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Day 19 (21.07.2023)

General Studies

Time Duration: 75 Minutes

Total Marks: 100

INSTRUCTIONS

All Questions are compulsory

The number of mark carried by a question is indicated against it

Answers to be written in English only

The content of the answer is more important than its length

(Answers to be written on the Answer Booklet or the Answer sheet format provided).

Upon finishing the assignment, kindly scan and create a pdf copy. Submit pdf copy, within 30 minutes of scheduled completion time, at both

Telegram number: +91-8899491974 &
Email ID: masterstrokementorship@gmail.com

All questions carries same marks, answer to be written in around 150 words.

Q1. Discuss the advantages and disadvantages of a presidential form of government compared to a parliamentary form of government, and which system do you think is better suited for ensuring effective governance and representation? ***(10 marks)***

Q2. Competitive federalism in India is a challenge for cooperative federalism in the country. Comment. ***(10 marks)***

Q3. Examine the potential avenues for misuse of power by Governors in India, and how can the independence and neutrality of the Governor's position be safeguarded to ensure its effective functioning in upholding democratic principles and maintaining a balanced center-state relationship? ***(10 marks)***

Q4. Explain the concept of separation of powers in the Indian democratic system and discuss the key challenges and opportunities in maintaining an effective separation of powers among the executive, legislative, and judicial branches in India. ***(10 marks)***

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Q5. The wide formulation and indiscriminate exercise of discretionary powers by the Governor raise legitimate concerns that needs closer attention. Discuss the implications of these concerns and the need for careful scrutiny and refinement in the application of such powers. ***(10 marks)***

Q6. Highlight the extent of President's powers under Article 352. Discuss the judicial scrutiny of proclamation and the exercise of executive powers under National Emergency. How is this power different from the one bestowed under Article 356? ***(10 marks)***

Q7. To what extent does the Comptroller and Auditor General (CAG) of India effectively fulfill its constitutional mandate as an independent and impartial institution of financial accountability, and what are the key challenges and opportunities in enhancing its role in ensuring transparency, accountability, and good governance in the country? ***(10 marks)***

Q8. What were the key recommendations of the Sarkaria Commission in India and how have they influenced the relationship between the central government and state governments? ***(10 marks)***

Q9. What are the major challenges faced in resolving center-state water disputes in India and what mechanisms exist to facilitate effective resolution and equitable distribution of water resources among states? ***(10 marks)***

Q10. Dr. B.R.Ambedkar acknowledged the need for A-356 to address exceptional situations but he also expressed concerns about its potential misuse. Comment. ***(10 marks)***

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Discuss the advantages & disadvantages of a presidential form of government compared to parliamentary form of government and which system do you think is better suited for ensuring effective governance & representation

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Presidential form of government is practiced in USA while Parliamentary form in India & UK.

Advantages of Presidential form

- Single chain of command ⇒ more effective hierarchy.
- technocrats as ministers ⇒ specialized.
- people choose only the President ⇒ free hand in appointing other officers.
- Separation of powers upheld ⇒ little encroachment by judiciary or legislature.

However, there are numerous dis-advantages

1) Lack of representative democracy as

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all sections aren't represented.

2) Lack of effective accountability to the legislature.

3) No Parliamentary scrutiny of bills. ⇒ high handed approach.

4) Top down governance ⇒ not sensitive to people needs.

5) Can lead to inequality due to lobbying as in USA.

For the Indian context with vast population and unity in diversity the Parliamentary form was most favourable as held by BR Ambedkar and later NN Palkhivala to ensure rights of minority is upheld and government is responsible ⇒ doctrine of checks & balance

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Well written. More dimension specific examples needed

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Competitive federalism in India is a challenge for cooperative federalism in the country. Comment.

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Federalism is a basic feature of our constitution as held in SR Bommai case.

Competitive federalism has however become a challenge for cooperative federalism

1) Looking at own interests despite the national needs.
   Eg tussle over rice in Karnataka.
2) Border disputes despite States not been sovereign or indestructible.
   Eg Assam Meghalaya.
3) Competition for limited resources or budget ⇒ political partisanship.
4) Competition for bettering of own vote base ⇒ Federal tussles like Belgaum

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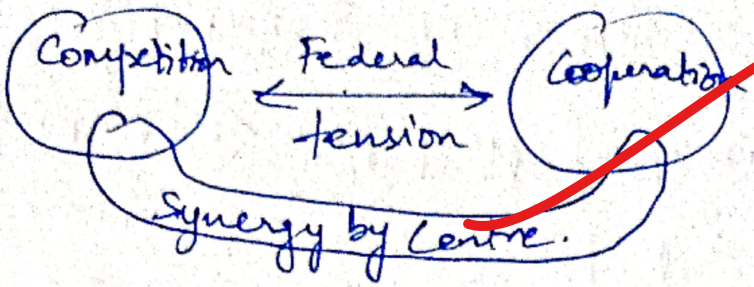
between Maharashtra - Karnataka.



However, Centre has played a crucial role in promoting cooperation with competition.

1) Indices by NITI Aayog ⇒ competition while sharing best practice ⇒ sabka saath, sabka vikas.

2) Tribunals like for Inter State Water dispute ⇒ cooperative competition via sharing of resources amicably.

3) Finance Commission ⇒ demographic, tax effort promoting national interests at core

All these have helped promote competition with cooperation. GST Council is a prime example of how nation progress when states join hands.

Well written

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Examine the potential avenues for misuse of power by Governors and how can the independence & neutrality of Governor position be safeguarded to ensure effective functioning in upholding democratic principles & balance centre-state

Governor is called the Constitutional Sentinel by Sarkaria Commission.

However, there have been issues around [potential avenue for misuse of power]

1) Partisan nature in calling party to form government [Eg] Manipur Governor called 2nd largest party.

2) Working as an agent of centre —
- Sitting government challenged via arbitrary dismissal. [Eg] Andhra Pradesh 1984.

3) Going against Constitutional morality
- Sitting on bills — [Eg] alleged against Tamil Nadu Governor.

4) Violating the spirit of representative democracy via own power
[Eg] President Rule imposition in Bihar 1998

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5) Outright tussle with the government for personal gains — for better posts.

Major reasons → "warrant undue hand & seal" appointment (Art 155)

→ no security of tenure

This calls for following steps to uphold independence & neutrality —

1) Fixing tenure of governor — only dismissal in extreme situation.
↳ Punchi Commission.

2) Impeachment procedure for Governor can be considered — Sarkaria Commission

3) Impartial nature via Governor — uphold ethical duty as Constitutional head

4) Give them the power of limited interference — 6 months to decide bill (SR Bommai case)

This would help uphold constitutional morality and dignity of the office.

Well written

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Explain concept of separation of power in Indian democratic system and discuss the key challenges and opportunity in maintaining effective separation of power among the EL branches in India.

The UNR Rao case saw definition of Indian policy as not strict separation of power.

Concept of Separation of power

- Arms length distance between the function of three organs of government
- Limited to no interference in the functioning of other organs.

Bhim Singh case

⊛ Strict separation of power is neither necessary nor feasible.

Key challenges to Separation of power

1) Lack of judicial accountability.

Eg Master of roster – CJI judge in own case of sexual harassment.

2) Executive excesses – whims and fancies of calling Legislative session.

3) Weak opposition – no party has 10%

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seats in opposition.

4) Parliamentary indulgence — no scrutiny of Parliamentary legislation — only 27% bills sent to Committees by 16th Lok Sabha (PRS data)

However, there are opportunities —

1) Judicial restraint as propounded by Justice Bhagwati

2) Legislative procedure can make compulsory routing to Committees [Korean model]

3) Limit the use of "national security" clause as held by Supreme Court (Pegasus case)

4) Role of media as IV pillar of democracy ⇒ bring challenges to the fore.

These would help uphold the spirit of Article 50 of Constitution.

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Wide formulation & indiscriminate exercise of discretionary power by Governor raise legitimate concerns that need closer attention. Discuss implications of these concerns & need for careful scrutiny ~~refinement in application of power~~

Governor has been given certain discretionary powers under Article 163 of the constitution when read with Supreme Court judgements.

Wide formulation & indiscriminate exercise

Article 163

1) Call for President's rule is discretionary
2) Reserving bill for President assent is discretionary.

1) Overarching nature of the powers.
   Eg ▷ No checks on calling for President Rule

2) Partisan nature of Governor ⇒ wide and indiscriminate usage.
   Eg ▷ Bihar 1998 President Rule

3) Personal gains desired by certain cases

4) Sitting on bills ⇒ against constitutional morality
   Eg ▷ Tamil Nadu Governor – 11 bills pending.

5) Calling 2nd largest party to form the

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government ⇒ political agent

Eg Manipur.

However, they aren't absolute –

Nabam Rebia case – Court held only under Article 163(1) can discretionary power exist.

Implications of such misuse

1) Against doctrine of checks & balances
2) Against Constitutional morality.
3) Leads to federal tensions. Eg Chancellor West Bengal
4) Can defeat the Article 324 mandate of level playing field.
5) Violates spirit of Article 50 – separation of powers doctrine

All this calls for –

1) Strict judicial scrutiny and defining discretion in absence of legislation.
2) Minimize working as agent of Centre as held in Raghukul Tilak case.

These would uphold cooperative federalism

(5) work on conclusion

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Highlight the extent of President power under Article 352. Discuss the judicial scrutiny of the proclamation and exercise of executive power under national emergency. How is it diff from one under Art 356.

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Article 352 gives the Power to declare national emergency in the country on three grounds — war, external aggression or armed rebellion.

Extent of President Power

Positive	Limits
1) Can call for a proclamation of emergency — Art 352	1) Only proclaim when given in written by Cabinet.
2) Can restrict fundamental rights under Art. ~~360~~ 359	2) Cant abrogate Article 20 & 21 of Constitution.

Judicial scrutiny of proclamation

1) Judicial scrutiny allowed after proclamation on ground of malafide.

2) Judicial review as basic feature.

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3) However, fundamental rights can be enforced (Art 358, ~~360~~ 359)

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Exercise of executive powers

1) Limited by consensus — only PM can call for emergency.
2) Legislative control
   - ↳ pass proclamation every 6 months
   - ↳ Lok Sabha can pass disapproval with simple majority

Difference from Article 356

Art 352 Imposed 3 times

Article 352	Article 356
1) On war or armed rebellion	1) On breakdown of Constitutional machinery
2) Suspends fundamental rights.	2) Fundamental rights not suspended

Need is to minimize any usage which threatens investor confidence and usage only where absolutely needed as held in SR Bommaicase.

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To what extent does CAG effectively fulfil its role as an independent & impartial institution of financial accountability & what are key challenges & opportunity in enhancing its role in ensuring transparency, accountability & good governance in country.

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CAG is defined under Article 148 to 151 of constitution and works to ensure financial accountability of executive to Parliament (PAC)

Extent to which CAG fulfils

Positives	Limitations
1) Unearth scams like 2G Scam.	1) Partisan nature alleged. Eg Former defence secretary as CAG.
2) Propriety audit helps improve financial prudence	2) Post-mortem nature of audit
3) Maintains accounts of State ⇒ Best practices	3) Paul Appleby called it Ineffective due to recommendatory nature.
4) Helped uphold true nature of Article 75 ⇒ executive responsible to legislature.	4) Only do what is told to do ⇒ no Suo moto.

Well written

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Key challenges & opportunities in enhancing role

1) Key challenges

- Appointment by executive without any checks.
- Post job appointments need to be disallowed even privately.
- Partisan nature alleged

2) Opportunities

- Anoop Baranwal case can help make appointment of CAG independent — learn from that
- ~~Constit~~ Statutory status to IA & AD can help improve.
- Digital governance & leverage data analysis for real time audit

Recent digitalization completeness by CAG in right direction as "guardian of public purse"

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What are key recommendation of Sarkaria Commission and how have they influenced the relationship between centre & states?

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Sarkaria Commission was formed for analyzing the Centre State relationship and has made vital improvements in the same.

Key recommendation

- Governor to be appointed after consulting Chief Minister
- Governor to be an eminent person from other State.
- Adequate space for working of State Government
- Limited use of Article 356 only in exceptional cases
- Residuary powers to Concurrent List
- Consult all States before making law on concurrent list.

They have had some positive impact

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on centre state relations.

1) Improved perception of state governments towards Governor.

2) Active role of Governor in supporting state. Eg ESR Narsimhan advocating Andhra interests.

3) Cooperative Federalism
Eg Ram Nath Kovind — development as Bihar governor.

However, the strains remain —

1) Indiscriminate usage of President Rule as seen with Manipur crisis (not imposed).

2) concurrent list not tweaked — Centre State tussle over legislation continues.

3) Adequate space not given to states.
Eg Tamil Nadu Governor dismissing minister.

Need is to represent and implement all recommendation in letter & spirit for cooperative federalism

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What are major challenges faced in resolving Centre State water dispute and what mechanisms exist to facilitate effective resolution and equitable distribution of water resources among states.

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Centre State Water disputes have been a point of contention since independence and threat to federalism.

Major challenges in water disputes

- Conflicting interests ⇒ alleged partisanship by loosing party.
- limited role of courts ⇒ lack of faith
- political nature of the Inter State Water dispute tribunal ⇒ as seen allegation in Kaveri dispute
- Multiplicity of tribunals ⇒ duplicity of efforts
- ineffective in building consensus

In recent times steps like single

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national tribunal under [Article 262] have brought some ~~sof~~ relief

Mechanisms existing

- Supreme Court for dispute resolution as in Mekedatu case.
- River wise individual mini tribunal
- Inter State Water dispute National Tribunal

There have been [partially successful] with treaties between the States and Centre. However, need more —

1) [Consensus based] approach based on set rules and formula
   ↳ use population as parameter.
2) [Internet of Things] to monitor water diversion & transparency.
3) Role of [Inter State Council] — meet at least thrice a year (Tamil Nadu CM said)
   This will help uphold true spirit of [coop-federalism] for welfare of all [Art 38]

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Dr BR Ambedkar acknowledged the need for Art. 356 to address exceptional situation but he also acknowledged concerns about its potential misuse. Comment

Article 356 gives the power to impose President's Rule in a State for breakdown of Constitutional machinery in a State.

Need for Article 356 – address exceptional situation

1) Fulfil role under Article 355 – duty of Centre to ensure ~~Constitut~~ Constitutional governance.
2) Handle exceptional circumstances like violence – as being seen in Manipur
3) Provide for support to people – protect their natural & fundamental rights.
4) Crisis situations like chaos and threat to sovereignty of India avoided.

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However, it has become a tool of potential misuse

- lack of what "breakdown of Constitutional machinery" means ⇒ opens door for arbitrariness
  - Eg ▷ Not implementing scheme ⇒ dismiss State government.
- Partisan role of Governor as agent of Centre
  - Eg ▷ alleged in Bihar (1998)
- Political rivalry taken to dismiss state government
  - Eg ▷ held in SR Bommai case

→ Wide power – goes against the doctrine of limited (constitutionality) power

Need here is to abide by the Nebam Rebia case judgement to truly limit Article 356 to exceptional cases only. This would uphold federalism as basic feature of constitution.

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