

**GS Advanced Program 2023****Generic Booklet**Test Name/Code/No. : **69204D/ #40**

Name			
Email ID.			
Roll No.			
Mobile No.		Date	

Allotted Time : 60 Minutes**Instructions to Candidates -**

- There are 7 Questions in this Question paper.
- All Questions are Compulsory.
- For all updates, please visit the noticeboard -
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Important -

- Answers must be attempted in the QCA Booklet only.
- To upload the Answer Copies please visit to "My Course" section on -
<https://academy.forumias.com/>
- Only those copies will be evaluated which will be submitted before the next class.

Q. No.	Grade/Score
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Overall Grade/Score	

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2.1) Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness.

Recently, former CJI N V Ramanna balked idea of 50% representation of women in higher judiciary.

Current Status :-

- 1) 4/33 women Judges in Supreme Court
- 2) Merely 11.5% Judges are women Judges in High Court.
- 3) 6 High Courts have no sitting women Judge.

Causes of lower women representation

- (1) Patriarchal mindset
- (2) Collegium system
- (3) Hostile Court atmosphere against women.
- (4) Low rate of legal education pursued by women in India.

Case :- In 2015, Delhi ~~the~~ Judicial magistrate was allegedly harassed which shows the patriarchal mindset of society and demotivates other women to join judiciary. Also, low rate of women in lower judiciary (27%) is responsible as they are not promoted to join at higher level.

Need for greater representation to women

- 1) Added perspective on gender sensitive matter. such as sexual harassment, rape, downy, domestic violence etc.
- 2) Will make courtroom suitable for women litigants and hence will become tool for social upliftment of women who can fight for their rights.
- 3) Introduce case ethics and empathy in law
- 4) Will make our age old laws with patriarchal tinge to be interpreted in more gender neutral and women centric manner.
 Eg decriminalisation of Marital Rape.
- 5) Will bring greater expertise in judicial decisions improving efficiency and reducing pendency of cases.

So, there is need to motivate girls to pursue legal education and creating role models such as Justice Kila Seth (first Delhi HC judge) who played a major role in Justice JS Verma committee in Delhi 2012 Rape case.

Overall Grading (V)

Poor			Average			Good		
1	2	3	4	5	6	7	8	9

2.2) Judicial legislation is antithetical to doctrine of separation of powers as envisaged in the Indian Constitution. In this context, justify the filling of large number of public interest petitions praying for issuing guidelines to executive authorities.

Judicial legislation: when court crosses its boundary to not merely interpret laws but also starts framing public policy in form of directives & guidelines.

Public Interest Litigation is a ~~test~~ legal tool to bring a matter of larger public interest in cognizance of court. 'Locus standi' is not applicable on PIL and any publically spirited person can bring any case or judiciary itself can take suo moto cognizance.

Over years, PIL has evolved as major tool of judicial activism and judiciary has taken steps to matters of immediate importance.

Some examples are-

① Hossina Khatoon vs State of Bihar: SC directed release of 40,000 undertrial perishing in various jails.

(2) MC Mehta vs UOI, Pollution of Ganga River

-SC directed many industries to stop open discharge of waste to Ganges. (leather tanneries)

(3) Union Carbide case

-SC directed monetary compensation of those effected in 1984 Bhopal Gas Tragedy case due to leak of methyl isocyanate gas.

(4) Vishakha Guidelines

to ~~regulate~~ prevent sexual harassment of women at work place for 15 years.

Abuse of PIL

1) For personal vested reasons.

2) Overburdening of Judiciary

(3) Judicial activism turning to Adventurism and Judiciary entering domain of executive legislature.

-Against Separation of Power

(4) Political parties using PIL to hinder day to day administration.

Overall Grading (✓)

Poor			Average			Good		
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2.3) The independence of Judiciary is one of the central elements of India's democratic system. In light of this statement analyse the collegium system.

In third Judges case, Supreme Court said that prior ~~require~~ concurrence of collegium (based on plurality of Judges) needed before appointing Judges of Supreme Court and High Court.

Collegium = group of 5 senior most Judges of Supreme Court including CJI.

Constitution says, "President shall appoint Supreme Court Judges with prior consulting the Supreme Court and High Court Judge as he deems fit".

Argument in Favour of collegium

1) Ex-CJI U.L. Lalit recently said that collegium system is vital for independence of Judiciary which is also part of basic structure of Constitution.

2) Justice Lalit also highlight that

in name of technical expertise.

4. Efficacy of Tribunals have been questioned
 - vacancy in cyber tribunal
 - Pendency of 90000 cases in Income Tax Tribunal.
 - low accessibility

Suggestions

(1) R. Gandhi vs UOI case 2010

(a) If existing jurisdiction of HCs are transferred to tribunals, members of Tribunals should not be less than rank of Secretary level.

(b) Technical member must not outnumber judicial members.

(2) Chandra Kumar case 1997

(a) SC upheld tribunals to tackle case complexity

(b) Control over appointment should be transferred from individual ~~govt~~ ministries to Ministry of Law and Justice.

(3) Madras Bar Association vs UOI 2020 :-

Formation of National Tribunal Commission for supervising administration/appointment in Tribunals.

Overall Grading ()

Poor			Average			Good		
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2.5) What is Judicial activism? How is it different from judicial overreach? Is Judicial Activism desirable?

Judicial activism

↳ proactive role by judiciary to intervene in cases/matters which are of national importance or of larger public interest or need immediate action.

Judiciary has time and again given ~~landmark~~ landmark judgements where executives and legislature has failed to deliver its mandate.

Eg

- 1) Vishakha Guidelines. — for prevention of sexual harassment of women at workplace.
- 2) Hosseina Khatun (1979)
release of 40,000 undertrial via a PIL.
- 3) MC Mehta case —
to prevent pollution of Ganga Water.

4) Bhopal Gas Tragedy (1984)

Compensation to be paid by Union Carbide Factory shareholder to those affected by release of Methyl Isocyanate.

Judicial overreach :-

This is seen as negative aspect of Judicial activism. It has been termed as Judiciary overreaching its mandate of Jurisprudence and entering into domain of executive and legislature.

This contradicts the principle of Separation of power enshrined in the constitution.

Judicial overreach takes many forms such as Judicial Activism, Judicial pauperism, Judicial legislation etc.

➤ Doctrine of Essentiality has been criticised time and again because judges are considered to be experts in legal matter and not in matter

of theology.

Balance

Current dynamics of Indian democracy requires a balance in separation of power and maintaining checks and balances between 3 organs of state.

Basic structure doctrine becomes the guiding light in this path.

At the end, the overall idea of maintaining constitutional morality and upliftment of the last in row (Sarvodaya) is the aim of all 3 organs which can be achieved only through mutual cooperation, facilitating each others functioning and recognising self-restraint.

Overall Grading (✓)

Poor			Average			Good		
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2.6) Examine the merits and demerits of Lokadalats.

Lokadalat term means "People's court"

- First Lokadalat was conducted in Gujarat 1982.

- 1987, Legal Service Authority Act gave Lok Adalat statutory backing

Merits of Lok Adalat

(1) Speedy Trial

- most of matters are disposed within single day

Judicial officer

↑
composition

(2) Flexibility

lawyer (Advocate)

social worker

- Flexibility in approach makes it more conducive for local people.

- No strict application of Code of Civil Procedure and Indian Evidence Act.

(3) Cost effectively

- As there is no court fee this helps in extending free legal aid to poor

and marginalised section of society are envisaged in our Directive Principle of State Policy (Article 39A).

(4) No interference

- most often cases do not need intermediary to put merits of the case.
- one can directly present his or her case to judge.

(5) Binding decisions

- As decisions of Lok Adalat are final and binding, this eliminates scope of appeal.
- This reduces pendency of cases in conventional judiciary in matters like matrimonial nature, or small torts, other civil disputes etc.

(6) Power and Authority

- Lok Adalat have been given authority of civil court under code of civil Procedures.
- This adds credibility to its reconciliatory process and in its decisions.

(7) Social Harmony :- Lok Adalat work on

reconciliatory mechanism where "no one is victor and no one is vanquished". This promotes stability and peace in society.

Demerits of Lok Adalat

- ① Decisions are purely conciliatory in nature and involves no adjudication.
- ② It has been seen that compromises have been imposed on poor which are pitted against authorities with deep pockets such as Electricity Board and Insurance companies. This defeats the purpose of Lok Adalat.
- ③ Lack of awareness due to poor legal education in India.
- ④ Poor Budgetary autonomy seriously impediments the decision making of Lok Adalat.
- ⑤ Summary adjudication : solely on merits effects quality
 - "Justice hurried is justice hurried". Hence, state government should provide adequate funds to these Lok Adalats.

Overall Grading (✓)

Poor			Average			Good		
1	2	3	4	5	6	7	8	9

2.7) The AIJS (All India Judicial Service) is seen as a right step in the right direction; however it is marked with many constitutional and legal hurdles. Discuss.

In 1977, constitution of India was amended to introduce provision of All-India Judicial Service in Article 32 of Indian constitution.

This provisions was for recruitment of judicial officer at District level. But oppositions and concerns raised by ~~High~~ State High Courts and State Government has pushed it into oblivion.

Merits of All India Judicial Service

- 1) Reduce the Pendency of cases in lower judiciary and bring overall effectiveness in decision making
- 2) Tackling the problem of Poor quality of Recruits by State government.
- 3) Tackling Nepotism and Favouritism in Judiciary.
- 4) Smoothens the entry of women and

motivate them to pursue legal education career.

(5) Bringing uniformity in recruitment process in selection.

— Currently each state has its own standard of examination

(6) Law Commission has repeatedly supported idea of AJS. According to Law Commission headed by AP Shah, AJS will improve the "status of district judicial magistrate" to that of collector".

Currently judicial magistrate is a state level officer & collectors are All India service members.

(7) This will help in attracting best talents to judicial decision making.

— Currently, Best talents join Bar and become advocates.

ex CJI NV Ramanna said this will lead to a phenomena of "Good advocates listened by Bad Judges".

(8) Uphold Judiciary ~~but~~ Integrated Model.

Issues

- 1) local laws differences.
- 2) Independence of Judiciary.
as other body will control appointment.
- 3) Learning local language and dialect
- 4) Centre & State conflict.
- 5) Poor legal education and awareness in India.
- 6) Less than $\frac{1}{3}$ in HC Judges are from district level judiciary.
Rest are from Bar.
- 7) Proliferation of coaching industry.

As & other AJS members learn local language, AJS members can also easily learn with adequate facilities.
A meritocratic judiciary is necessary which is possible only by competitive recruitment process.

Overall Grading (✓)

Poor			Average			Good		
1	2	3	4	5	6	7	8	9



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