

Write the following question in about 150 words.

1. (a)

Discuss the Radical Humanist perspective of the Indian National movement

(10 marks, 150 words)

Radical Humanism was given by M.N. Roy. He calls his theory as radical because, he rejects all the existing theories. Although M.N. Roy doesn't provided any specific radical humanist perspective to Indian National Movement we can derive it from his work.

M.N. Roy's interaction about the not supporting of the National movement with Lenin. He said that the masses were ready for revolution. He refused Lenin's idea of giving power to the Congress.

He regarded Congress as a bourgeois party and Gandhi as a bourgeois leader. His radical humanism focused upon individual's liberty, autonomy. He did not want any over arching idea to trump over freedom of individual be it class, nationalism etc. So he rejected the idea of nationalism as well. He propagated cosmopolitan Union of rational individuals all over the world.

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The way to bring radical humanism or radical democracy was not through a top down approach but a bottom up approach. education of masses.

Democracy cannot be sustained long without a democratic culture.

Sudipto Kaviraj called M. N. Roy as a remarkable failure. He said suffered from heterogeneity- where he attempted to apply international experiences- experiences of the history of some other country without understanding the differences.

Roy tried to apply Geo history of Germany w.r.t. Indian National Movement.

M. N. Roy's established the first Communist party in India, his ideas and attempts at emancipation of the people made him a transitional thinker.

1 (b)

How did the constitution framers' emphasis on national unity influence the decision-making process regarding India's political structure? (10 marks, 150 words)

Members of the constituent assembly were visionaries in the context that they have established a solid base whose core still remains unchanged. Constitutional framers emphasised upon national unity with regards to decision making.

1) Parliamentary form of Government:

They preferred responsibility and representation over stability. Diversity of the India could be given a chance only with parliamentary form of Govt- which was as re-emphasised by Ambedkar in constituent Assembly debates

2) Choice for strong federal Government:

In order to ensure there is no balkanisation of the country. Adopted the ^{Canadian} German model of federalism rather than American

3) Bi-cameral legislature:

Rajya Sabha providing representation of states. In order to involve states in decision making

4) Single Constitution and Single Citizenship

rather than different constitutions for states and federal laws and did not follow dual citizenship for states.

5) Representation for Minorities

special rights and representation for minorities, backward classes - in order to resolve their grievances and resolve their issues.

6) Strong Governor

who would act as a linchpin between state and the central. Pandit Thakur Das advised on strong & detailed provisions for Governor. However Nehru believed that good precedents would be followed.

7) Non-implementation of UCC:

As there were objections from the likes of Pocker Sahib and believed that const society was not ready for it.

Constitutional framers have a grand vision to ensure the unity and sovereignty of India which would be carried forward until Vikshit Bharat in India

1. (c)

Discuss the socialist perspective on Indian National Movement.

(10 marks, 150 words)

Socialist perspective of Indian National Movement tried to view the movement from class perspective. The socialist view co-existed with the liberal view of the congress. It was influenced by Russian revolution. Prominent scholars included: Jay Prakash Narayan - Acharya Narayan Dev, J. L. Nehru, Subhash Chandra Bose.

Jay Prakash Narayan in his book Why socialism has criticised Congress for being bourgeois party and not ~~suppressing~~ the recognising the contradictions in the society. He thought Gandhi's ideas are utopian.

Acharya Narayan Dev
Ram Manohar Lohiya - In his book Socialism and National revolution ~ was extremely critical. Gandhi's approach of reconciliation of the classes was considered extremely impractical.

Ram Manohar Lohiya - Provided a socialist perspective of Gandhian Movement. He came up with 7 types of revolution gave the concept of 4 pillared state.

Nehru: Nehru was a socialist, he wanted country to accept goal of socialism for free India. The immediate goal of the national movement should be ending the exploitation of the people.

Nehru adopted socialist pattern of development at Swadi service.

Subash Chandra Bose: He envisaged a social revolution - equality of among all individuals

Socialist preferred to work within congress.

Socialist programme included -

- Primary goal is attainment of political freedom
- Political freedom is not an end

Socialist ideas helped in focussing on the inequalities that existed in the society. The socialist perspective reflected in preamble and in terms of DPSPs in the independent India as well.

1. (d) What are the key criticisms of the constitutional amendment procedure in India?
(10 marks, 150 words)

Constitution doesn't exist in vacuum they exist in a ever evolving environment. Hence they have to make provisions for changes in the constitution. Pt. Nehru said that by disallowing the changes) amendments in the constitution we would be stopping growth of the state.

However the Amendment procedure has come under criticism as well:

- 1) $\frac{2}{3}$ of the constitution can be amended
very easily - either with special majority or simple majority
- 2) No - involvement of state in amendment of the constitution except of ratification by state legislatures when federal principles are about to be changed
- 3) No special body - to bring Constitutional changes like the one found in USA. Legislature carries out amending functions as well.

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- 4) Majoritarian Government can easily ~~be~~ make amendments to the Constitution.
- 5) Multiple amendments > 100 amendments have taken place in India, However < 10 amendments have taken place in USA.
- 6) If there is a deadlock over the passage of the constitution there is no provision of joint sitting.

Safety Measures:

- 1) Equal rights to Rajya Sabha w.r.t to amending of constitution
- 2) ~~No~~ No joint sitting ensures that Lok Sabha cannot trump over Rajya Sabha's objections
- 3) Important federal principles can be only amended through ratification i.e. half of state legislatures.

K. B. Whare called the Amending process a blend of flexibility and rigidity.

Granville Austin held that Amendment procedure has proved to be one of the most ably considered aspect of constitution

1. (e) Difference between judicial activism and judicial overreach. (10 marks, 150 words)

Judicial activism refers to the judicial philosophy when the judges in ~~an~~ jump out of the orbit of the judicial review and step into legislative and executive functions.

Judicial overreach is said to be a situation when the enthusiasm of the judiciary blatantly oversteps the separation of power resulting in judicial co-Governance.

Judicial activism and judicial overreach are very closely related. It is a matter of exercise of judicial restraint that differentiates them both. Judicial activism is facilitated due to writ provisions and provisions of judicial review (32, 226). Judicial over-reach can be due to above reasons and due to Public Interest Litigation as well.

Judicial activism can help in expanding the scope of fundamental rights - Maneka Gandhi case, Unnikrishnan vs State of AP, Hadeja Case and keeping a check upon powers of the executive - Viret Nairn Case, Manish Sisodia case concerning

Constitutional Supremacy.

Judicial Over-reach had resulted in ~~us~~ usurping of powers of executive or ~~judi~~ legislative - like the National Anthem judgement and no sale of liquor on the ~~the~~ national highways.

It has resulted in judicial supremacy.

Mallikarajukatti and others like Pratap Bhanu Mehta have condemned the act of judicial activism -

- Judiciary should only ~~say~~ adjudicate if there is a law or make one if there is none.
- Judicial activism could also result in imperts of impetium

Justice P. N. Bhagwati regarded that gone are those days when it is considered a taboo for judges to make laws. Judicial restraint would mean that shuffling away from responsibility of delivering justice

Upendra Baxi said that judiciary has done chemotherapy of Indian Political System

3. (a)

The Non-Cooperation Movement highlighted both the potential and limitations of mass participation in the Indian national movement. Discuss this statement.

(15 marks, 200 words)

Non-Cooperation Movement is considered as one of the ~~most~~ most important step towards freedom against the colonial regime. Its strength lie in the existence participation of various communities and the extent of Gandhian mass movement.

Non-Cooperation movement was launched by Gandhi against the Jallian Walla Bagh Massacre, the Khilafat wrongs and consequent Hunter Commission report. Gandhi was able to forge a unity between Muslim League and the Congress for putting up a united front as the reasons provided for a perfect opportunity for Hindu-Muslim Unity:

Nagpur Session of Congress have passed the resolution for Non-Cooperation Movement. Non-Cooperation used the methods of Swadeshi, Satyagrah, Non-violence, boycott of foreign goods and English education. Which gave impetus to the local regional educational institutions

Potential of Mass participation in Non-Cooperation Movement:

First Mass movement of Gandhi at the national level it has seen participation of from hitherto unawakened class:

- 1) Ext women has participated in the hartals, boycott of foreign goods, promotion of swadeshi - through spinning of the wheel
- 2) labours and peasants: who were already agitated with the colonial government for exploitation of their rights have participated
- 3) Members of the Muslim community - highest number of Muslim participation witnessed in comparison to all other classes

First time the authority of the Colonial Government was questioned at such large scale causing dents in their benevolent despotism theory

→ Exposed the political and economic atrocities of the British rule.

Limitations of the Mass participation

Gandhi had to withdraw the Non-Cooperation movement because of the Chauri-Chowra incident. He called it a Himalayan blunder.

- Gandhi realised that masses were not yet ready for a satyagraha. The use of violence will lead to easy suppression of the movement.

- Communal issues that arose during Non-Cooperation - in Mopilla revolt showed that the limitations of mass participation

- Gandhi also knew that movement cannot continue indefinitely he adopted the struggle-Trade struggle. However there was heavy backlash when he withdrew the movement.

It was criticised by Nehru and Subash Chandra Bose as well.

Non-Cooperation Movement however established the fact that India was ready for mass movements and it would be the path for India's freedom.

(b)

Discuss how the judiciary, through various judgments, has established that Fundamental Rights and Directive Principles of State Policy are not in conflict with each other but rather complement each other.

(15 marks, 200 words)

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Supreme Court in the Munira Bhatti case has established the ~~new~~ doctrine of Harmonious construction where DPSPs and FRs shouldn't be seen as anti-thetical to each other however complementary.

We can trace back the tussle between DPSP and FRs to Shankari Prasad case, where Ghampakorn Dhurirangan case which said that Fundamental Rights are superior to the DPSPs in their legal status. DPSPs nevertheless important. Though ordinary law Fundamental rights cannot be abridged but by amendment in Part IV it can be implemented.

Golaknath Case 1967: Struck down the Ghampakorn Dhurirangan case and adjudicated Fundamental Rights are inviolable. 25th Amendment Act introduced article 31C gave supremacy of 39(b) and (c) over Article 14 & 19.

Keshvanand Bharti Case 1973: Supreme Court upheld the validity of 25th Amendment but re-stated the judicial review is part of basic structure hence it cannot be abridged.

42nd Amendment extended all supremacy of all

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Munira Mills Case: 1980

SC declared the 42 Amendment of the above provision null and void. Court restored the position as existing in 25th Amendment.

Fundamental Rights and DPSPs are complementary to each other and essential for implementation of political and social rights in a democratic government.

The complementary nature of DPSPs and Fundamental Rights can be understood in the following judgments.

Unnikrishnan vs State of AP: Where article 21A was established which was right to compulsory elementary education which implemented the article 45 after which its subject matter was changed.

- Right to property & Article 31 which became controversial due to its conflict with directive principles was downgraded into a conditional right under article 300A.

Instances of conflict between Fundamental Rights and Directive principles :

I.R. Coelho case: Where protection provided to provisions implemented by DPSPs were struck down deleted by subjecting all the provisions after 1973 added to 9th schedule to Judicial review.

Despite the differences Directive principles although non-enforceable they are very important for the Governance in the country. They provide political mandate for political parties and reflect the aspirations of the country.

Hence as stated in Munshiulla and Deshwanand Bhargath case Harmonious construction should be followed.

3. (c) Examine various reasons for the demands of autonomy in India. Discuss the provisions in the Indian constitution to respond the same. (20 marks, 250 words)

According to Paul Brass Regionalism is the permanent thing and unity is feature of Indian politics and Nationalism as a temporary phenomenon. The Demand for autonomy in India is a very frequent and ~~recurring~~ thing due to its diversity and form of federalism.

Various types of regional movement take the form of secessionist movement - demand for a separate nation in the case of Khalistan movement and Greater Nagalim, separate state is ~~also~~ demanded by the Bodos, Phek, & Vidarbha, greater autonomy as seen among the 5th & 6th schedule states and Ladakh recently, Son of Soil Movement - in Maharashtra and Karnataka, linguistic state nationalism - Tamils.

According to Lata Reddy in her book Remapping India has said that the reason for demand for greater autonomy differed throughout the history

of India

Ist phase 1950s to 1960s - it was demanded on linguistic purposes - as seen in Southern states.

IInd phase 1960s - 1980s - ethnic purposes to protect or promote certain ethnic groups. Seen in West and North East.

IIIrd phase - 21st century -

Reorganisation of Hindi heartland besides Telangana - based on good governance and development.

There were with respect to greater autonomy in terms of separate state, however greater autonomy within the existing setup can be demanded due to the following reasons:

(i) Development deficit - As seen in the case of Kuki's demand for greater autonomy. Atul Kohli spoke about the economic reasons forming the reason for demand for autonomy.

Better

(ii) Representation of the endangering communities:

Tribes, Bhils demanding for greater autonomy in order to protect their culture.

Kadukh requesting the status of 8th schedule was mainly to protect their tribal culture

(ii) Better opportunities for economic development -

The regions of Northern Karnataka demanding for autonomy and increased assistance from state

Provisions in Indian Constitution to respond to

greater autonomy:

1) Provisions of the 5th and 6th schedule -

5th schedule has 10 states which ~~have~~ are developing and tribal states which has special provisions for the local government to protect and preserve their culture.

2) Article 371: Makes special provisions for

various states which ~~have~~ are suffering due to backwardness, development deficit or needs special provisions for their distinctive culture.

3) Finance Commission:

- which makes provisions of division of taxes,
- Granting aids to states which have low state GDPs or low developments
- Encouraging fiscal federalism

According to there are two types of states from which the requests for autonomy comes up.

1. Core states - In core states providing more autonomy is not a cause of concern - usually the inland states like Maharashtra, Madhya Pradesh.
2. Peripheral states - these are states in the borders. granting more autonomy here could endanger the security of the state. Exam

India's success as a democracy should be credited to its asymmetric federalism principles which provided avenues for grievance redressal for states.

4. (a)

Discuss the importance of ideological-political work in the nationalist strategy.

(15 marks, 200 words)

The importance of building ideology in a revolution was emphasised by Gramsci. Indian nationalist strategy also needed ideological political work.

Ideological political work means creating mass awareness, instilling the idea of nationalism within people, debunking political myths about undefeatable nature of British empire.

Importance of ideological political work:

1) To encourage the masses to participate in the movement - masses should be provided with strong reasons in order to encourage them to participate in mass movement.

2) To expose the true nature of British - British rule was being treated as a blessing in disguise. Ideological political work can debunk the myths white man supremacy, benevolent despotism.

3) Gandhian Method of struggle true struggle:

There cannot be indefinite mass movement

people masses will get tired, during true period
Gandhi used the ideological methods to build and
regain the movement against

4) War of ^{Ideas} Movement before War of Manoeuvre :

Gandhi recommended two level movement
where the masses are made aware of the necessity
for the revolt and prepared for it

5) It becomes the basis for the sacrifice of the people :

It also helps in easy mobilisation of the
people against the colonial rule. Till the time
it was considered blessing in disguise by moderates
they couldn't involve masses in the movement

However only ideological political work is not
enough. Because no ~~new~~ birth can happen without
blood. Gandhi's natural transition towards
Quit India where he did not explicitly
condemn violence. ~~to~~ Gandhi knew that
masses were ready and the time for was right
to move beyond ideological political strategy.

Gandhi's ideological politics
Moderates ideological political strategy was poor
infant created positive opinion towards the
~~extrem~~ colonial government strengthened the idea of
benevolent despotism.

Extremist-like Ambedkar, Tilak debunked the
myths and created the political idea of India
being a nation and providing a strong ideology
for Indian Nationalism (Universal spirit is with
India).

Gandhi built on this idea and spread the
ideology horizontally and created the mass
movement that India has witnessed.

Bipin Chandra calls Indian Mass movement
as one of the greatest mass movement to be
witnessed.

(b)

Discuss the key provisions of 74th Constitutional amendment also evaluate its effectiveness in delivering good governance. (15 marks, 200 words)

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74th Constitutional Amendment enabled the implementation of democratic decentralisation fulfilling Gandhian dreams of Grass root democracy. M.N. Roy's radical democracy and Vinod Bhanu's idea of Antyodaya.

74th Constitutional Amendment aims to bring decentralised Urban local Government in India. Although Urban local government existed in the colonial period, India was very late in adoption in Independent India.

KEY PROVISIONS OF 74th Constitutional Amendment and its effectiveness:

2) Articles 243 P to Q provided articles about ULBs

243P - defined Municipalities, Municipal Corporations: Enabling decentralised local self government in Urban areas on the basis of population and extent of urbanisation.

- Decentralised the functions however there is lack of activity mapping to understand delineation of power

- Existence of Many Parallel bodies have also hampered the functioning of the ULBs.

2) Provision for State Election Commissioner to conduct elections: Provides autonomy for the states to conduct elections for their local self governments

- However we find lacunas in their functioning in conducting regular elections

3) Provision for audit mechanisms by the state legislature:

To ensure transparency and accountability in the working of ULBs.

However regular tabling of reports has not been seen.

Some of the opt

4) Provision for District Planning Committee:

Some states have ensured decentralised and planning with the help of active participation of the members

It has been seen that some states have either not constituted a District Planning Committee or there are no regular meetings

5) Funds for the ULBs are devolved by the states or they can independently collect taxes as well,

But ULBs have failed to collect or manage its finances. The devolution has also been inadequate

Mani Shankar Aiyar Committee called the decentralisation as a Half Baked Cake.

Ram Nath Jha (ORF) considers that ULBs have been neglected as regard to the Panchayats - 74th Amendment is like a post script to the Panchayats poorer cousin which followed the Glorious 15th

15th Finance Commission recommended substantive increase in funds to cities, to give performance based grants.

2nd ARC recommended special cadre of officials for Municipality Urban Local Bodies.

4. (c)

Despite the Rajya Sabha's limited authority on critical matters compared to the Lok Sabha, It has a significant role in ensuring accountability of the Lok Sabha that should be strengthened and effectively utilized within India's parliamentary framework?

(20 marks, 250 words)

Chief Justice Chandrachud has said that Rajya Sabha shouldn't be bypassed it is an integral part of democratic setup of India. Rajya Sabha represents the upper house where representatives of the states are elected indirectly.

Limited Role of Rajya Sabha in comparison to Lok Sabha:

1) Role of Rajya Sabha with regards to Money Bill:

→ They can only be originated in Rajya Sabha. Lok Sabha. Rajya Sabha can only make recommendations which may or may not be accepted by Lok Sabha.
→ Rajya Sabha can only delay its passing for 14 days.

2) Demand for grants in or budget are discussed and passed in Lok Sabha - Rajya Sabha doesn't have the power to make amendments in it

3) No- Confidence Bill: Can only be originated in Lok Sabha as the council is responsible to the Lok Sabha. Give the power to hold the executive accountable.

4) Power to revoke the National Emergency:

When 1/10th of the members of the Lok Sabha write to the speaker to conduct a session to make a decision on revocation of Lok Sabha National Emergency.

This is an exclusive power of Lok Sabha.

5) Joint sitting: During joint sitting the rules of Lok Sabha are followed and the Chairperson of the Rajya Sabha do not get to preside over the sitting.

SIGNIFICANT ROLE OF LOK SABHA in strengthening

India's Parliamentary framework:

1) Acts as house for deliberation and checks the hasty decisions of the Lok Sabha.

The hasty and populist measures of the Lok Sabha can be dismissed and deliberated in Rajya Sabha.

M. Ananthasayan Ayyankar make these arguments in Constituent

2) Rajyasabha has the power to initiate constitutional amendment Bill: Rajyasabha has equal powers with respect to constitutional amendments. As there is no provision of joint sitting there is no trumping of Lok Sabha's majority over Rajyasabha.

3) Check authoritarian power of Lok Sabha majority party: of Lok Sabha.

But sometimes Rajyasabha can act as a check upon authoritarian government of the Lok Sabha - where a party enjoys absolute majority will be able to easily pass the bills.

How can Rajyasabha be strengthened:

- 1) Have equal representation of states in Rajyasabha like that in USA - providing greater voices to smaller states.
- 2) Panch Commission recommended that Rajyasabha should develop an informal convention like Salisbury doctrine in UK that a policy which has been thoroughly discussed, has broad and

bipartisan support and has passed with a majority in the lower house should be accepted.

→ NCRC recommended fixing of number of days to 100 days for Rajya Sabha.

Special powers of Rajya Sabha:

Article 249 - any matter which the Rajya Sabha feels like it is of national interest from the state but a law can be made on it by Rajya Sabha approval

Article 312: Creation of New All India Services

Dr. Sreephilli Radhakrishnan also believed in the need for a second house for holding the Lok Sabha accountable and for deliberation purposes.

SECTION-B

5. (a)

Examine how peasant movements expanded the scope of the Indian nationalist movement

(10 marks, 150 words)

Peasant Movements in India existed even before the national movements. Peasant movements were against the colonial government rather than for nationalist goals. They however have strengthened National Movement.

Peasant Movement had two

- Ideologies:
- 1) Gandhian Movements - led by Swami Sahajanand
 - 2) Communist led Movement - Telangana Telangana Movement

Peasant revolts were due to the following reasons:

- 1) Change in the land settlement system by British rule. Mophid
- 2) Interference of the money lenders and zamindars ^{and exploitation} _{Kulak} in ~~best~~ peasant movement
- 3) Exploitative practices such as Begar, ~~was~~ unbearable burden of taxes. Ex: Indigo Movement (in Anand Math)
- 4) Now Abolition of Zamindari system (Telangana revolt)

Peasants while fighting against the state have shown unity and strength which provided the

push for national movement.

Congress rehabilitated the concerns of the peasants and used it in the active movements of Non-co-operation and Civil Disobedience.

Nationalist leaders like Gandhi, Patel have been the active members of peasant movements thus ~~strengthened~~ expanding the scope of movement to nationalist movement from merely being a peasant movement.

Organised Kisan Movements through Kisan sabhas.

Refusal to pay taxes, challenged the authority of British rule through disobedience have led to ~~defeat~~ created awareness of exploitative rule of British empire.

Gyanender Pandey and Rajith Guha believe that

peasant movement were not supported by Congress.

Gandhi wanted peasants to make compromises for the sake of National movement.

like China had Mao, Indian peasants did not have their own leader to carry forward

their Movement.

5. (b) Discuss the provisions of legislative control over the executive parliamentary democracy.
(10 marks, 150 words)

Parliament is considered as the microcosm of Indian political life and representation of the will of people of India. In order to ensure the democratic culture there are provisions for checks and balances -

Provisions for legislative control over executive

1) Article 74: Council is collectively responsible to the Lok Sabha. This responsibility can be tested through:

- No Confidence Motion against the executive
- Not passing the money bill and motion of thanks
- Passing of Censure motion

All of these could result in dissolution of the Government.

Parliamentary procedures: Through Question Hour,

Zero hour - Legislative can question the government on floor of the house.

- Passing and disapproval on demand for Grants, Money Bill

Parliamentary Committees: To ensure vigil and accountability of the executive. Public Accounts Committee

Estimates Committee and Committee on Public Undertaking

Undertaking - executives present reports to the parliament

Check on the parliamentary privileges and Contempt of the house.

→ ~~Comptroller and~~

There are provisions which are leading to bypassing this checks and balances such as:

→ Anti-defection law, use of ordinance route -

<16% of bills have been sent to committees,

instead increased disruptions. Pratap Bhanu Mehta and Dervish Kapur book "Rethinking public institutions

have said that if any institution has undergone drastic decline it is the parliament."

Checks and Balances ensure effective functioning of the parliament. Legislature is given the power that executive doesn't become authoritarian and they ~~can~~ continue to represent the public mandate.

5. (c)

Write a short note on the significance of the 42nd amendment. (10 marks, 150 words)

42nd Constitutional Amendment is called as the Mini constitution due to the number and the kind of changes it brought in the constitution.

Changes brought through 42nd Constitutional Amendment

- 1) Amendment to preamble - Socialist Secular and Integrity
 - 2) Added ~~two~~ ³ more DPSPs which is 39A, 43A and 48A - to bring in elements of equality, promote justice and improve environmental inequalities
 - 3) Added 4 fundamental duties - to improve a ~~good~~ ^{protected} environment constitution
 - 4) Seventh schedule changes - added moved subjects from state list to Concurrent list like - education, forest, weights and measures
 - 5) Made directives of Council binding on President
 - 6) Increased the term of Lok Sabha and Legislative Assembly to 6 years from 5 years
 - 7) Made changes to emergency provision can be applied to entire country or only part of it, extended one time duration of president rule from 6 months to 1 year.
 - 8) Judicial review powers were curtailed
 - 9) Creation of All India Judicial Services and Tribunals
- 328A & B.

Significance of 42nd CAA,

- It explicitly mentioned Socialist and secular principles of India
- It completed the balance of rights with duties.
- Fundamental duties act as reminders to citizens
- Tribunals and All India Judicial Services attempted to solve the burden on the judiciary and making it more efficient.
- 42nd Amendment showed the signs of authoritarian government so rectifying measures were taken through 44th Amendment.
- attempted to curtail the power of judicial review and tried to bypass Kesavananda Bharati case.
- 42nd Constitutional Amendment was a reminder that ~~an~~ amendment power when used rightly could do extensively good for the country however when misused could be the reason for its ruin.

5. (d)

Discuss various provisions for secularism in the Indian constitution.

(10 marks, 150 words)

Secularism is declared as basic structure in India through the SR Bommai Case. It was also added as a part of preamble in 42nd Constitutional Amendment Act. Shows that secularism is inherently part of Indian Constitution.

Provisions for Secularism in Indian Constitution

1) Preamble - Declares India as socialist, secular and democratic Sovereign. Explicitly added by 42nd Constitutional Amendment.

2) Fundamental Rights - Article 25-28:

Provides Religious freedoms - 25 - Right to profess practice and propagate one's own religion

26 - Right of ^{religious} institutions to own property and to

27 - Taxation of fees for religious purposes

28 - Religious institutions in educational institutions.

These rights not only promote religious freedom but also mentions the restrictions on the state for non-interference.

3) Rights of Minorities - Article 29 & 30. To promote their culture

3) Article 44 - Uniform Civil Code in order to promote uniformity and uniformity further strengthening Secularism

3) Other provisions include:

- 1) National Integration Council
- 2) National Commission for Minorities
- 3) Sachar Committee in order to better the conditions of minorities

Indian model of secularism is called as principally distanced model and politically negotiated model by Rajeev Bhargava. which provides secularism but also creates avenues for state interference. Thus state has made interference by striking down triple talak, Sabarimala Case.

Indian model of secularism is criticised by Pratap Bhanu Mehta saying said that it provided opportunities for communalisation.

Secularism however has helped to not only manage diversity but promote unity in India

5. (e)

Discuss the nature, composition, and role of the Constituent Assembly in framing the Indian constitution.
(10 marks, 150 words)

Constituent Assembly formation was a result of the ~~seige~~ ~~seious~~ rigorous effort towards effort of the National Movement.

Nature of Constituent Assembly:

1) Representation of all the ~~sta~~ princely states through nominated members, ~~through~~ other provinces through indirect elections

2) Majorly dominated by Congress members however Muslim League and other found minority membership

Composition:

1) Dominated by Hindus and Upper class members
Churchill called it a Brahminical group

2) ~~Low~~ It was called as lawyers paradise

3) Low representation of women in the Constituent

Assembly.

Role of Constituent Assembly:

It's role was to decide the nature, form and provisions of the constitution

To ensure there is a constitution which provides protection of liberty, equality, fraternity. Ensure justice among all.

Through deliberation and discussion to come to conclusions about the provisions in the constitution.

- To study the various existing constitution and to imbibe their ideas into the Constitution.

Ambedkar has owned the criticism of constitution being a patch work. He said that it was inspired by successful and established constitution.

Constituent assembly was criticised for his composition dominated by Congress and lawyers paradise and it was not directly elected.

Granville Austin said that then Congress was a
rainbow coalition of all parties - Congress was India

and India was congress. hence that criticism
cannot be justified

Direct elections would be complicated and complex so they chose the indirect elections.

Supreme Court in Keshwanand Bhaurathi case has established that w.r.t the will of the people we have to accept that members of constituent assembly were true representatives of the people.

NCRWC recommended no far reaching changes
in constitution

6. (a)

The Preamble embodies the essence of the constitution and serves as its guiding key. It offers a definitive yardstick to measure the effectiveness of any government's functioning. Analyse the statement.

(15 marks, 200 words)

Preamble in the Key

In Berubari Case Supreme Court has said that preamble is the key to open the minds of the makers. In ^{USA} ~~India~~ preamble ~~does not~~ follow the constitution. In India preamble walks with the constitution. Showing that preamble was the key embodied constitutionalism.

K.M. Munshi said Preamble is the horoscope of constitution. as it declares the date of birth of the constitution the qualities that constitution has and the ability to predict the future course of action. Preamble declares the source of power in the constitution i.e. "We the people" signifying popular sovereignty rather than parliamentary supremacy as seen in UK.

It also declares the nature of constitution which is Sovereign, Socialist, Democratic and Republic. Also puts forward the objectives of constitution.

which was to achieve ~~social~~ justice, liberty, equality and fraternity.

As the soul of constitution, it guides the future generations w.r.t the nature and goals as objectives India should achieve.

Definitive yardsticks to measure government's functioning:

1) Sovereignty: As long as there exists popular sovereignty (general will) is dominant it means the government has not become authoritarian or subversive to any other authority.

2) Socialist: Explicitly indicates that government should strive to bring equality and bridge the gaps between the rich and poor.

3) Secular: In a diverse country like India, having a secular government becomes essential for the functioning of the government and maintaining law and order.

4) Democratic: In a representative democracy the functioning of the government is decided by

the amount of ~~of~~ deliberation and dissensions in the society along with freedom of speech.

5) Republic: ^{Head of the State is} ~~Public~~ offices are not hereditary and elected by people. All people have equal claim to the office.

6) Justice: Good Government should ensure social political and economic justice. Lack in either of them can result in outrage from public. Lack of political justice witnessed in Pakistan, economic justice in Sri Lanka and social justice in Myanmar. Leading to turmoil in the state.

7) Equality: of opportunity and equal protection before law: all should be treated equally ~~are~~ however difference principle is justified

8) Liberty: of thought, expression, faith: includes freedom of speech, ~~free~~ religious rights as well. State should protect these rights.

Preamble has become an essential

Supreme Court in Kesavanand Bhauri case ruled that

Preamble furnishes valuable guidance in matters of interpretation of Constitution and should be read and interpreted with the light of, preamble.

(b)

Discuss the provisions of the democratic decentralisation in scheduled areas.

(15 marks, 200 words)

Candidates
must not write
on this margin

Democratic decentralisation was considered as the ultimate guide for ensuring equality and justice in the nation by Mahatma Gandhi in his book Hind Swaraj, M.N. Roy's Radical humanism as well.

Democratic decentralisation became particularly important for scheduled areas due to their special conditions - distinctiveness in culture, isolation from the rest of the country. Adhering by the principles of multi-culturalism greater autonomy was given to these areas through greater ~~and~~ the democratic decentralisation.

Democratic decentralisation for the scheduled areas was carried out through a special act which was ~~the~~ through PESA - Panchayath extension to the scheduled Areas

B.D Sharma highlighting the importance of PESA

PESA appeared as a saviour that is designed to erase the historical injustice done to the tribal communities

Important features include: There shall be

Gramsabha will shall make decisions:

- to protect the traditions, beliefs and culture of the tribal communities
- resolve local disputes, control over local money lending practices
- provide permission for mining of Minor minerals
- have control over the minor forest produce.
- shall approve plans, programs and projects for social, economic development before they are taken up for implementation by the Panchayats at the village level.

- Responsible for identification of beneficiaries

- ~~Reserve~~

Reservation of seats in Scheduled Areas shall not be in proportion to the population, should not be less than 1/2 half of the total number of seats and chairpersons at all levels shall be reserved for the Scheduled Tribes

PESA despite these decentralised provisions have faced issues:

- 1) Low level of awareness and education at Gramsabha
- 2) State governments have not appropriately decentralised fiscal and administrative powers. Gramsabha lack the powers to levy, collect, taxes, fees etc

3) Recommendations of the finance commissions are not fully implemented

A study conducted by Indian Institute of Public Administration (IIPA) in six districts of three states Jharkhand, Chhattisgarh, Odisha highlight poor implementation of the act.

Manishankar Ayyar committee regarded the whole democratic decentralisation in India as half baked cake. It has resulted in decentralisation of corruption rather than democracy.

PESA provides a good opportunity to integrate scheduled areas without imposition of state on them hence needs to be reformed.

6. (c)

What are the constitutional provisions regarding judges joining politics or accepting post-retirement appointments in the government? Examine its impact on judicial independence and the separation of powers between the judiciary and the executive?

(20 marks, 250 words)

Justice should not be just done, it needs to be seen to be done. For which an absolute necessity is of judicial independence. Judiciary is the apex institution in India which people look forward as Vanguard of democracy. It should not be tainted with collisions.

Constitutional provisions judges joining politics or accepting post-retirement appointments

Constitution doesn't prohibit the judges from joining politics explicitly is the constitution however the practice is shunned up.

Constitution however prohibits a retired judge of SC from practising before any court or authority. Other than this provision there is no detailed provisions on post retirement restrictions on judges.

In Bombay Lawyers Association of Union of India

It asked the court to have a mandatory cooling off period of 2 years, court however

dismissed it saying that it was the responsibility of legislature to regulate post retirement appointment of judges.

law commission also made recommendation of on cooling off period and restrictions on the post retirement operations.

IMPACT ON JUDICIAL INDEPENDENCE & Separation of power between judiciary & executive:

Judicial independence is considered to be of utmost importance in a federal democracy like India and hence was provided through the following provisions:

- 1) Their salaries and pensions are charged on the Consolidated fund of India or state
- 2) The behaviour of the judges cannot be dismissed without a motion
- 3) They can appoint their own staff members
- 4) Allowed contempt of court
- 5) Judges cannot be removed except by a impeachment.

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The recent incident of judges joining politics such as Rajiv Gargi becoming a member of Rajya Sabha - questions it raises questions upon the independence of the decisions given as a Chief Justice because he was responsible for many landmark legislations.

- It may be presumed to be a quid pro quo arranged for the judges to be securing their post retirement life.

It also causes issues in the separation of powers as ~~some~~ in judiciary one of the role of was to keep a check on the executive, with the motive of becoming part of executive questions of the checks and balances were actually upheld. According to Pratap Bhanu Mehta in his book rethinking public institutions: He said that judiciary was self served serving perpetuating institutions.

Advances of judges going for post retirement

appointments:

- 1) allows to use the expertise and knowledge of the judges
- 2) Ensures independence of the office when a judge is allowed to oversee it
- 3) Filling of vacancies requiring specialised knowledge - not letting the experts and knowledgeable people to

Arguments against:

- 1) Taints the judicial independence and questions its integrity.
- 2) Against the separation of power.
- 3) Jeopardises the Supreme Court's Restatement of Values of judicial life 1997.
- 4) Could lead to conflict of interest.

Essential that judiciary's position shouldn't be moved. Judges should come up with self regulating measures to against post-retirement appointments.