1. What is the mandate of SEBI? Examine the recent issues pertaining to the functioning and role of SEBI in the regulatory context.

Approach:

Question is straight forward in its approach, students are expected to give a brief about SEBI in introduction and the mention about the mandate of the SEBI as demamnded by the question then in the second part issues pertaining to the functioning and role of SEBI need to be explained properly and then conclude by arriving at a balanced and forward looking conclusion.

Introduction:

SEBI is a statutory body established on April 12, 1992 in accordance with the provisions of the Securities and Exchange Board of India Act, 1992. Before SEBI came into existence, Controller of Capital Issues was the regulatory authority it derived authority from the Capital Issues (Control) Act, 1947. In April, 1988 the SEBI was constituted as the regulator of capital markets in India under a resolution of the Government of India. Initially SEBI was a non statutory body without any statutory power. It became autonomous and given statutory powers by SEBI Act 1992.

Body:

Mandate of Sebi-

- To Inspect Books of Accounts: Accounts of any listed public company or a public company intending to be listed can be inspected by SEBI. However for such inspection there should be reasonable grounds to suggest that the company is indulging in unfair trade practices or is involved in insider trading.
- To regulate securities market intermediaries: SEBI has the power to regulate the intermediaries for proper functioning of the market. In order to do so it can also restrain persons from accessing the securities market and even prohibit any person from such access.
- To investigate: If SEBI has reasonable grounds to suggest that the any particular transaction or transactions are dealt in a manner which is detrimental for the investor, then it can order anyone to investigate such transactions.
- To review the market operations, organizational structure and administrative control of the stock exchanges.
- To overlook the registration and regulation of working of market intermediaries such as merchant bankers, portfolio managers, stock broker etc.
- To overlook the registration and regulation of Mutual Funds, Venture Capital Funds and Collective Investment Schemes.
- Prohibiting fraudulent and unfair trade practices in the securities market. Prohibition of Insider Trading and to educate and train the investors.

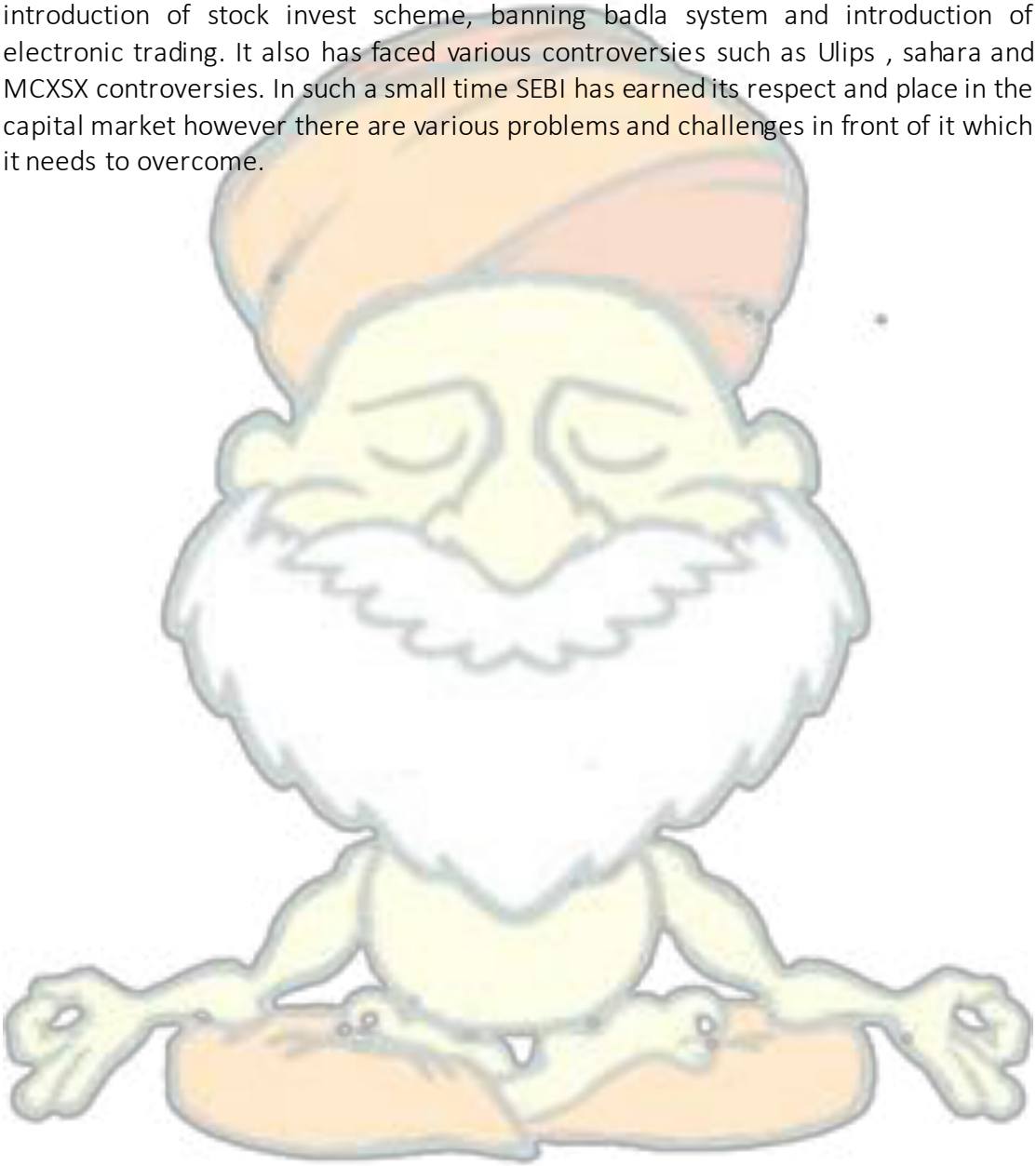
Issues pertaining to functioning and role of SEBI.

- SEBI has given intellectual leadership for the transformation of equity market. Initially the objectives of SEBI were not adequately defined and it frequently succumbed to lobbying. SEBI regulations are laws but the process through Which regulations are drafted leaves a lot to be desired. Neither regulation making nor post-mortem analysis of regulations is shaped by evidences.
- Enforcement process-
  The statutory powers of SEBI are at par with a civil court SEBI has made various regulations but only making regulations and giving orders is not enough if it is not able to enforce the same. SEBI need to strengthen its surveillance and enforcement functions.it needs to ensure that violations do not go unnoticed whether small or large.
- Talent pool and market intelligence-
  In 2012 SEBI had 643 employees whereas US security and exchange commission alone had 1000 people. As we all know human resource is the most important resource for an organisation. SEBI needs to increase its human resource in both quality and quantity. It needs to significantly improve its market intelligence, technology and talent pool in order to improve its performance.
- Deepening capital market
  The number of participant in the capital market has not risen much. Still a large section of society does not deal in security market. SEBI has done a lot to encourage people to participate in capital market such as abolishing entry load on mutual funds, simplifying KYC norms but it needs to take some stronger steps to deepen participation in capital market. It should work deeper participation in equity by pension, superannuation and gratuity funds, developing a vibrant retail debt segment and reducing the cost of transaction.
- Corporate debt and securitization market
  Despite numerous attempts the debt market volume has increased but it has failed to attract sufficient liquidity. The regulator need to develop a vibrant corporate debt market and securitization market but these largely remain part of over the counter market.
- Matching up to global standard
  Capital markets are growing and the size of SEBI as compared to security market is not sufficient to properly regulate the capital market .like its peers (regulators of US and UK) it needs to established self-regulatory organisations. SRO can focus on routine decisions and SEBI can work on more important issues.
- Negatively charged
  SEBI's appointment process has always been criticise. Allegation of corruption by SEBI staff are frequently heard. The accountability mechanism that envelope SEBI are quite poor. It is very important to make the recruitment process fair and transparent.
- The performance of Sebi also came under severe criticism in the report of the Joint Parliamentary Committee (JPC) constituted to examine the stock market

scam and matters relating thereto in April 2001. The committee indicted Sebi for all-round failure in properly regulating the market.

Conclusion:

SEBI has taken a number of steps in the last few years to reform Indian capital market. It has past various regulations such as freedom in designing and pricing instruments, introduction of stock invest scheme, banning badla system and introduction of electronic trading. It also has faced various controversies such as Ulips , sahara and MCXSX controversies. In such a small time SEBI has earned its respect and place in the capital market however there are various problems and challenges in front of it which it needs to overcome.



2. Should bodies for control and regulation of various sports be given statutory status for better functioning and transparency in operations? Critically comment.

Approach

Candidates need to comment on whether the various bodies controlling and regulating sports be given a statutory status for better functioning and transparency in operations. Further, the candidates should give all sides of arguments by commenting critically on the above given argument.

Introduction

Given the growing might of the Indian economy and the country's young demographics, India is fast emerging as a preferred venue for major sporting events. However, barring a few popular sports like cricket and shooting, India's performance in most of these events continues to be dismal. These failures are often attributed to the model of sports governance in India.

Body

- The current model of sports administration in India has stakeholders such as Ministry of Youth Affairs and Sports (MYAS), Indian Olympic Association (IOA), State Olympic Association (SOA), National Sports Federation (NSF), Sports Authority of India (SAI), etc. The role of every stakeholder is well-defined.
- In accordance with the Olympic Charter that restricts government influence of sports federations, the sports bodies in India are autonomous entities. While the IOA is the umbrella body under which all the NSFs and SOAs conduct various sporting events in the country, government bodies operate under MYAS, playing a support role such as training and infrastructure management.
- The key job of a sports body is to facilitate identification and grooming of sporting talent and providing them a platform. But these bodies have repeatedly fallen short of public expectations and failed to carry out their jobs. Some of the issues involved can be seen as given below –

1. Accountability Issues: The biggest concern regarding these bodies so far has been a complete absence of checks and balances. In the pretext of autonomy, they have been allowed to function in the most whimsical manner. Further, Unlimited Discretionary Powers, Non-transparent Decision Making and Revenue Management Irregularities are other issues.
2. Administrative Issues: Sponsorships & Media Rights Management, Doping and Related Drug Abuse, Discrimination based on Sex, Region, etc. and Unauthorized Betting are some of the issues involved.
3. Developmental Issues: Cultural Impediments and Infrastructural Impediments are related to this factor.

These impediments clearly show the need for giving statutory status to these bodies for better functioning and transparency of operations. Also, it is important to consider a holistic picture rather than addressing problems in silos as many bodies of sports in India face mostly similar problems as discussed above.

- Thus India needs a national legislation for promotion, development and uniform regulation for sports in India. Sport figures in the State list of the Seventh Schedule (entry 33) of the Constitution. Further the government has failed to implement National Sports Policy of India even after its repeated attempts.
- Developments and professionalization of sport have not adequately motivated a shift of the subject to the concurrent list is surprising. This has meant that patchwork solutions like the National Sports Development Code, 2011, have limited reach, being forced to rely on the residuary powers under the Union list relating to foreign affairs and international participation.
- The Parliament must enact a national legislation on sports wherein it shall provide for establishing a Sports Commission to regulation of sports in India which shall advise the Ministry of Sports and Youth Affairs regarding sports, support talent identification and promote and foster development, etc.
- The legislation on sport shall aim at promotion of sport, right from the school level by integrating sports with education by making it a compulsory subject of learning up to the Secondary School level. An appropriate Inter-school and Inter- College/University competition structure shall be introduced at the National, State and District levels.
- The sports federations and associations shall no more be autonomous and shall register itself under this legislation instead of Societies Registration Act and the allocation of funds to these federations shall be routed through the Sports Commission established under the Act.

Other Measures –

- Here, it seems pertinent to mention that the autonomy of sports bodies such as BCCI, etc., is not absolute. This is because sports are specifically included in the seventh schedule of the Constitution. Here, empowering local authorities can help in catering to regional needs rather than one size fits all approach.
- The change has to begin from the primary education level to build a sporting culture in the country. The education system should be revamped to give sports an equal, if not higher importance in the holistic upbringing of a child – rather than just doing lip service.

Conclusion

Given the close association of sports with national pride and the kind of influence it has on the psyche of the nation, a role for the State is imperative in sports governance. However, this role has to be subtle so that it does not violate the Olympic charter and also ensures emergence of India as a sporting superpower.

3. What is the existing framework for clinical trials of vaccines and medicines in India? Explain.

Approach

Candidates are expected to explain about clinical trials. And write about existing framework in India for clinical trials of vaccines and medicines.

Introduction

The Union Ministry for Health and Family Welfare has notified the Drugs and Clinical Trials Rules, 2019 with an aim to promote clinical research in the country. The new rules will change the regulatory landscape for the approval of new drugs and conduct of clinical trials in the country.

Body

Clinical trials:
Clinical trials are research studies performed in people that are aimed at evaluating a medical, surgical, or behavioural intervention. They are the primary way that researchers find out if a new treatment, like a new drug or diet or medical device is safe and effective in people. Often a clinical trial is used to learn if a new treatment is more effective and/or has less harmful side effects than the standard treatment.
Clinical trials framework in India:

- Clinical trials in India are governed by the acts: Drugs and Cosmetics Act, 1940, Medical Council of India Act, 1956 and Central Council for Indian Medicine Act, 1970. Under the Drugs and Cosmetics Act, CDSCO is responsible for approval of Drugs, Conduct of Clinical Trials.
- It also lays down the standards for Drugs and has control over the quality of imported Drugs in the country. It is also responsible for coordination of the activities of State Drug Control Organisations by providing expert advice with a view of bring about the uniformity in the enforcement of the Drugs and Cosmetics Act.
- Further CDSCO along with state regulators, is jointly responsible for grant of licenses of certain specialised categories of critical Drugs such as blood and blood products, I. V. Fluids, Vaccine etc.

Prerequisites of conducting a clinical trial in India are:

- Permission from the Drugs Controller General, India (DCGI).
- Approval from respective Ethics Committee where the study is planned.
- Mandatory registration on the ICMR maintained website.
- Online application: The application for conducting a clinical trial is required to be submitted to the DCGI via SUGAM, an online portal managed by the CDSCO.
- DCGI will decide the compensation in cases of death and permanent disability or other injury to a trial participant. Ethics committee will monitor the trials and decide on the amount of compensation in cases of adverse events. The

quantum of compensation is required to be calculated on the basis of the formula specified in the New Rules.

Clinical trials are carried out in four phases. Clinical trials of drugs developed in India have to undergo all four phases of trials in India.

- Phase I or clinical pharmacology trials or "first in man" study: This is the first time where the new drug is administered to a small number, a minimum of 2 healthy, informed volunteers for each dose under the close supervision of a doctor. The purpose is to determine whether the new compound is tolerated by the patient's body and behaves in the predicted way.
- Phase II or exploratory trials: During this phase, the medicine is administered to a group of approximately 10-12 informed patients in 3 to 4 centres to determine its effect and also to check for any unacceptable side effects.
- Phase III or confirmatory trials: Purpose is to obtain sufficient evidence about the efficacy and safety of the drug in a larger number of patients, generally in comparison with a standard drug and/or a placebo as appropriate. In this phase, the group is between 1000-3000 subjects. If the results are favourable, the data is presented to the licensing authorities for a commercial license to market the drug for use by the patient population for the specified and approved indication.
- Phase IV trials or post-marketing phase: Phase of surveillance after the medicine is made available to doctors, who start prescribing it. The effects are monitored on thousands of patients to help identify any unforeseen side effects.

Conclusion

Clinical trial framework should provide for a predictable, clear and transparent system for regulation of clinical trials. The changes such as reduced approval period and online registry, are expected to revive and drive the growth of the clinical trials industry in India. Therefore it is important for anyone preparing a trial of a new therapy in humans that the specific aims, problems and risks or benefits of a particular therapy be thoroughly considered and that the chosen options be scientifically sound and ethically justified.

4. What are the recent guidelines issued by the government for regulating the OTT space and social media? Should there be any government control in their functioning? Critically examine.

Approach- Candidate is required to outline the guidelines in the initial body part and then analyse the same in the second half. With some examples and similar judgments answer can be concluded.

Introduction

For the first time, the government, under the ambit of the Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules 2021, has brought in detailed guidelines for digital content on both digital media and Over The Top (OTT) platforms, while giving powers to the government to step in.

Body

In a long anticipated move, the government notified guidelines that seek to provide a grievance redressal mechanism for users of digital platforms of all kinds — social media sites, messaging apps, over the top (OTT) streaming services, and digital news publishers.
The Information Technology (Guidelines for Intermediaries and Digital Media Ethics Code) Rules, 2021 mandate that social media and messaging platforms will have to adhere to new requirements in assisting investigative agencies of the government.

What are the new rules?

- The broad themes of the guidelines revolve around grievance redressal, compliance with the law, and adherence to the media code.
- Social media platforms like Google or Facebook, or intermediaries, for instance, will now have to appoint a grievance officer to deal with users complaints.
- intermediaries have to appoint a 'Chief Compliance Officer, who will have to ensure that the rules are followed; the officer "shall be liable in any proceedings relating to any relevant third party information, data or communication link made available or hosted by that intermediary.
- The intermediaries will also have to appoint a nodal contact person for "24x7 coordination with law enforcement agencies
- The other key requirement is that such a social media intermediary would have to "enable the identification of the first originator of the information on its computer resource" as may be required by a judicial order.
- This means , a problematic message, that is considered "an offence related to the sovereignty and integrity of India, the security of the State, friendly relations with foreign states, or public order, or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material", will have to be traced to its initiator on messaging applications like WhatsApp and Signal.

- For digital publishers of news and current affairs as well as video streaming services, an identical three tier structure for grievance redressal has been mandated.
- This structure will look into grievances in relation to a Code of Ethics, which is listed in the appendix to the rules. Among other things, the Code of Ethics includes the 'Norms of Journalistic Conduct' as prescribed by the Press Council of India, as also content that shall not be published "content which is prohibited under any law for the time being in force shall not be published or transmitted.
- The guidelines also require streaming services to classify content based on its nature and type. So, for instance, content "for persons aged 16 years and above, and can be viewed by a person under the age of 16.

Context and need of guidelines

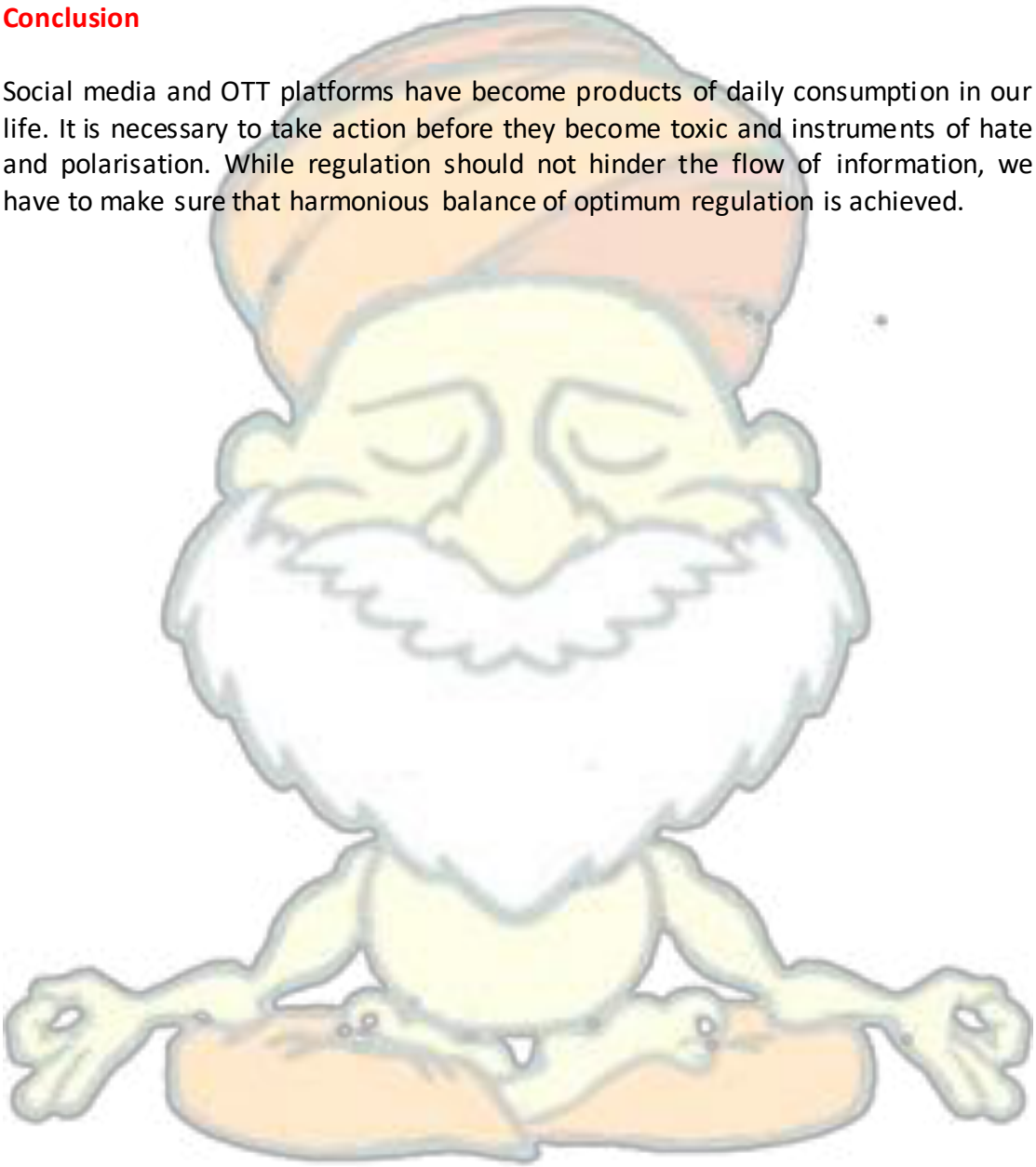
- A 2018 Supreme Court observation and a 2020 Supreme Court order in Sudarshan TV case, in addition to discussion in Rajya Sabha once in 2018 and then through a report laid by a committee in 2020 asked the need for coming up with rules to "empower the ordinary users of digital platforms to seek redressal for their grievances and command accountability in case of infringement of their rights".
- the government said that it wanted to create a level playing field in terms of rules to be followed by online news and media platforms vis-à-vis traditional media outlets.
- Citing instructions from the Supreme Court and the concerns raised in Parliament about social media abuse, the government released guidelines.
- The big push came in the form of the violent incidents at the Red Fort on January 26, compromised our honour on republic day, following which the government and Twitter were embroiled in a spat over the removal of certain accounts from the social media platform.
- Section 79 of the Information Technology Act provides a "safe harbour" to intermediaries that host user-generated content, and exempts them from liability for the actions of users.
- The new guidelines notified on Thursday prescribe an element of due diligence to be followed by the intermediary, failing which the safe harbour provisions would cease to apply.
- The recent campaign of misinformation on media during the CAA protests, farmers protests, toolkit case, Sudarshan tv case calls for more responsible regulation of these platforms. Social media is used to tarnish image of India is a matter of concern
- Government can regulate some content but it has to be in reasonable limits. Self-regulation by OTT and social media platforms is the best way forward. OTT platforms are providing very explicit porn content with no option of parental regulation. It is creating more problems of sexual abuse and harassment.
- Social media and OTT platforms are too big to control in terms of the information they generate, this does not mean that regulation cannot be

done. A more proactive vigil and accountability from big platforms like Facebook and twitter will pave way for the harmonious balance of oversight.

- In the times of daily abuse, rape threats, hatred and unregulated pornographic content, social engagement has become matter of responsible and careful behaviour. We should not ignore elephant in the room and tame the giant before it goes out of control.

Conclusion

Social media and OTT platforms have become products of daily consumption in our life. It is necessary to take action before they become toxic and instruments of hate and polarisation. While regulation should not hinder the flow of information, we have to make sure that harmonious balance of optimum regulation is achieved.



5. What are your views on India's sedition jurisprudence? Substantiate.

Approach

As the derivative is substantiate so it requires you to substantiate (provide information to prove) already proven point and not debating between the various points.

Introduction

Sedition, as per the law is defined as any words, either spoken or written, or by signs, or by visible representation, that could bring or attempt to bring either hatred, or contempt, or excite or bring to excite any disaffection (including disloyalty or any feeling of enmity) towards the Government established by law. It can be considered as an offence against public tranquillity and being connected in some way or the other with public disorder.

Body

INDIA'S SEDITION JURISPRUDENCE

- Sedition is defined as the illegal acts done of inciting people against the Government in power. Sedition is any act or speech which incites anybody to form of anti-national views against a Government or is probable to disrupt the public peace or harmony of the state.
- The punishment for seditious offences is harsh with minimum seven years of imprisonment which may extend to life imprisonment. It is a cognizable, non-bailable and non-compoundable offence triable by the Court of Sessions.
- Section 124A of the Indian Penal Code tells that the prosecution must prove to the hilt that the intention of the accused is to bring into hatred or contempt or excite any form of anti-national views towards the Government of India or Government of the State in India.
- Sedition is a permissible restriction under Article 19 (2) of the Indian Constitution which states that a reasonable restriction may be imposed by the government.
- Section 124A has been challenged in various courts in specific cases. The validity of the provision itself was upheld by a Constitution Bench in 1962, in Kedarnath Singh vs State of Bihar.
- That judgment went into the issue of whether the law on sedition is consistent with the fundamental right under Article 19 (1) (a) which guarantees each citizen's freedom of speech and expression. The Supreme Court laid down that every citizen has a right to say or write about the government, by way of criticism or comment, as long as it does not "incite people to violence" against the government established by law or with the intention of creating public disorder.

But The law of sedition in India can be questioned for the following reasons:

- The law of sedition was framed by the British to suppress the rebellious Indians who were engaged in activities which were against the decorum of

the colonial rule and is hence out of place in a democratic republic where the sovereignty rests with the citizens.

- The law of sedition is more likely to be a law for which the political parties crave for their own benefits.
- The existing provisions of the Indian Penal Code (IPC) are sufficient to address all threats to violence and public order.
- During the first amendment, the then PM of India, Pandit Jawaharlal Nehru had identified offence of sedition being fundamentally unconstitutional and further said that "now as far as I am concerned [Section 124-A] is highly objectionable and obnoxious and it should have no place both for practical and historical reasons. The sooner we get rid of it the better."

Conclusion

Democracy is meaningless without freedoms and sedition as interpreted and applied by the police and Governments is a negation of it. But, before the law loses its importance, the Supreme Court, which is the protector of the fundamental rights of the citizens has to step in and evaluate the law and could declare Section 124A unconstitutional if necessary. The word „sedition" should be applied with caution. It is like a cannon that ought not be used to shoot a mouse; but the arsenal also demands possession of cannons, mostly as a deterrent, and on occasion for shooting.