - It raised the tenure of Lok Sabha from five years to six, did away with quorum requirements, etc.
- **Changes in the federal structure:** It facilitated the proclamation of National Emergency, President's Rule and empowered the Centre to deploy armed forces in any state to deal with the law and order situation.

Thus, the 42nd CAA sought to introduce significant changes in the Indian Constitution. Many of its provisions were challenged in the Supreme Court, and resulted in further **evolution of the 'basic structure' doctrine**. In the *Minerva Mills* case (1980), the issue of Article 31C and that of judicial review was widely discussed. Later, through the 43rd and 44th CAA, the powers of the Judiciary were restored and the original terms of the Lok Sabha and Legislative Assemblies were restored. However, most of the changes introduced by the 42nd CAA have been retained reflecting the fact that the Constitution is a '**living document**', which needs to be changed with changing times.

18. Compare the judicial system of India with that of the United States of America (U.S.A.) and the United Kingdom (U.K.).

Approach:

- Introduce by writing about the importance of the Judiciary in a democracy.
- Compare the judicial systems of India and the U.S.A.
- Similarly, compare the judicial systems of India and the U.K.
- Conclude accordingly.

Answer:

An efficient judicial system that is capable of settling disputes and penalizing deviant behaviour with certainty, rapidity and fairness, constitutes one of the core foundations of a democratic society.

Comparison of the judicial systems of India and the U.S.A.

- In both India and the U.S.A, the Constitution acts as the 'supreme law of the land' while the Judiciary acts as the **guardian and interpreter of the Constitution**.
- In both India and the U.S.A, the Judiciary has acquired the power of judicial review. But, in India, the **scope of judicial review** is limited, whereas, it has a wider scope in the U.S.A.

- India follows the '**procedure established by law**', whereas, the U.S.A follows '**due process of law**'. However, through various judicial pronouncements in India 'procedure established by law' has been required to be fair, thus moving towards 'due process of law'.
- **Original jurisdiction** is confined to federal matters in the Indian Supreme Court, whereas, its American counterpart enjoys wider authority.
- The Supreme Court of India, in exercise of its **appellate jurisdiction**, covers constitutional, civil and criminal matters, whereas, in the case of the Supreme Court of America, it is confined to constitutional cases only.
- The Indian judicial system has a wide discretion to grant **Special Leave to Appeal** under Article 136 of the Constitution. However, the American judicial system has no plenary powers to grant such an appeal.
- The Indian judicial system has a provision for **advisory jurisdiction under Article 143** of the Indian Constitution, whereas, no such provision is provided in the American judicial system.

Comparison of the judicial systems of India and the U.K.

- In India, there is a **single integrated judicial system** where both state and Centre laws are administered under the supervision of the Supreme Court. The U.K. does not have a **single integrated judicial system**. Instead there is one system for England and Wales, another for Scotland, and a third for Northern Ireland. However, in most cases the Supreme Court sits above all of these as the final court of appeal.
- The Indian Constitution follows a synthesis of **Parliamentary sovereignty** and **judicial supremacy**, whereas in the U.K., there is a system based on **Legislative supremacy** and **Parliamentary sovereignty**.
 - Due to this, in India, the **power of judicial review** can be used in three dimensions i.e. judicial review of constitutional amendments, Legislative Acts and administrative Acts, while in the U.K., there is no scope to check the validity of the Legislative Acts of the Parliament, however, secondary legislations are subject to judicial review.
- In India, there are **specific and extensive provisions** of judicial review covered in the Constitution of India such as Articles 13, 32, 131, 136, 143, 226, etc. whereas in the U.K., there is an unwritten Constitution, and there is **no express provision for judicial review**. It is dependent on the discretion of the Court.

The U.S.A, U.K. and India are liberal democratic states wherein the Judiciary in each of these states enjoys a very important and powerful position. All three have an independent, unbiased, honest and efficient Judiciary. The principle of separation of powers is followed in these nation states where the Judiciary is independent of the interference from the other two organs.

19. Discuss how the Indian Constitution ensures the independence of the Election Commission of India.

Approach:

- Briefly mention the constitutional role of the Election Commission of India.
- Mention the constitutional provisions that ensure its independence.
- Discuss some concerns pertaining to its independence and conclude on a positive note.

Answer:

The **Election Commission of India (ECI)** is an autonomous constitutional authority responsible for administering Union and state elections in India. The body administers elections to the Lok Sabha, Rajya Sabha, State Legislative Assemblies, and the offices of the President and Vice-President in the country.

The Indian Constitution has ensured the independence of the Election Commission of India through the following provisions:

- **Constitutional status:** The Indian Constitution under **Article 324** provides for the establishment of the Election Commission of India. This provision ensures a constitutional status for the

Commission and its powers and functions are defined by the Constitution, which cannot be undermined or withdrawn by other public institutions in the country.

- **Security of tenure:** The Chief Election Commissioner is provided with security of tenure. He/she cannot be removed from his/her office except in the same manner and on the **same grounds as a judge of the Supreme Court**.
 - He/she can only be removed by the President on the basis of a resolution passed to that effect by both the Houses of Parliament with special majority, either on the ground of proved misbehaviour or incapacity. Thus, he/she **does not hold his/her office till the pleasure of the President**, though he/she is appointed by him/her.
 - Moreover, any other Election Commissioner or a Regional Commissioner cannot be removed from office except on the recommendation of the Chief Election Commissioner.
- **Stable service conditions:** The service conditions of the Chief Election Commissioner cannot be varied to his/her disadvantage after his/her appointment.
- **Authority over the election process:** Under Article 324, the powers of “superintendence, direction and control of elections” is to be vested in an Election Commission. During the election process, the Election Commission has the power to take decisions with regard to postponement, cancellation, recounting of votes, transfer of officers to ensure non-partisanship, etc. to ensure free and fair elections.

However, there are certain concerns with regard to the independent functioning of the ECI. The Election Commissioners are appointed by the President of India on the advice of the Council of Ministers. It is therefore possible for a ruling party to appoint a **partisan person** to the Commission who might favour the party in the elections. Also, the Constitution has not debarred retiring Election Commissioners from further appointment by the government.

Despite such concerns, over the years, the Election Commission of India has emerged as an independent authority, which has **asserted its powers** to ensure fairness in the election process. It has acted in an impartial and unbiased manner in order to protect the sanctity of the electoral process and strengthened the roots of democracy in the country.

20. Though there exists separation of powers between the Legislature and Judiciary, judicial activism has blurred that concept. Discuss in the context of India.

Approach:

- Briefly introduce the concept of separation of powers and state the provisions in the Indian Constitution that ensure it.
- Discuss how judicial activism has blurred the concept of separation of powers.
- Conclude accordingly.

Answer:

The doctrine of separation of powers envisages that one organ of the government should not perform the functions of other organs and should not interfere with the jurisdiction of other organs of the government. The functions of various organs of the government have been sufficiently differentiated in the Constitution, so that one organ does not usurp the function of another.

Provisions for separation of powers between the Legislature and Judiciary under the Constitution of India are:

- **Articles 122 and 212:** Under these Articles, the Indian Constitution prohibits the courts to inquire into the proceedings of Parliament/State legislatures.
- **Articles 121 and 211:** These Articles provide that the Parliament/State Legislatures cannot discuss the conduct of a judge of the Supreme Court or High Court. They can do so only in the case of impeachment.

However, with the evolution of judicial activism in India, there have been times when the Judiciary has usurped the powers of the Parliament. **The Judiciary has been criticized for blurring the principle of separation of powers in the following manners:**

- **Through Public Interest Litigations (PILs)/ writ petitions:** Through PILs and writ petitions, the Judiciary in the name of legal action for indemnifying common interest, has often encroached into the role of the Legislature.
 - **In Vishaka & Others vs. State of Rajasthan (1997),** the Supreme Court laid down the guidelines that ought to be followed in all workplaces to ensure proper treatment of women. It stated that these guidelines should be treated as a law until the Parliament passes a legislation for enforcement of gender equality, thereby assuming legislative power.
- **Law-making process:** Laws formulated by the Legislature have to pass judicial review wherein they depend on the interpretation of the court determining the due process of law. In **Kesavananda Bharati vs. State of Kerala (1973),** the Supreme Court propounded the theory of basic structure, which more or less limits the Parliament's law-making power in constitutional amendment.
 - Similarly, striking down the National Judicial Appointments Commission by the Supreme Court, which was established through the 99th Constitutional Amendment Act, on the ground that it was unconstitutional was seen as judicial overreach.
- **Directing the proceedings of the House:** Despite Article 212 of the Indian Constitution, the Judiciary often gets involved in the business of the House of Legislature.
 - For instance, in the **Jharkhand Legislative Assembly case,** the Supreme Court ordered the Assembly to conduct a Motion of Confidence and ordered the Speaker to conduct proceedings according to a prescribed agenda and not to entertain any other business.

Judicial activism may be a welcome measure in the short-run, as it connotes the assertive role played by the Judiciary to compel the other organs of government to discharge their assigned Constitutional functions towards people, helps in strengthening democracy and reaffirms the faith of people in the rule of law. However, there is a very thin line between judicial activism and judicial overreach, which the Judiciary should keep in mind, otherwise the judicial officers themselves, would be found violating the basic principles of the Constitution.