

NEXT IAS

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ADVANCED INTEGRATED MENTORSHIP

POLITY ASSESSMENT TEST-1

(To be filled by candidate)

Test Code : TC301

Name of Candidate : MANSI GUPTA

NEXT IAS Roll No. : Date of Examination : 25 June '23

Exam Centre : Old Rajinder Nagar Bhopal Online

GENERAL INSTRUCTIONS

This Question-cum Answer (QCA) Booklet contains 25 pages. Immediately on receipt of the booklet, please check that this QCA booklet does not have any misprint or torn or missing pages or items, etc. If so, get it replaced by a fresh QCA booklet.

Candidates must read the instructions on this page and the following pages carefully before attempting the paper.

Candidates should attempt the questions strictly in accordance with the instructions specified in the question paper and in the space prescribed under each question in the booklet. Any answer written outside the space allotted may not be given credit.

Question paper will be provided separately and can be taken by the candidates after conclusion of the exam.

SUBJECT/PAPER
GENERAL STUDIES

II

Invigilator's Sign. :

(For filling by Examiners only)

Evaluator Code :

Q.No	Pg No.	Maximum Marks	Marks	Total
1	1			
2	3			
3	5			
4	7			
5	9			
6	13			
7	16			
8	19			
9	22			
10	25			
Grand Total				

Signature

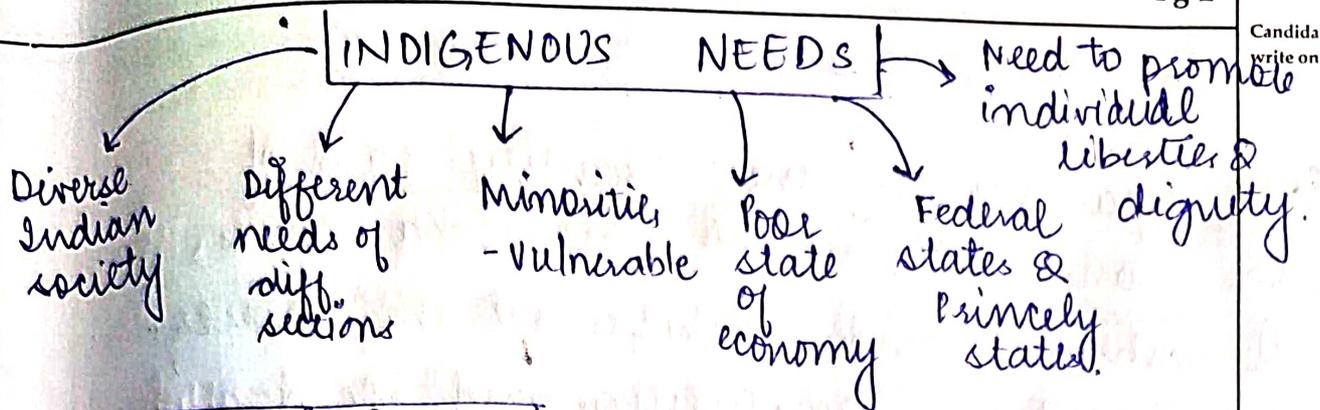
MACRO COMMENTS

Q.1 How does the Indian constitution harmoniously blends borrowed elements with indigenous needs? (Answer in 150 words) 10 Marks

The constitution of India is hailed as one of the most formidable documents which not only protects rights of its citizens but effectively limits government. Dr. B.R. Ambedkar proudly called it a mixed bag which 'ransacked all the important features from major constitutions of the world'.

MAIN BORROWED ELEMENTS with sources :-

- 1) GOI Act, 1955 → Borrowed maximum provision, scheme of parliamentary governance, 3 lists, Public service commission, 3 lists - Federal, state, Concurrent
- 2) British constitution → rule of law, Parliamentary form of govt, Form of legislature, separation of power
- 3) US constitution → Independence of judiciary, FR, Equal protection of laws
- 4) Canadian constitution - Federal scheme
- 5) Australia - Concurrent list, freedom of trade and commerce
- 6) Irish constitution - DPSP.
- 7) ^{Japan} South African constitution : Procedure est by Law
- 8) Weimar constitution → suspension of FR during emergency



HARMONIOUS BLEND :

- 1) Fundamental Rights as protector of liberties
eg:- Art 19, 21, 22 etc protect civil liberties
- 2) DPSP - establish welfarist goals of state and guide the executive for development of masses.
- 3) Minority Protection - Rights of Art 14, 15, 16 [Equality], 17 [untouchability], 29-30 [cultural Rights] are protected.
- 4) Rule of law - Blended as per needs of India and codified to avoid arbitrariness eg- Art 14.
- 5) Federal provisions such as - Amendment of Art 368, written and rigid constitution, 3 lists help to establish rule of harmony.

Therefore, Constitution, even though a lengthy document, has harmoniously blended the provisions taken from abroad to suit to Indian needs.

Q.2 Preamble is the mirror that reflects the mission and vision of the constitution makers. Explain.
(Answer in 150 words) 10 Marks

The preamble is the identity card of the constitution - NA Palshivala. Thus, it enshrines and imbibes all the values of the Indian Constitution and its drafters.

Drafted at the end, Preamble is a non-justiciable preface to the constitution and contains the following:-

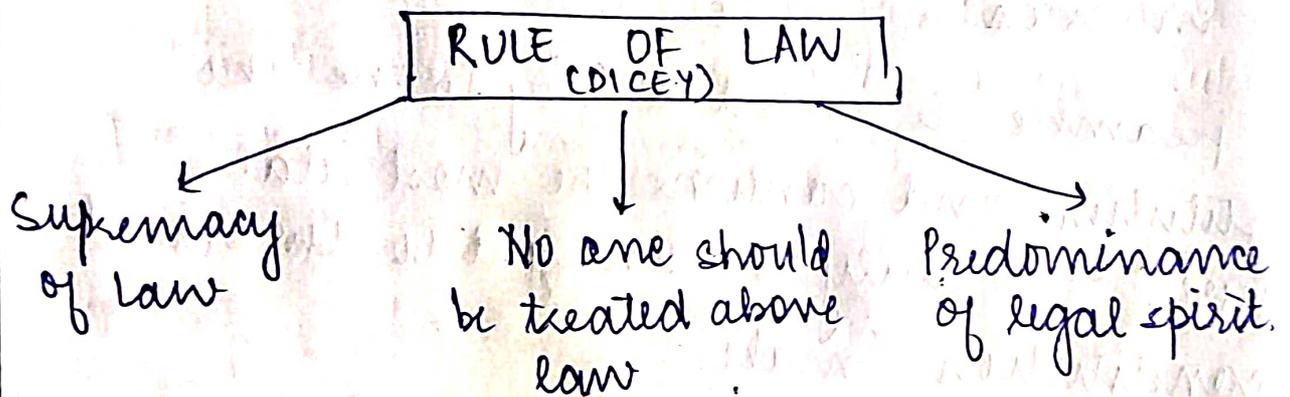
- 1) Source of authority → Identifies 'People' as the source of authority.
- 2) Limits the powers of government and subject it to rule of law.
- 3) Defines the nature of polity → Provides aim of constitution to declare people as sovereign, socialist, secular, democratic, republic.
- 4) Imbibes values of constitution makers :-
 - a) derived from objective resolution of Constituent Assembly
 - b) seeks ~~for~~ to ensure justice, liberty, fraternity, equality for all
 - c) resolves to promote unity, and integrity of India

- 5) Head of the state to be elected - i.e. declares itself to be republic.
- 6) Mission to preserve individual freedom and dignity by providing liberty of faith, worship, belief etc.
- 7) Ensures welfarist goal by declaring itself socialist plus ensuring socio-economic justice.
- 8) Provides for democratic rule and power lies in hands of people

The preamble is called a key to the the constitution and contains the most vital features. It is truly the insight to the mind of constitution makers.

Q.3 What is Rule of Law? Compare and contrast the implementation of the Rule of Law in India and that of the United Kingdom (Answer in 150 words) 10 Marks

'Rule of law' is one of the most cardinal principles of governance. Formulated by AV Dicey in the UK, it is hailed as one of the supreme principles to protect individual liberties and curb arbitrariness.



① SUPREMACY OF LAW - It means law is supreme and no govt. can override it. curtails arbitrary powers of the government to rule without fetter.

② NO ONE SHOULD BE TREATED ABOVE LAW - Ensures equality before law as opposed to 'rex suprema' or king is supreme.

③ PREDOMINANCE OF LEGAL SPIRIT - means law that is formulated must be just & end fair. [justice doesn't derive from law]

COMPARISON BETWEEN INDIA AND UK		
Points	India	UK
Written	Constitution is written which limits power	Unwritten and judge made law
Sovereignty of Parliament	Not completely sovereign bound by constitution	Complete sovereignty.
Equality	considers both equality before law and equal protection of law (Art 14)	only equality before law
Discretionary power	Limited with Executive	wide due to absence of written laws.
Predominance of legal spirit	component generally not a part of India's rule of law because written law is supreme.	Presence of the component.

Therefore, even though similar in origin, Indian and UK have different conceptions of rule of law which affects the outcomes in both nations. Rule of law has come to be part of India's basic structure (Raj Narain vs Indira Gandhi) and continues to be integral.

Q.4 Fundamental Duties are a reminder that citizenship is not merely a passive status but an active engagement. Discuss. What are the challenges in their legal enforcement?

(Answer in 150 words) 10 Marks

Fundamental duties are an essential part of constitution (Part IVA) added by 42nd CAA, 1976 on recommendations of Swaran Singh Committee.

MADE CITIZENS' ENGAGEMENT ACTIVE :-

- 1) Duty towards nation - Reminds them to contribute their share towards nation - building [Eg → Fightwar when called upon]
- 2) Imbibes sense of patriotism Eg: asks them to respect ^{Flag} Code, anthems etc.
- 3) Stringent warning to anti-nationalist elements to not create nuisance.
- 4) Contribute to nation's well being and fulfill social contract's bargain from their end.
- 5) Defend Honour of nation and people living within it.
- 6) sense of duty makes people more accountable and are more likely to fulfill their duties such as paying taxes etc.

Challenges in this legal enforcement :-

- 1) not made justiciable - Even though Swaran Singh committee suggested, Parliament didn't do so. Though it still has power to do so.
- 2) Vague and indefinite - Words such as 'scientific temper' cannot be enforced.
- 3) Not done in ^{major} any democratic liberal country since asking citizens and penalizing them for non-fulfilment goes against liberty.
- 4) No political will for enforcement since it creates tensions and disagreements.
- 5) Very difficult to monitor and make people aware of duties in such a vast and illiterate nation.

Therefore, even if fundamental duties are not enforceable, they are no less important in functioning of country. Instead of waiting for legal measures, govt can rely on moral suasions for enforcement.

- Q.5 'Unchecked hate speech emboldens hatred and fosters fear and animosity.' Does the problem of hate speech in India stem from the lack of laws or lack of their effective implementation?
(Answer in 150 words) 10 Marks

Hate speech is not defined as a crime in any law of the country. However, in common parlance, it can be defined as use of words which insinuate hatred against certain group/person/nation.

Some ^{provisions} ~~parts~~ of IPC are used to define hate speech :-

- 1) Art 298A - hatred against specific ^{religious} groups
- 2) Art 153A - enmity against community
- 3) Art 505 - rioting etc

Some other laws such as Representation of people's Act, 1951 s. 123(5) ~~do~~ make it a ground for corrupt practice and disqualification of election.

Reasons for problem of Hate speech

- 1) Lack of legal clarity - There are several provisions which are read in conjunction against hate speech but no specific law till date.

However, the problem is much deeper than lack of laws as:

(2) Proliferation of internet based crimes

- provides anonymity to offenders
- difficult to prevent circulation
- social media sites' unwise to cooperate.

(3) Political unwillingness - often times political parties themselves are involved in hate speech and are unwilling to have their members prosecuted. Eg - Gujarat Riots

(4) Unchecked use of provisions for political gains
→ often due to lack of clarity of law, some people genuinely dissenting are ~~arrested~~ booked w/ IPC. For ex - Delhi Riots.

(5) Chilling effect on speech → The problem of police excess and lack of clarity on law also causes chilling effect on speech curbing Art 19(1)(a)

Law Commission of India has suggested

to incorporate proper definition of hate speech into the law to check misuse of the present provisions. Moreover, anti-social elements should be effectively identified & made through to go through process of law.

Q.6 Examine the distinct characteristics of the notion of Equality in the Constitutions of the United States and India. (Answer in 250 words) 15 Marks

EQUALITY is a crucial aspect of any free and democratic society. It contains positive and negative connotations.

Positive :- Equal chance of development and growth of all capacities.

Negative :- absence of discrimination by state and its instrumentalities.

The Indian constitution provides the right to equality under Part III of the constitution. [Art 14-18]

(1) Article 14 :- Provides that state shall not discriminate anyone and there shall be equality before law and equal protection of laws.

(a) Equality before law (taken from British Constitution) means no individual should be discriminated against. Eg- Babita Punia v/s UOI (Women allowed in commissioned Army posts)

(b) Equal protection of laws :- (US constitution) it means that unequals should

be treated 'unequally' and equal should be treated equally.

Eg: Reservation of weaker sections in govt jobs and posts (Indira Sawhney v/s UOI)

(2) Article 15 and 16

→ Provide that state shall not discriminate on any prohibited marker like religion, race, caste, sex, place of birth. [Eg: Air India v/s Nargesh Miza - women ^{pilots} can't be discriminated on grounds of sex].

→ Art 15(3) → state to make special provisions for women and children.

→ Art 15(4) & 16(4) → provides that state can reserve posts in govt education and posts for SEBC and SC, ST. Not against equality but rather a facet of equality [state of Kerala v/s NM Thomas]

→ Art 15(6) & 16(6) → Notion of equality is expanding by adding economically weaker sections also as a discriminated/weak section (103rd CAA) [Janhit Abhiyan v/s UOI]

3) Art 17 → prohibits untouchability & make it an offence.

4) Art 18 → Prohibits any title / hierarchy.

Therefore, equality in India is an evolving concept comprising both facts.

American Constitution

- In the US, both the facets of equality find space in Bill of Rights.
- states are empowered to make laws to prohibit any form of discrimination and make it an offence.
- States also look after ~~caste~~ weaker sections and minorities and make provisions for their betterment.
- similar to caste in India, they have sanctions for ~~caste~~ race discrimination.

Therefore, India and USA have very similar notions of equality wherein state takes a protective and promotive role.

"Basic structure doctrine is a North Star that guides interpreters of Constitution" Analyse the above statement and also highlight the elements that constitute basic structure as decided in various judgements.

(Answer in 250 words) 15 Marks

Candidates must not write on this margin

Dr. DY Chandrachud said the above statement highlighting the importance of the doctrine and its place in the Indian legal system. Doctrine of Basic structure finds no mention in the constitution and is a judicial innovation from the case of Keshavanand Bharati vs State of Kerala (1973):

Features :-

1) Amendability of constitution - Doctrine provides for amendability but restricts power of the Parliament in that aspect.

2) Basic structure = Basic values of constitution

Fundamental Tenets as derived by the constitution makers. Eg- Rule of law

(i) There is no set list of the constituents but it is an evolving concept.

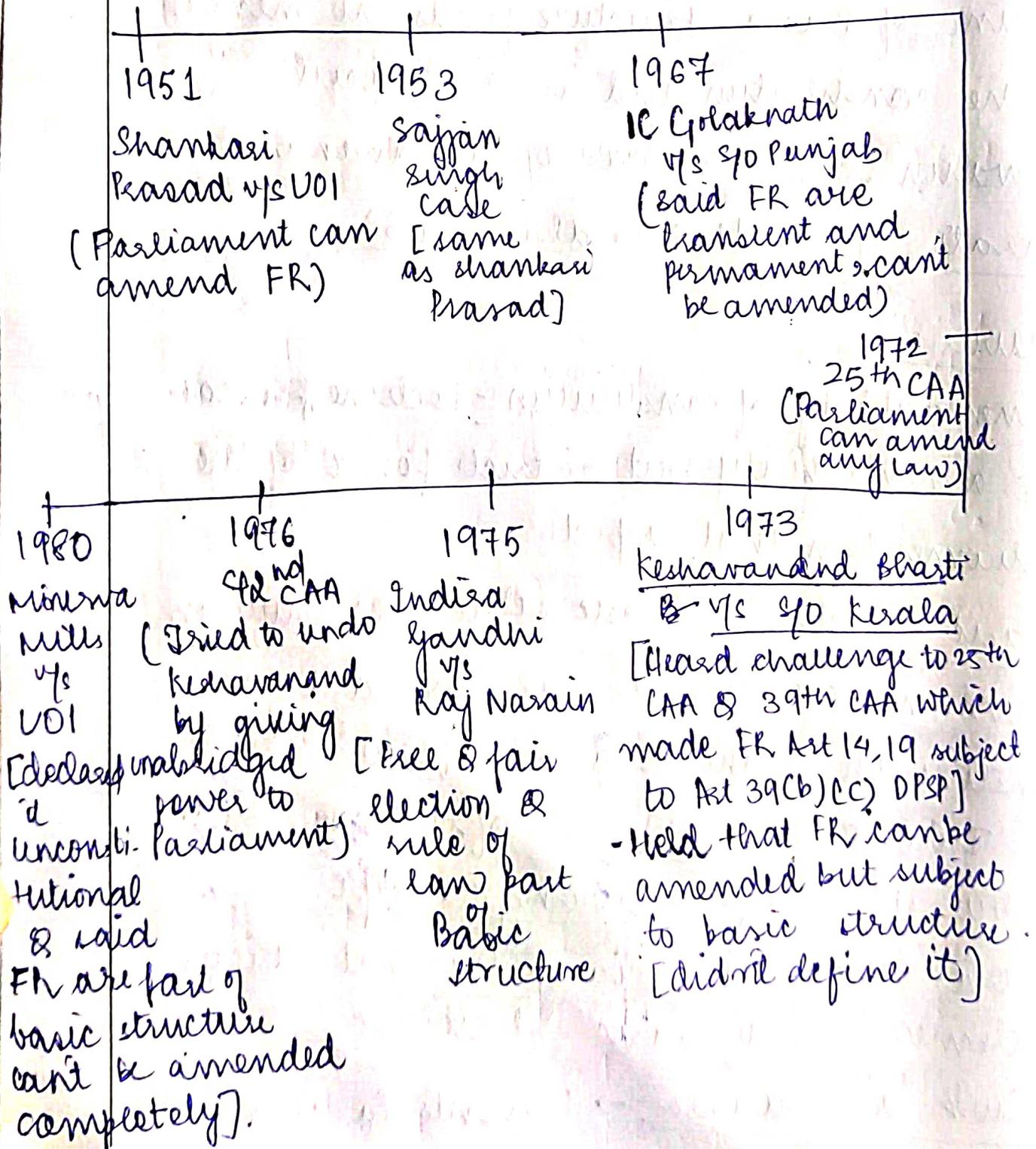
(ii) Over years judiciary has put various elements into basic structure.

3) Curbs arbitrariness → Prevents Parliament

to arbitrarily change the entire substrate of the Constitution.

(4) Prevents rights of minorities and protects individual rights - eg. Art 21 is supreme.

EVOLUTION OF BASIC STRUCTURE :-



Elements of Basic Structure:-

- ① Rule of law and Parliamentary form of government [Indira Gandhi case]
- ② Secularism [SR Bommai case]
- ③ Doctrine of Judicial Review [IR Coelho]
- ④ Free and fair election [Indira Gandhi and ADK case]
- ⑤ Individual Rights [Minerva Mills vs UOI]
- ⑥ Sovereignty and integrity of India
- ⑦ Democratic elections [SR Bommai]
- ⑧ Equality between men & women [Sabimata]

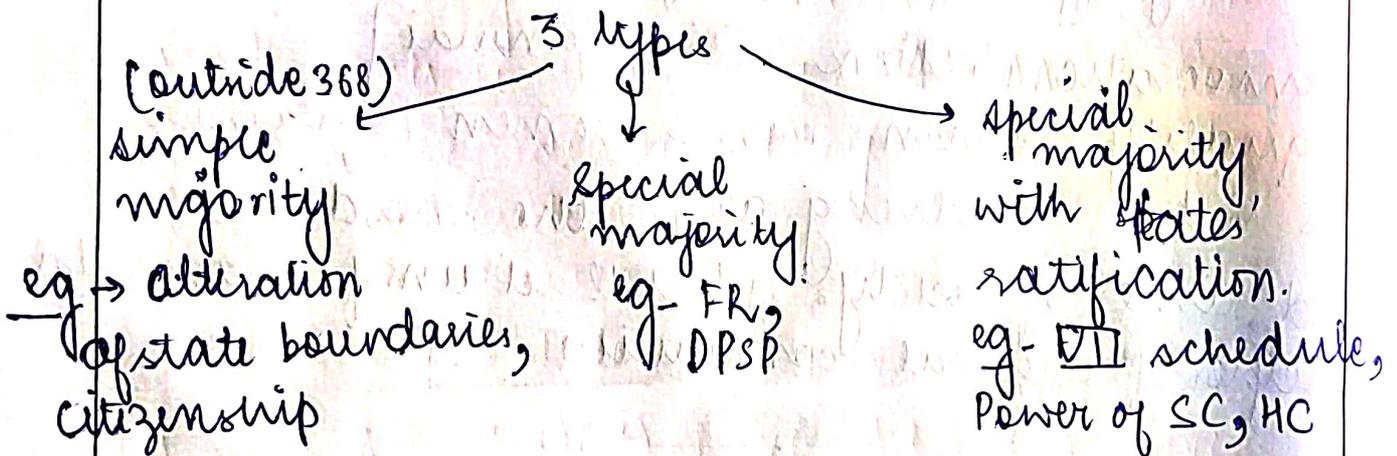
This list is evolving as per the needs and time of society, yet still retains fundamental principle of original constitution.

Thus, even though the doctrine has been criticized as being overbroad and judicial overreach, it still protects the rights of individuals by placing firm limits on the powers of the Parliament and also ensures that the soul of constitution is preserved.

Q.8 "Constitutional amendment empowers the citizens to shape the destiny of their nation, ensuring that the constitution remains a living document that reflects the will of the people." In this context highlighting the constitutional framework, show how constitutional amendments have ensured its organic evolution. (Answer in 250 words) 15 Marks

Indian constitution in its last 75 years have witnessed 105 constitutional amendments (2021) and yet continues to be the beacon of light for individual aspiration and guide to government.

(A) Amendment to Indian Constitution (Art 368)



(a) Only Parliament has the power to amend however, for some provision which affects the interests of states, even ~~has~~ ratification by half the states is required.

(b) Different types of procedure: As mentioned based on different needs and kinds of provision - different types of majority required for approval.

(c) some of the provisions which require simple majority fall outside the scope of Art 368. [Art 2, 3, 5-11 (citizenship)].

(d) ensures blend of rigidity and flexibility:-

The procedure of diff. kinds have ensured that while it is not very easy to amend the constitution, it ~~is~~ is possible to do so with right reasons and requirements.

EVOLUTION:-

① To be able to fulfill aspirations of state:-

The First Amendment came immediately after Champakam Doraisajan v/s S/O Madras wherein the court held that reservations were against equality. To undo this and to insure equality as a goal, 1st CAA brought Art 15(4) and 16(4) to give state power to provide reservation.

② To promote DPSPs:- certain amendments such as 1st, 24th, 39th, 42nd, 44th were done with the objective of promoting DPSPs, Art 31B - provides power to state to exempt certain land ceiling laws from

scrutiny and put them in IX schedule.

- ③ For protecting minority rights - Eg - 67th, 85th and 102nd CAA created NCSC, NCST and NCBC respectively.
- ④ For enhancing rights :- Eg. Art 21A was added through 86th CAA to provide right to education as a FR for 6-14 years of age.
- ⑤ For providing power of administrative convenience and rights to states - eg: 104th CAA - wherein DBCs can be identified by states and not Parliament alone.
- ⑥ For security of state and preventing law & order.
Eg:- In Art 19(1)(a) ~~provis~~ Art 19(2) provision public order insisted in 1st CAA, emergency provisions made more stringent in 44th CAA.

therefore, these amendments have helped shape the nature of Indian polity and retain the spirit of living document.

The expression "equal respect for all religions" does not capture the complexities of Indian secularism. Analyse, also discuss the challenges in the implementation of the Uniform civil code. (Answer in 250 words) 15 Marks

Secularism in India cannot be confined to the western notions of a negative & non-interference form. Rather, it is much more complex wherein state is an active player in promoting the right to religion.

SECULARISM IN INDIAN CONSTITUTION :-

① Preamble - declares the Indian union to be a secular one.

② Positive notion of secularism

principled distance

state shall not advocate any religion but aid all

doctrine of harmony

Based on gandhian idea of promoting harmony among all religions.

③ Article 25 - protecting right to freedom of faith, worship, belief, conscience and propagation. However it doesn't

include right to forcefully convert a person (Eg- Rev. Father Staniclaus case)

④ Not just an individual right - Art 26 promotes rights of a denomination to establish, practice, propagate their religious belief. Thus, also have group rights.

⑤ Art 27 - No tax for promotion of any religion.

⑥ Art 28 - Equal protection to all religion but no discrimination

→ Eg - govt promotes diff religions yatra including Haj, Amarnath without discrimination

→ no declaration of any religion as state religion.

⑦ Not an absolute right - can be abridged based on public order, health and morality. Therefore, unlike the west, there is an active involvement of the state in promoting & protecting religion.

But, there have been demand for a Uniform Civil code which applies to all citizens of all religion.

Challenges in implementation of UCC:-

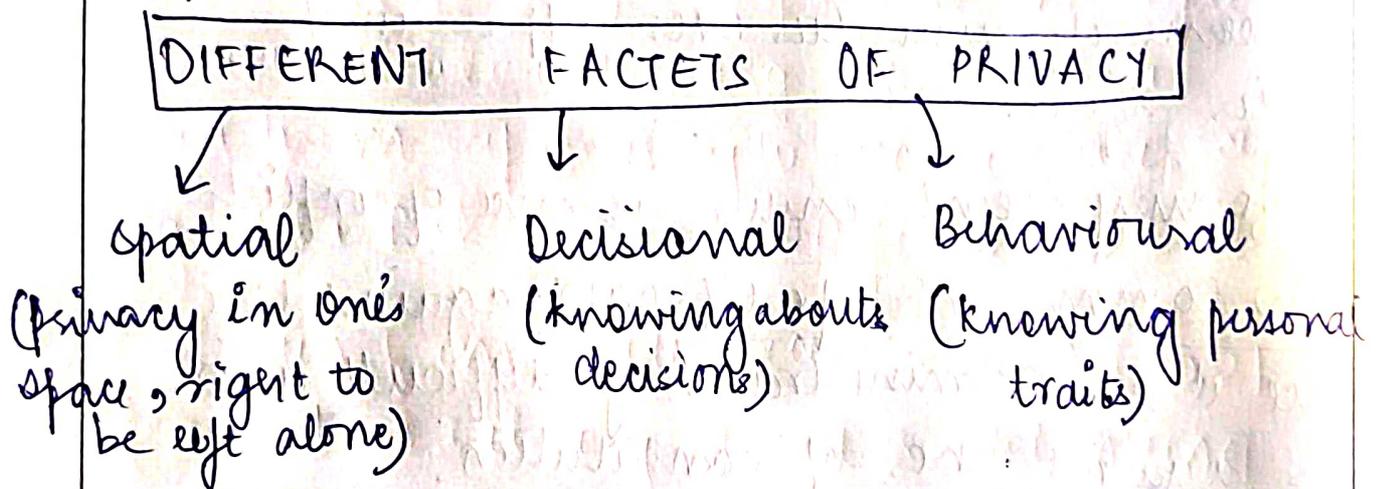
Even though Art 44 of the constitution provides for the states' duty to push for UCC, it is fraught with challenges:-

- (1) No agreeable definition of the constituents
- (2) Concerns of minorities over suppression of their rights.
- (3) Uniformity doesn't ensure absence of conflicts.
- (4) Law Commission's Report (2021) - against UCC since it is administratively difficult and goes against ethos of constitution.
- (5) Power of the Supreme Court / HC to undo any right violation in name of religion.
 - eg:- Temple entry case wherein right of equality was given primacy (Sabarimala)
 - Santhara - Jain practice of fasting unto death was also held invalid.

Therefore, even though SC in Lily Thomas & Sarla Mudgal have proposed UCC and sought its implementation, it still remains a distant goal.

Q.10 In light of the recent Supreme Court judgement on the Right to Privacy, examine the scope of Fundamental Rights in India. (Answer in 250 words) 15 Marks

The SC in 2017 in *K.S. Puttaswamy v. UOI* (2017 10 SCC 1) held that right to privacy is a fundamental right in India enshrined in Art 21.



The 5 J-B after analysing the different laws on privacy across the world -

- (1) read Right to privacy as a facet of Art 21 which protects bodily autonomy and provides liberty.
- (2) Overturned previous decisions of M.P. Singh & Kharak Singh which said privacy ^{is not} a FR.
- (3) Limited state's right of intervention to a proportionality test → ① These

must be a law (2) Law must have a purpose (3) must have nexus to the object (4) must be proportional in measure.

scope of FR in India :-

- (1) Protection of individual liberty and dignity - Art 14, 19, 21 (trinity) is the most important set for any right violation.
- (2) Expanding scope of rights u/ 21 :- In Article 21 - 'Right to Life' the courts have time and again increased its ambit to include more rights :-
 - (i) Right to shelter - Olga Tellis case
 - (ii) Right to sleep - Ramdev Baba case
 - (iii) Right to environment - M.C. Mehta case
 - (iv) Right to legal aid - Hussainara Khatoon v/s 40 Bihar
 - (v) Right to sexual autonomy - Navtej Johar v/s UOI. (on 8.377)
- (3) Upholding constitutional morality against social morality to promote

values of constitution such as freedom, dignity, equality.

- ④ Protection of minorities → Women
→ SC, ST, OBC
→ Religion
→ Disabled
- (diff provision of constitution (Art 29, 30 - cultural rights), Art 14-16 [Equality] help promote the rights of various disadvantaged groups. SC has read them expansively to increase their scope (Eg. Vikas Dubey case - PWD person got scribe)
- ⑤ Protection from state excess : Ex - Art 20, 21, 22 prevent arbitrary arrest & detention of people by state without valid law.
- ⑥ Right to approach court (Art 32): Dr Ambedkar 'Heart & soul' of constitution since people can approach court in case of violation of any. Therefore, Part III has emerged over the years as the most crucial part of constitution which protects the rights of individuals and save minorities against the excess of majority.