CS Mains G.S-II
Part- 1

NOTE: As the question on this topic may not come in the exact form in C. S Main Examination we have given slightly more information so that candidates can answer a question on this topic even if it is differently framed. Though care has been taken to give accurate information, if there are any inaccuracies, please write to us at rcreddy.testseries@gmail.com. It will be referred to experts and, if need be, correction will be made.

Q 1. Recently Prime Minister Narendra Modi supported the idea of holding concurrent polls for the Legislatures of States and the Parliament. What are the arguments for and against this view?

Arguments for simultaneous elections for the Legislatures of States and Parliament

- The imposition of the Model Code of Conduct (MCC) at regular intervals puts many activities of the government on hold which affects governance.
- Leaders who constitute political executive will be able to spend more time on governance as they would be free from frequent election canvassing.
- It reduces the massive expenditure that is currently incurred by Government for the conduct of separate elections.
- Expenditure incurred by political parties also gets reduced.
- Concurrent polls would free central armed forces and manpower that is deployed at regular intervals for election duty so that they can be used better for their regular functions.

Arguments against simultaneous elections

- A survey indicated that when simultaneous elections are held voters tend to vote for the same party as national issues get mixed with state issues which is not in the interests of people of a particular state.
- Fractured verdicts or unstable governments cannot be avoided in any democracy which lead to fresh elections, and fresh term may not coincide with the term of Parliament.
- The simultaneous elections requires either curtailment or extension of the term of some of the State Assemblies which requires constitutional amendment which in return requires political consensus which is very difficult.
- The EC will also need more central armed forces personnel for deployment at separate polling booths meant for Lok Sabha and state assembly elections leading to inadequate availability of these forces for performing their regular functions in disturbed areas.
- Election Commission will have to purchase a large number of Electronic Voting Machines (EVMs) and Voter Verifiable Paper Audit Trail (VVPAT) machines which requires more money

Additional Points:

- Simultaneous polls to the Lok Sabha and all State Legislative Assemblies were held four consecutive general elections held in 1951, 1957, 1962 and 1967. But with the premature dissolution of some State Assemblies in 1968 and 1969, this cycle was disrupted.
- The 79th Report of the Department-related Parliamentary Committee has also suggested some alternative measures like conducting two phases of all state elections, one with the general elections phase and other elections during the mid-term phase.
- The Law commission suggested that the elections of the state governments which end their five year term post six months of Lok sabha polls can be clubbed together and the result of these elections will be declared only after the expiry of term etc.

Q 2. Tribunals are quasi-judicial bodies which are set-up for effective and speedy delivery of justice and to supplement the efforts of judiciary. Comment on the growing trend of 'tribunalisation of justice' in India.

Tribunals in India are set-up under articles 323A and 323B of the constitution which were inserted through 42nd amendment in 1976. Over the years, the number of tribunals have multiplied which led to 'tribunalisation of justice'.

Advantages of Tribunals are

- efficient disposal of cases that require **specific knowledge** by tribunals as they are manned by persons with required expertise like National Green Tribunal (NGT),
- s**peedy disposal** of cases following the principles of natural justice,
- reduction in the burden on courts at all levels significantly leading to reduction in the **number of backlog cases,**
- easy **accessibility** to aggrieved persons unlike regular Courts which are governed by elaborate procedure, and
- low cost litigation compared to regular courts

Disadvantages of tribunals are

- violation of the doctrine of separation of powers as they function under the executive,
- may result in ill-founded claims as fee is not charged, and
- large number of tribunals lead to the creation of alternate institutional mechanisms of justice delivery.

Q 3. Recently, the President of India rejected the legislation by the Delhi government that exempted the post of Parliamentary Secretary from the purview of 'office-of-profit' which led to a major controversy. What do you understand by the term "Office of profit"? Where do you find its mention in general? Suggest measures to ensure that such controversies are not repeated in future.

The term "Office of profit" refers to a post under central/state government which yields salaries, perks, and other benefits. Holding an Office of profit disqualifies the occupant as a member of parliament or any state legislature.

This term is mentioned under article 102(1)(a) and Article 191 (1) (a) of our constitution and is also mentioned in the Representation of People's Act, 1950 by which a member will be disqualified if he/she is found to be holding an office of profit.

The object of the provision is to secure independence of the MPs and to ensure that Parliament does not have persons who have received favours or benefits from the executive (separation of Powers) and who consequently might be amenable to its influence.

The expression "office of profit" has not been defined in the Constitution or in the RPA, 1951. This is the main reason for controversy. Even Parliament (Prevention of disqualification) Act, 1959 mentions certain offices which do not disqualify their holders from being members of Parliament or assembly, rather than setting up criteria. Thus,the final interpretation and decision whether a person is disqualified or not rests with the courts.

However, the best course appears to be to refer the matter to a Parliamentary Joint Committee on office of profit to determine which of the offices would attract disqualification.

Way forward :

- Often, the crude criterion applied is whether or not the office carries a remuneration. Better criterian should be whether executive authority is exercised by the office or not.
- If a serving Minister, by virtue of office, is a member of certain organisations like the NITI Aayog or NTCA, etc, where close coordination and integration with the executive is vital, it should not be treated as office of profit.
- In England, whenever a new office is created, the law also lays down whether it would be an office of profit or not. As new bodies are created regularly, Indian Parliament should also adopt this precedent.

A Constitution Bench of the Supreme Court in Guru Gobind Basu vs Sankari Prasad Ghosal & others (AIR 1964 SC 254) ruled that the decisive test for determining whether a person holds any office of profit under the Government is the test of appointment. There are several factors that enter into the determination of this question such as: appointing authority; the authority vested with the power to terminate the appointment; the authority that determines the remuneration; the source from which the remuneration is paid; the authority vested with the power to control the manner in which the duties of the office are discharged and to give protection on that behalf. The Supreme Court has further held that it is not necessary that all these factors must co-exist. The court also held that stress on one factor or the other would depend on the facts of each case.

Q4. **Recently,Supreme Court upheld Sections 499 and 500 of the Indian Penal Code (IPC). What are the arguments made for and against Criminal Defamation?**

Supreme Court, in its recent judgement on **Subramanya swamy and others Vs Union of India** case, upheld the constitutionality of Sections 499 and 500 of the Indian Penal Code dealing with criminal defamation Further, defamation as a civil offence prescribes monetary compensation as penalty.

While the Constitution grants the right to freedom of speech and expression (Article 19 (1)(a)), it is subject to reasonable restrictions of which defamation is one. Unsubstantiated or wrong allegations often cause irreparable damage to the reputation of a person and may cause financial as well as physical harm. Thus, it is important to protect against defamation. While civil defamation is completely justified, criminal defamation is the focus of debate.

Arguments for criminal defamation:

- Supreme court observed that reputation of Individual under Article-21 is equally important right as freedom of speech and expression (Article-19)
- Government has been arguing that monetary compensation under civil defamation is insufficient and is necessary for 'efficacious remedies to deal with growing tendency to defame people'.
- Misuse or abuse of law (here section 499 & 500 of IPC) cannot be a ground for repeal of total law.

Arguments against criminal defamation:

- Powerful like large corporations, politicians, etc. have misused the law to threaten, harass, and intimidate journalists and critics.
- Threats of legal action with punitive damages under the laws of defamation puts undue pressure on journalists and publishing houses.
- Criminal defamation is also against UN convention on Civil and Political Rights.
- Defamatory acts which harm the public order are already covered under section 124 A,153, 153A of the IPC. Hence, criminal defamation is not required.
- Any criminal charge should be mentioned in public employment application and visa applications which affect applicants.

The Law commission also in its report acknowledged that criminal defamation law violates not only individual freedom of rights but also the international norms and that imprisionment upto 2 years is clearly disproportionate. Ironically, the colonial law, strongly defended by the Indian political class, has been dumped in UK- its place of origin.

Q 5. Given the role of the Election Commission on India (ECI) of providing a level playing field for all political parties, there is a view that the ECI should be further strengthened.What are the recommendations of Law commission in this regard? Do you have any suggestion to make in this regard ?

The Law Commission of India in its 255th Law Commission Report, 2015 made the following recommendations.

- Election Commission should be appointed by the President of India on the advice of the three member selection committee consisting of the Prime Minister of India, the Leader of Opposition in the Lok Sabha, and the Chief Justice of India.
- Article 324(5) of the Constitution should be amended to equate the removal procedures of the two Election Commissioners with that of the Chief Election Commissioner. Thus, equal constitutional protection should be given to all members of the ECI in matters of removal from office.
- Article 324 should be added with a new sub-clause (2A) with regard to separate independent secretariat for ECI.
- In addition, the expenditure of the Election Commission of India should be treated as expenditure charged on the Consolidated of India to ensure financial autonomy.

Q6. There is a stalemate in the appointment of judges in higher Judiciary. Why? What are your suggestions for selection of candidates for the posts of judges for High Courts and Supreme Courts?

The causes for the delay in the appointment of Judges to the higher Judiciary are the differences between the Judiciary and the Executive on the method of selection of judges. This led to the enactment of the 99th Constitutional Amendment Act, and the National Judicial Appointments Commission Act. Later, these two Amendments were struck down by the Supreme Court of India.

The Collegium of the Supreme Court selected 74 candidates for appointment as judges of High Courts and forwarded their names to the Executive. The Executive did not respond quickly which annoyed the Judiciary. In an August 8, 2016 hearing, the Chief Justice of the Supreme Court asked the government whether it was trying to bring the Judiciary to a grinding halt, and ordered the Executive to furnish a report on the status of 74 names the Collegium recommended for appointment as judges of High Courts. On September 14, 2016, the Attorney General of India handed over a sealed cover containing facts on the status of 74 names to the collegium : appointments to Kerala and Chhattisgarh High Courts have been cleared, and one name for appointment as judge of Madras High court has also been cleared.Transfer of two High Court judges was also cleared. Attorney General contended that High Courts were also responsible for delays due to late commencement of selection, etc.

Regarding selection of judges,as Justice Chalemswar rightly pointed out objective criteria have to be followed in selection process. An all-India Judicial Service, as provided in Article 312 of the Indian constitution, has to be created to ensure selection of meritorious candidates for appointment as district judges. Ethical among them, based on their annual confidential records, should be selected by the collegium for appointment as High Court judges, and similar procedure should be followed by the collegium for selection of ethical and efficient persons from the High Court judges for appointment as Supreme Court judges.

Q7. Recently, the Supreme Court of India set aside arbitrary actions of Governor of Arunachal Pradesh. What are the recommendations of Sarkaria and Punchhi Commissions in this regard? What are your suggestions?

Both Sarkaria and Punchhi Commissions have recommended that an eminent person in some walk of life, a person from outside the state, and a person who has not taken active part in politics, particularly in the recent past shall be chosen as Governor of a state.

Regarding the tenure of office of Governor, Sarkaria Commission recommended that Governors shall be allowed to complete the tenure excepting in compelling circumstances. However, Punchi Commission recommended that Governors should have a fixed tenure of five years and their removal should not be at the sweet will of the Union Government.Procedure similar to the one laid down for impeachment of President can be made applicable for removal of Governor.

Both the Commissions have recommended that the Chief Minister of the concerned state should be given an opportunity to prove his majority on the floor of assembly before the dismissal.

Q8. In spite of 52 and 91 Constitutional Amendments, defections are continuing. Why? What is to be done?

In 1985, 52nd Constitutional Amendment Act introduced provisions for disqualification of defected legislators in the 10th Schedule of the Constitution of India. It could only check defections of legislators whose strength was less than one third of the strength of political party, independents, and nominated members. Defections in the guise of splits continued. To check this type of defections, in 2013, 91st Constitution Amendment Act deleted the provision of Splits in the tenth Schedule.

However, defections are continuing due to misinterpretation of merger
as though it is a process by speakers and chairpersons of Legislature. As presiding officers mostly belong to the ruling party, they do not act against their parties in their own interests.

Anti-defection provisions in the Tenth Schedule should be further amended empowering the President to disqualify a legislator on the advice of the Election Commission under Article 103 of the Indian Constitution.Voters should vote against defectors in the subsequent elections.

Q9. 'India is not a federation, but it has definite federal features'. Comment.

India is not a federation because the very existence of States of the Indian Union is at the mercy of the Central Government as Parliament can form any new state, alter the boundaries of any State, etc.with simple majority under Article 3 of the Indian Constitution
State Governments can be dismissed easily under Articles 365 and 356.
Most of the Governors of States appointed by the Central Government act as their agents as they have no security of tenure.
There is no clear cut division of Services between the Centre and States as all India Services work both under Centre and States.
There is no separate constitution for States, except for the State of Jammu and Kashmir.
Residuary power is with Parliament.
States do not have equal representation in the upper House of Parliament.
Unified judiciary, single citizenship, integrated audit machinery,etc.are the other non federal features.
However, there are certain federal features like
written constitution,
division of powers between the Centre and States,
difficult amendment procedure of constitution,
supremacy of constitution, and
Federal Court, that is , Supreme Court to settle disputes between the Centre and States. Hence,Prof. K.C. Wheare described india as quasi federation.

Q10. What are Self Help Groups? Evaluate their performance.

Self Help Groups are associations of persons, mainly women, for earning livelihoods through self employment with the aid of subsidy from government and loans from
Banks. About ten persons form a group with a Secretary, Treasurer, President,etc. and open a joint account with their little savings. Government contributes grant and Banks extend loans for viable self employment activates like rearing milch animals,sheep,goats,etc. or service activities like tailoring, retail shops,etc.

In some states,they even formed federations like Gram Samakhyas, Block Samakhyas, and Zilla Samakhyas for taking up economic activities of higher scale
like grain procuring, milk collection, milk chilling centres,etc. National Rural Livelihood Mission (Aajeevika), launched in 2011, was brought under Self Help Group method.National Urban Livelihoods Mission, launched in 2013, is being implemented under Self Help Group model.

Of the various programmes for eradication of poverty, S H Gs are very successful in some states like Andhra Pradesh, Telangana, Kerala, Gujarat, etc.
S H Gs contributed to the economic empowerment of women which in turn led to their social empowerment in terms of better status at home and in society. Their association with other women in S H Gs gave them the ability to resist domestic discrimination and societal discrimination. However, there a few instances of money they got for self employment was used for family expenditure, money lending, etc..No programme can be a total success. On the whole, it is a success.