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Test - 05

GS - Mentorship with Kiyasat Ali

Que-1 'Freedom of speech and expression' refers to the right to express one's own views and others' views freely. It is provided as fundamental right under Article-19(1).

'Freedom of speech and expression' is necessary for the healthy functioning of democracy and participation of people in the process of democracy. This includes freedom -

- to express one's own views.
- to express others' view - right to press.
- to choose the medium to express their views.

Hate speech refers to the expressions of views which hurt or have the potential to hurt the sentiments of other peoples or communities. It can lead to the situation of conflict and can hamper the stability and harmony in the society.

For eg: Recent issue of Sudanese channel

Freedom of speech and expression' is not an absolute right and it can be restricted on the following grounds (Article-19(2)) :-

- security of state
- sovereignty, unity & integrity of state.

- decency, morality and public order.
- defamation - sedition etc.

So, in this way 'freedom of speech & expression' does not include hate speech and 'freedom of speech' needs to respect right to privacy and dignity of life.

Q-3 Medical termination of pregnancy is one of the crucial issue due to the reproductive rights of the women, right to life of foetus and health complications.

So, it needs to be properly regulated. Regarding this, medical termination of pregnancy (Amendment) Bill, 2020 has been passed recently.

Provs of the Bill :-

① Termination of foetus duration:

- This bill has amended medical termination of pregnancy 1971 and it has increased the upper gestation limit to 24 weeks from existing 20 weeks to terminate the foetus.

- This upper limit will not apply in case of abnormalities with foetus.

② Confidentiality

The identity of women undergoing termination of foetus will be kept confidential & it will not be revealed until the law requires.

③ Rights to unmarried women

In case of 'contraceptive failure' any woman, irrespective of her marital status can undergo termination of pregnancy within the fixed time limit of gestation.

Corn of the bill

① Societal pressure

On unmarried girls going for foetus abortion.

② In case of foetus of gestation period more than 24 weeks having abnormality requires medical board permission which is tedious & time consuming process & hence increasing the complications.

Despite being the corn of the bill, it is a progressive step towards ensuring the good health & reproductive rights to women along with surrogacy bill & ART bill.

Que-4 Fundamental duties enshrined in the part IVA of the constitution were added by the 42nd Constitutional amendment act, 1976 and were borrowed from USSR.

Characteristics

- They are not legally enforceable by law.
- They are only for Indian citizens & not for foreigners.
- Some are civic duty like respecting National Anthem while some are moral duty like cherishing noble ideals of freedom struggle.

Significance of these fundamental duties

- ① They remind the citizens that while enjoying the fundamental rights, they have to abide by some duties also.
- ② They also help in ascertaining the constitutional validity of any law. It means no law can be declared unconstitutional due to abridging fundamental rights under Article 14 & 13 if they give effect to fundamental duties.
- ③ They prevent the unlawful activities like

burning the flag, disrespecting the national flag etc.

- Prevention of insults to National Honour Act (1971)
- Wildlife protection Act, 1972
- Unlawful activities prevention Act.

So, fundamental duties, though ^{not} enforceable by courts, they provide us the opportunity to be the participatory in the realisation of national goals. But some more duties like duty to pay tax, duty to vote etc. must also be added (as also recommended by Swaran Singh Committee)

Que-5 Judicial overreach refers to the acts of

Judiciary which breaches / encroaches the jurisdiction of other branches of govt. i.e.

Legislative & executive. For eg:-

SC ordering mandatory play of National Anthem in cinema halls.

Under, Article 142 of the constitution, it is provided that to provide complete justice, the SC can extend its jurisdiction where at times law

either may not exist or may not provide a remedy.

Pros of Article -142

- ① It ensures complete justice to the citizens & hence serves its purpose of ^{SC} being the protector of fundamental rights. When the legislature and executive fails to do so.
i.e. Judicial Activism.
- ② It helps the courts to ~~construct~~ set out a system of checks and balances on other organs of the govt.

For eg. - In Vishakha v. State of Rajasthan case, SC laid down the Vishakha guidelines to protect women at workplace.

Cons of Article 142

- ① Judicial overreach as it (SC) cannot be held responsible unlike executive & legislature.
- ② Repeated intervention of courts can diminish the integrity and faith of govt. in the minds of people.
- ③ Against separation of power.

So, the powers under A-142 to be used sparingly so that SC help to fill the vacuum in the legislative process without overreaching its jurisdiction.

Que-to Power to promulgate ordinances is available to the President (Under Article-123). He can promulgate them when one or both the house are not in session and there arises ~~emerge~~ urgent situation.

For eg. :- Recent promulgation of Epidemic Disease ordinance to replace Epidemic disease Act 1894

Provisions to promulgate ordinance :

- Can be promulgated during ~~only~~ recess of the house only.
- Can be promulgated in urgent / emergency situation.
- has to be presented before the house once the house convene its sitting i.e. max. life of an ordinance is 6 months & 6 weeks.

Issues of with ordinance :

- It bypasses the legislature in terms of law making & it is against the basic separation of power & democratic structure of the constitution.
- House can be adjourned to issue ordinance & hence bypassing the legislature. i.e. undemocratic & unconstitutional.

Protections regarding abuse of ordinance making power

① In Cooper case, SC held that the satisfaction of President to promulgate ordinance, can be questioned in the court on the ground of malafide.

② In DC Wadhwa case, Supreme court held that the successive repromulgation of ordinance without attempting to present it before the house would make the ordinance unconstitutional & liable to be struck down.

Hence, the ordinance making power to be used only in the urgent situations with bonafide intention to maintain the integrity of the executives.

Que-11 Parliament or assemblies are the places where MPs & MLAs deliberate and discuss the issues of their constituencies, make policies for their welfare, pass the annual budget, discuss the reports of CAG and other agencies like UPSC etc. and frame legislations for the governance of the country.

Need for free discussion by parliamentarians

- to discuss / raise the issue without any fear or favour. (right to dissent against illegitimate actions).
- to ensure the overall development of the people and ensure social justice.
- to ensure transparency and accountability in the decision making process
- free discussions enables the members to apply their own conscience & instill the innovative spirit in the legislative process

• But the freedom to discussions of MPs & MLAs is curbed by Anti-defection Law (Under Schedule 10).

• ADL has given the power to speaker / chairman of the Rajya Sabha to disqualify the member from the house if they defect from the party.

• This curbs their freedom to dissent against the illegitimate actions.

• This ADL does not differentiate between dissent and defection. Hence curbs freedom of speech & expression of legislators and hence leads to party bossism and curbs innovation in the law

making process.

In *Kihoto Hollohan Vs Zachilliu* case, the SC held that decision to disqualify any MP by the speaker/chairman on the grounds of defection can be questioned in the court on being Malafide.

So, in order to strengthen the legislative process of our govt. and hence the democratic system, it should be done -

- Use ^{whip} ~~the~~ sparingly. (only in cases like No-confidence motion, Motion of thanks etc).
- As Law Commission recommended, the power vested in the speaker to be given to an independent authority capable of doing the task.

Que-14 Emergency provisions in India are provided under Part 18 - from Articles 352 to 360 in our Constitution.

There are 3 types of emergencies - National Emergency (Article-352), financial emergency (A-360) and President's rule (A-356).

Features of emergency :-

- Changes the federal polity into unitary polity without any formal amendment of the constitution.
- Effect on fundamental rights : only in case of National emergency (Article 358 and 359).

National Emergency

- Article 352 provides for the implementation of National emergency in case of threat of national security due to war, external aggression and armed rebellion.

National Emergency of 1975

- it is considered as a black spot on democracy as there were instances of abuse of power by executives, suppression of media/press, fundamental rights etc.
- National emergency of 1962 & 1965 were on the ground of external war.
- So these emergencies shows that national emergency secured the governance when national

security was under threat.

But 1975 National emergency misused the provisions of the emergency.

• But After 1975 National emergency, several amendments were brought in the provisions of emergency to prevent its misuse & to strengthen its provisions to protect the national security.

- 44th Constitutional amendment brought following changes

• Replaced the term 'internal threat' with 'armed rebellion'.

• It can be implemented only on the written advice of the cabinet.

• ^{Simple} Majority to pass the resolution to implement emergency was replaced by Special majority.

To conclude, if the provisions of national emergency be used within the provision of constitution and with good intent, then are useful in ensuring the governance in the scenario of threat to national emergency.

Que-15 Governor is the constitutional head of the state appointed by the President under his seal. He is the nominal head of the state & the representative of President in the state.

Governor plays an important role in the smooth functioning of the democratically elected govt. But many a times there occurs controversy between the state govt. and the Governor. for eg.

- Recent disqualification of KN's MLA by the governor.
- Imposition of President's rule.
- Appointment of CM, when no party gets absolute majority. for eg - in MH. etc.
- Tussle between Governor and state govt., in Kerala & WB over implementation of ~~Kerala~~ NRC & CAA.

Governor's discretionary powers :-

- Situational:

- Appointment of CM when no party gets majority or CM dies in the office & no immediate successor exists.
- Dismissal of CM when it loses confidence.
- Dissolution of Assembly when it loses majority.

- Constitutional

- Reservation of veto for President's assent.
- Recommending the President for President's role etc.

But sometimes, the discretionary powers of Governor are misused. To prevent such misuse, the guidelines by SC in various cases to be followed:-

- In Neelam Kishore case, SC held that Governor cannot employ his 'discretion' & should abide by the 'aid & advice' of the cabinet to summon the house.
- In S. R. Bommai case, SC held that floor test to be conducted before suspending the CM in just pretext of analysing the loss of majority.

So, the Governor should be a medium of promotion of national integration among the states and centre. He/she should ensure an environment of dialogue & consultation rather than opposition.

Ques -> 'Speaker' is the head of the Lok Sabha,
elected among the members of Parliament.

He is the interpreter of the constitution and the rules of the house, maintains the decorum of the house & ensures the quorum of the house.

⇒ Independence, Impartiality and non-partisanship of the office of speaker is ensured by :-

- Resigning the party after entering the office.

- Tenure of the office is fixed.

- Votes only in case of tie and not in the first stance.

- Salary and allowance of speaker are charged upon expenditure.

⇒ But recent controversies :-

- Money bill

Eg - Aadhar bill declared as money bill.

- Anti-defection law

- Lack of action taken against the defectors of opposition party & joining the ruling party, shows the biased nature of speaker.
- Inequal or ~~inapp~~ inadequate time allotted to opposition parties.
- Suspension of opposition party members from the proceedings of the day to avoid dissent.

⇒ How to restore the prestige of speaker's office

- Provision of judicial review on declaring a bill as money bill by speaker.
- Fixing the time limit to take action on the case of ADL (also suggested by SC recently).
- As recommended by law commission, transferring the power of speaker regarding ADL to an independent authority competent for it.

So, the integrity & impartiality of speaker is the need for smooth & transparent functioning of the assembly & Lok Sabha.

Que-19 Artificial intelligence refers to the ability of machines to perform cognitive tasks and learn & correct errors in its functioning. 'Health' being a state subject in India, faces a lot of structural problems like lack of public funding, ^{poor} doctor to patient ratio, lack of infrastructure & lack of data management etc.

So, Artificial Intelligence can be used in health sector.

Advantages of AI in healthcare :-

- Research & Development

- medicines for new diseases.
 - study of pathogens causing diseases & their impact on health.
 - Efficacy of medicines can be checked.
- Keeping a track of contamination, spread & pattern of spread & probable population to get infected.
- AI can be used to fill the doctor gaps in ~~recor~~ prescribing medicines, diagnosis & surgery.

- Keeping a back of stock of medicines, supply of drugs & diagnostic devices etc.
- To manage & use the big data generated in health sector in India. and using this data to generate good results.

Challenges with AI

- Lacks empathy and can compromise with privacy issues & ethical issues.
- Lack of research & development in the field of AI.
- Issue of data protection & cyber crime.
- Lack of fund to afford expensive technology.

So, AI can be used to augment the health sector & facilities in India & can move towards achieving the goal of SDG goal of good health & well-being.

Que-18 Elections are the vibrant pillar of democracy.

They ensure the participative democracy and are the means of holding the representatives responsible to the people. Article-324 of India's Constitution provides for the establishment of Election Commission of India.

Persistent issues in the election :-

① Election Commission of India

- SC called it 'caged Parrot' because of its declining credibility.
- Inability of ECI to take action ~~act~~ against the violation of Model Code of Conduct.

② Electoral funding

- Lack of transparency in electoral funding.

③ Political parties

- Lack of internal democracy.
- Criminalisation of politics.

- RTI not applicable to political parties

④ Issues with EVM

- Issues raised on the credibility & tampering of EVM.
- ~~VVPAT, rechecking issue.~~

⑤ Issues related with Representation of People's Act 1951 :-

- Paid news in election.
- Criminalisation of politics.
- Vote bank politics

Steps taken to deal with issues of electoral reforms

- Regarding EVMs

- VVPATs are connected to deal with the issues related EVMs.

- Provision of NOTA

- SC in the PUCJ v/s UoI case, 2013, paved the way for the introduction of NOTA

- Proposal of totaliser machines

- Electoral bonds :- Budget 2017-18 issued for the electoral bonds in an attempt to "cleanse the system of political funding".

Solutions :-

- Bringing political parties under the ambit of ~~the~~ RTI.
- Making the provisions of MCC legal and binding.
- Giving more tooth & power to ECI.
- Increasing female participation in the politics.
- Making paid news an electoral offence will lead to disqualification.
- NOTA to be implemented in Rajya Sabha election.

Que-17 'Education' in India is a concurrent list subject. 'Right to Education', 2009 aims to provide primary education to all children aged 6 to 14 years. & enforces education as a fundamental right.

Recently, Govt. has issued a new Education Policy, 2020 to revamp the education system in India.

Existing issues in Indian education system

- Lack of quality outcome of education.
— as reported by the report of Pratham: ASER.
- Lack of skills based education.
- Lack of employability of graduates.
- Issue of dropout rates.
- Lack of research in our universities.
- Low spending as % of GDP on education (~ 4.6%).

How NEP, 2020 will cater these needs

① School Education :

- Universalization of education from preschool to secondary level by 2030.
- Open schooling system to bring back dropouts.
- To replace 10+2 system with 5+3+3+4 system i.e. Aged 3-8, 8-11, 11-14 & 14-18 years respectively.
- Emphasis on foundational literacy & numeracy.
- Vocational Education to start from class 6 with internships.

② Higher Education

- Holistic undergraduate education with a flexible curriculum can be of 3 or 4 years with multiple exit options.
- M. Phil courses to be discontinued.
- HECI will ~~replace~~ ^{higher} set up as a single body for the entire education, excluding medical & legal education.

③ Others

- To ↑ the spending on education to 6% of GDP.

- National Assessment Centre - 'PARAKH' has been created to assess the students.

So, NEP, 2020, is aiming to have an inclusive, participatory & holistic approach & to achieve the goal of SDG of Quality Education.

Que-9 'Double burden of Malnutrition' refers to the situation of undernutrition and overweight & obesity. UN SDG goals deal with zero hunger and health & wellness.

Steps to tackle the burden of malnutrition

- Undernutrition :-

① To deal with it, 2 things to be done i.e. provision of food which is nutritious and focus on absorption of nutrients. i.e. focus on sanitation.

- Schemes like PDS-NFSA & Mid Day Meal can be strengthened to deal with the provision

of nutritious food. Biofortification of food is also needed like Golden rice rich in vitamin A. (β -carotene rich).

- ICDS also provides nutritious food to children & lactating women.

- Swachh Bharat Abhiyan (SBA) deals with sanitation & open defecation free so that nutrients to be observed well by the people.

→ Overweight :-

- It is rising due to increased consumption of processed & ready to eat food items.
- Increased consumption of oil, fat & sugar & salt.
- To reduce this problem, trans fat free to be consumed more & more and reducing the consumption of oil, sugar & salt.
- FSSAI has focused on reducing Trans fats & logo of Trans fat free food.

So, to deal with double burden of malnutrition schemes like POSHAN Abhiyan, ~~to~~ that aims at nutritious food

Ques-11 Non-Govt. Organisations (NGOs) or Civil Society Organisations play an important role in the governance process in our country. It acts as a bridge between the govt. and the governed and help the govt. in effective implementation of policies & social audits of these policies.

For Eg. - Akshay Patra Foundation (NGO) engaged in providing free meal to school students.

Recently, govt. has amended the provisions of Foreign Contributions (Regulation) Act, 2010 through FCRA (Amendment), 2020. It has been amended in the wake of rise of foreign contribution & recent ban of 6 NGOs' foreign contribution by home ministry.

Provisions of FCRA (Amendment) bill, 2020 :-

- Prohibition on acceptance of foreign funds :
Public servants cannot accept such funds.
- Prohibition on transfer of such funds to other person or entity.
- Restriction on spending the received foreign fund on administrative cost to 20% of total received fund (earlier 50%).
- Govt. may restrict usage of unutilised foreign

Contribution, if based on enquiring the govt. has found any contravention of the provisions of FCRA.

- Aadhar has been made mandatory for all office bearers, directors etc. of foreign ^{fund} receiving NGOs.

But there are some issues involved with the bill :-

- ① It would impact the livelihood of workers associated with the small NGOs, due to copping on the administrative expenses.
- ② It will impact the collaborative functioning in critical fields as NGOs, receiving foreign funds will no longer be able to transfer them to small NGOs working at grassroots level.

So, the way forward is to follow the principle of *vasudheva kutumbakam* as the framework for its global engagement and NGOs, be considered as equal partners in the democracy by providing voice to the voiceless section of the society.

Que - 16 Sedition, ~~Ques~~ :-

- Under Section 124A of IPC, the offence of sedition is committed when any person by words or otherwise brings or attempts to bring into hatred or contempt or excite disaffection towards the govt. established by law.
- The offence of sedition is cognisable, non-bailable and non-compoundable under the law.

Recently, FIR was registered against 49 persons in Bihar including Ranchandra Guha, Mani Ratnam etc - who wrote open letter to Modi raising concerns over the growing incidents of mob-lynching.

Arguments in favour of Sedition Law

- Necessary to combat divisive tendencies & ~~sedition~~ secessionist activities.
- Freedom of speech is not a license to spread disaffections. , so need of sedition law.
- Necessary to combat the violent calls / revolution seeking to overthrow the govt, like appeals for a separate Khalistan or Kashmir or activities of Naxalites.

etc. which have the ability to topple/disturb the legitimacy of a democratically elected govt.

- SC has repeatedly observed that the mere possibility of misuse of a provision does not invalidate the legislation.

Arguments against section 124A

- It leads to a sort of unauthorised self-censorship, to restrict free speech.
- It suppresses the freedom available in democracy
→ raise question, debate, disagree and challenge the govt.'s decision.
- Seditious destroys the soul of Gandhiji's philosophy that is, right to ^{dissent.} ~~speech~~.

So, the way forward is to adhere to the SC judgement regarding section 124A in Kedar Nath v/s State of Bihar → SC held that this section is constitutionally valid, but limited its application to acts involving intention or tendency to create disorder, or disturbance of law & order, or incitement to violence.