

1. Differentiate between Fundamental rights and Natural rights? Also, why are the rights incorporated in Part III of the Indian Constitution called Fundamental Rights? Elaborate**Approach**

This question is based on basics of concept of rights. In first part the candidate needs to differentiate between fundamental rights and natural rights with help of examples and in the next part of question write why the part three of Indian constitution is called as fundamental rights with help of suitable examples.

Introduction

Rights are legal, social, or ethical principles of freedom or entitlement; that is, rights are the fundamental normative rules about what is allowed of people or owed to people according to some legal system, social convention, or ethical theory. Rights are classified as Natural rights, Human rights, Legal rights and contractual rights. Further many countries have incorporated a mixture of different rights in their respective constitutions and have made State accountable to enforce these rights which are called as Fundamental rights.

Body

Natural rights and Fundamental rights are the two basic types of rights which can be differentiated as following:

- Natural rights are those rights that are not dependent on the laws or customs of any particular culture or the government, and so are universal and inalienable in nature. While Fundamental rights are those rights which are bestowed onto a person by the constitution of any country and are enforced by the highest court of the land. Indian constitution has mentioned Fundamental rights in part III.
- Natural rights cannot be repealed by human laws, though one can forfeit their enjoyment through one's actions, such as by violating someone else's rights. Fundamental rights can be modified, repealed, and restrained by constitutional processes by respective nations. For example India has repealed right to property mentioned earlier in article 31 of Indian constitution.
- Natural law is the force behind of natural rights according to which these rights are intrinsic to human beings. While constitution and law is the force behind the fundamental rights.
- According to John Locke, who argued that the natural rights include perfect equality and freedom, and the right to preserve life and property. Therefore these rights are not totally opposite of Fundamental rights and rather there is overlap between them as seen from Fundamental rights mentioned in Indian constitution which are Right to Equality, Right to Freedom, Right against Exploitation, Right to Freedom of Religion, Cultural and Educational Rights, Right to Constitutional Remedies.

Reason why Part III of Indian constitution is called Fundamental rights:

- The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. Thus article 32 of Indian constitution directs that the government cannot infringe upon or curb anyone's rights. When these rights are violated, the aggrieved party can approach the courts. Citizens can even go directly to the Supreme Court which can issue writs for enforcing fundamental rights.
For Example : In Menaka Gandhi case of 1978 Supreme Court upheld the fundamental right of life and personal liberty mentioned in article 21 of Indian constitution. Further it enlarged its ambit by reading that procedure established by law cannot be arbitrary but should be reasonable.
- They are 'fundamental' also in the sense that they are most essential for the all-round development which include material, intellectual, moral and spiritual of the individuals.
 - 1) Material : Right to employment under article 16 which includes provisions of reservations for vulnerable section of society and Right to reside and settle in any part of country which includes right to occupation grants an individual capacity to materially uplift and attain social mobility.
 - 2) Intellectual : Article 21A which grants Right to education to all children in the age group of 6 – 14 years. Further by making provisions for reservation in educational institutes for social and educationally backward classes the constitution works to promote intellectual capacity building of citizens of India.
 - 3) Moral : Right to equality, Right against untouchability, Right against discrimination seeks to ensure that a moral and modern citizenship is developed which is detached from the past prejudices such as caste and misogyny.
 - 4) Spiritual : Right to religion which includes right to adhere to a particular religion and also a right to reject any religion leads to spiritual enlightenment of citizens.

Conclusion

Therefore Rights are essential for not only the development of individual but also for the nation. In that spirit Fundamental rights of Indian constitution has since independence played a prominent role in making government of the day more accountable and reduce the arbitrary action which curb individual liberty. Further there is a need to strengthen these rights by including right to living wage, right to job and other economic rights in the view of current covid 19 induced economic turmoil to make life of citizens more fulfilling and secure in future.

2. Is domicile-based reservations constitutional? Does it lead to social, economic, and political empowerment? Critically comment.**Approach**

Candidates are expected to examine the constitutionality of domicile based reservations and critically comment whether it leads to social, economic and political empowerment.

Introduction

Recently Madhya Pradesh Government announced that only the “children of the state” would be given all government jobs. Similarly Haryana and Telangana too have endorsed similar policies in their states preferring state’s residents to other people. At the outset, it is important to mention that almost the majority of the precedents of domicile reservations have been the subject matter of controversy before the Supreme court.

Body

Constitutionality of the domicile based reservations and agreements in favour of it:

- The constitutionality of ‘Domicile Reservation’ both in public employment and Educational Institutions in India has often caused deep confusion.
- Domicile as a concept is of immense importance it denotes “the place of living”, or more precisely a permanent residence it is the legal relationship between an individual and a territory.
- Article 16(3) of the Constitution provides an exception by saying that Parliament may make a law “prescribing” a requirement of residence for jobs in a particular state. This power vests solely in the Parliament, not state legislatures.
- As on date, several states have enacted laws to provide reservation for their local residents in the private sector. These states include Maharashtra (up to 80% quota), Karnataka (75%), Andhra Pradesh (75%) and Madhya Pradesh (70%). But validity of most of these laws are pending challenged before the Supreme Court and high courts and an authoritative ruling is awaited.
- Since state finances these colleges from taxpayers, the taxpayers deserve a reciprocal benefit. Also there is a high possibility that the majority of the talent generated in the state will be retained within the state, which lies in the larger development interest of the state.
- Most importantly state has a duty to provide opportunities to the weaker and disadvantaged sections, and it will be able to do so through domicile reservations.
- These are the relevant provisions in the Constitution that seek to balance the right to equality for all citizens with the right of the state to legislate for reservation in favour of backward classes.

Time and again question were raised on the constitutional validity of the domicile based reservations and it's implications on social economic and political empowerment such as:

- As for the first consideration, it must be noted that citizens do not have a right to domicile reservations. Though Courts have affirmed such reservations as constitutionally valid, they have never declared it as a constitutional right.
- If India is one nation and there is only one citizenship, namely, citizenship of India, and every citizen has a right to move freely throughout the territory of India and to reside and settle in any part of India.
- To regard person as an outsider would be to deny him his constitutional rights and to derecognise the essential unity and integrity of the country by treating it as if it were a mere conglomeration of independent states.
- Not every single state in India is homogeneous in terms of backwardness. Domicile-based reservation that fails to accommodate for intra-state disparities would inevitably result in providing a more favourable position to the stronger and elite section without contributing to the alleviation of weaker sections of the state.
- Rise of strong Sons-of-soil movement even in other states and thus end up affecting the spirit of Cooperative Federalism.
- Such policies would prevent us from optimally harnessing the demographic dividend and thus end up promoting Regional Inequality.
- It may not be viable for the private organisations as they work on profit driven motive and accordingly hire the best talent available in any salary bracket.
- Industry bodies such as Assocham have questioned the effectiveness of such steps due to the absence of talent pool required for skilled jobs.
- Moreover, companies look at their profits more than the welfare of locals, there is a likelihood that if such steps result in a reduction of profit of a company, it might consider moving out of that state. Ultimately, this step would discourage capital investment in the implementing state.
- This step would create friction among locals and non-locals in the implementing states and against the residents of that state in the other states.
- As mentioned above, these laws are against the spirit of constitutional provisions and sociopolitical empowerment. As Article 16 and 19 that provide fundamental rights to Indian citizens to work anywhere in the country.

Wayforward:

- A country like the US has become a superpower by allowing migrants and talents from other countries to work with equal opportunity, the same rule applies to the states of any country.
- A state, attracting and encouraging talent from other state, is on the better position to become developed and promote welfare of its people, compared to the one making the process difficult.
- State government must look at the implications of such law on the thriving economy of the state and contribution of the outsiders in it and try to bring an alternative in the form of incentives to companies on skill development of locals.

Conclusion

In a nutshell encouraging employment and thinking of the betterment of the state is the job of state government in power, but it should not be at the cost of the socio economic development of the country. In a multi linguistic society such as India, the unrestricted work-related migration has potential to emerge as unifying/centripetal force. Further it enables the healthy interaction of different languages and cultures and thus promotes national integration by transcending regionalism. Therefore domicile based reservation needs to be more widely discussed and then a consensus based decision needs to be arrived at for a better social, economic and political outcomes.



3. Dissent, protests and rebellion are signs of a mature and vibrant democracy. However, in no circumstance, the passions evoked by a protesting mob should be allowed to adopt unconstitutional and violent means that threatens peace and order in the society. Analyse the statement.

Approach

Candidates need to analyse how dissent, protest and rebellion are a sign of mature and vibrant democracy. Also they have to analyse how protest, dissent and rebellion can be managed controlled to not turn it into unconstitutional and violent exercise.

Introduction

The history of human civilisation is marked by “dissents”, “protests” and “rebellion” within human relationships and human groups and also between civil and political society. Dissent means disagreement or withholding assent. It has a negative connotation i.e. a dissenter is a non-conformist. Which leads to protest and rebellions.

Body

- Disagreeing with each other is a fundamental human trait. There is not a single individual who does not disagree with something or the other all the time. As per the Supreme Court dissent is the safety valve of democracy:
- They are expressed against any form of domination and discrimination. They are movements against unjust and unequal order in social, economic, political or cultural form.
- The Right to Dissent is an important addition of expressing one’s view, and on many of its most important constituent elements. It will enable practitioners and citizens to claim their rights and participate more effectively in the project of democracy.
- The Right to peaceably assemble allows political parties and citizenship bodies such as university-based student groups to question and object to acts of the government by demonstrations, agitations and public meetings, to launch sustained protest movements.

This brings into focus the tug-of-war between morality and state security, freedom, and responsibility:

- On one hand, it is the government’s responsibility to ensure that any protest should not turn into violent chaos. On the other hand, public protests are the hallmark of a free, democratic society, whose logic demands that the voice of the people should be heard by those in power and decisions be reached after proper discussion and consultation.
- In spite of this dilemma, in order to preserve the democratic fabric of the Indian society, it is the responsibility of stakeholders in a democracy that all freedoms under Article 19 are preserved.

- The Jat reservation agitation was a series of violent protests in February 2016 by Jat people of North India, especially those in the state of Haryana, which "paralysed the State for 10 days.
- On 26 January, tens of thousands of the farmers protesting agricultural reforms drove a convoy of tractors earlier than the allotted time to start the tractor rally into New Delhi. The farmers drove on prohibited routes in long lines of tractors, riding horses or marching on foot.
- The risk of a protest turning violent has increased in recent times. Social media and instant messaging have made it possible for information (and misinformation) to spread like wildfire, causing havoc for civilians and posing problems for law enforcement officials.
- In the Shaheen Bagh Case, the Supreme Court has found the indefinite "occupation" of a public road by the protestors unacceptable. The judgment upheld the right to peaceful protest against the law but made it unequivocally clear that public ways and public spaces cannot be occupied, and that too indefinitely.
- The right of the protester has to be balanced with the right of the other citizens of the country. They have to co-exist in mutual respect.
- The right to protest in a public place should be balanced with the right of the general public to move freely without hindrance.
- The Indian Constitution provides for this under Section 129 of the Criminal Penal Code which gives the power to disperse an unlawful assembly by force to any Executive Magistrate or officer in charge of a police station.
- As India heads into the next decade, all democratic institutions need to work together and ensure a zero-violence political atmosphere. On the other side, as in every democracy from the US and the UK to France and Italy, protests will continue. But protests are a democratic right, violence a crime.

Wayforward:

- It must adopt SOP on violent crowd control that uses non-lethal weapons to disperse the crowd and distinguish between violent and peaceful protesters and bystanders.
- Security officials must only use force where there is a serious and imminent threat to life and property, and they have exhausted all other means to disperse the crowd.

Conclusion

The Right to protest is one of the core principles on which democracy survives and thrives. However, when a protest turns violent, as seen in some places in recent protests, it defeats the very purpose of the protest. While enjoying the rights, one must adhere to one's duties and responsibilities in a democratic society.