

1. Was the higher judiciary's intervention necessary to reform cricket administration in India? Critically comment.

Approach

Candidates can start the answer with highlighting issues around lodha committee and cricketing governance. Also candidates shall give alternative arguments as per demand of question.

Introduction

Cricketing performance is often associated with national pride, the systemic issues, like corruption, nepotism, spot fixing, etc. have dented it severely in the recent past. As a result, Supreme court intervened in the matter for reforming.

Body

Judicial intervention necessary for reforms:

Politicization-

- There are huge number of politicians flocking BCCI to be a part of cricket administration in spite of neither being a cricket fan nor having enough time for its administrative issues.
- For example, a former agricultural minister was more known as ICC chairman and BCCI president than his ministerial role.
- There is lack of transparency in the functioning of the BCCI and more often than not, the richest cricket organization is engaged in political squabbles with least concern for the welfare of the game, the players and the passionate fans.

Representation-

- When one state has more than one association, it means that it has more representation in the Board. This leads to underdevelopment of sport uniformly in all parts of the country.

Support from state:

- BCCI receives some indirect subsidies from the government, in the form of tax benefits, security at sporting events free of cost, land for stadiums, etc.

Corruption and scandal-

- Powerful reflection of the larger failings afflicting India today: rampant cronyism, poor governance, and the absence of accountability. For example DDCA case, goa case etc.

BCCI as public servant-

- Transparency and accountability of association is basic right of the people. They may be private in nature, but they are performing a public function. So, they are liable for IPC.
- Board has appropriated unto itself a unique ability to make substantial encroachments into civil liberties guaranteed by the Constitution.

Its external interference and violation of their autonomy:

- Intervention can be seen as Judicial overreach and interference with the legislative and executives' ability to operate properly.
- Judicial Overreach is what happens when judicial activism oversteps its bounds and becomes judicial adventurism. In BCCI case the court exceeded its jurisdiction.
- The BCCI president, secretary, and other office-bearers are elected on the basis of its bye-laws. So, the Lodha committee has no authority to make the recommendations.
- If they have violated the rules or otherwise shown themselves to be unfit for their positions, they should be removed through the proper prescribed procedure.
- When Judicial activism helps in strengthening the people's faith in the judiciary, the very act of overreach destroys it. As it appears an act of 'tyranny of unelected' in a democracy where elected representatives' rule.

Conclusion

BCCI, irrespective of its legal status, must act in a transparent and accountable manner as a trustee of the game. Indian courts judicial time can otherwise be utilized for hearing various important matters relating to public importance pending before the court.

Q-2 The doctrine of separation of power is one of the most important cornerstones of the India's constitutional democracy. Elucidate .

Approach-

A simple straightforward question where candidates need to write doctrine of separation of power and how this is important cornerstone of India's constitutional democracy .

Introduction -

The separation of power is model of governance in which power are distributed among various units of governance. vibrant democracy always longs for clear demarcation of power .

Body-

The principle of separation of powers states that the executive, legislative, and judiciary powers of government should be divided into different branches and not concentrated in one.

- These departments should be separate and distinct because of the corrupting nature of power. If the body that made the laws could also enforce them and

adjudicate disputes, it would likely do so in a preferential manner, undermining the rule of law and basic fairness.

- Power, in other words, must be checked, or it will be abused, and it is important to be imperative for the smooth functioning of a vibrant democracy.
- Democratic government is characterized by the separation of powers:
- There are 'checks and balances' within our political system that limit the power of each branch in order to prevent the abuse of power.
- This system divides the state into three branches – the legislative, executive and judicial branch – and gives each the power to fulfil different tasks. These branches are also known as the 'organs of government'.
- Tasks are assigned to the different branches and their institutions in such a way that each of them can check the exercise of powers by the others. As a result, no one branch or institution can become so powerful as to control the system completely.
- In Indian constitution, the separation of powers is supported through Article 50, Articles 121 and 211 and Article 361. Such steps, along with presence of checks and balances, help in creating a vibrant democracy in the following ways:
- No single branch can act as a hegemony over the others, by influencing their members.
- No single branch can endanger the democratic principles of the country
- It provides a channel of grievance redressal for the citizens through an independent judiciary.
- The executive remains accountable to the legislature for the implementation of policies and consequent results.
- Helps in creating a feedback channel to the executive where the citizens can put forward their demands in the Assembly, without being afraid of the authorities.
- The separation of powers is important because it provides a vital system of 'checks and balances':
- Firstly, it ensures that the different branches control each other. This is intended to make them accountable to each other – these are the 'checks';
- Secondly, the separation of powers divides power between the different branches of government – these are the 'balances'. Balance aims to ensure that no individual or group of people in government is 'all powerful'. Power is shared and not concentrated in one branch.

Judicial Pronouncements Upholding Separation of Powers Doctrine-

- Kesavananda Bharati Case (1973): In this case, the SC held that the amending power of the Parliament is subject to the basic features of the Constitution. So, any amendment violating the basic features will be declared unconstitutional.
- Swaran Singh Case (1998): In this case, the SC held the UP Governor's pardon of a convict unconstitutional.
- In Indira Nehru Gandhi V Raj Narain, Ray, CJ observed that in the Indian Constitution there is a separation of powers in a broad sense only. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India.
- In P Kannadasan V State of Tamil Nadu, it was held, "the Constitution has invested the Constitutional Courts with the power to invalidate laws made by Parliament and the state legislatures transgressing Constitutional limitations.

- Where an Act made by the legislature is invalidated by the Courts on the basis of legislative incompetence, the legislature cannot enact a law declaring that the judgement of the Court shall not operate; it cannot overrule or annul the decision of the Court.
- But this does not mean that the legislature which is competent to enact the law cannot re-enact the law. Similarly, it is open to the legislature to alter the basis of the judgement.
- The new law or the amended law can be challenged on other grounds but not on the ground that it seeks to in effectuate or circumvent the decision of the court. This is what is meant by “checks and balance” inherent in a system of government incorporating separation of powers.

Checks and Balances-

- The strict separation of powers that was envisaged in the classical sense is not practicable anymore, but the logic behind this doctrine is still valid. The logic behind this doctrine is of polarity rather than strict classification meaning thereby that the centre of authority must be dispersed to avoid absolutism. Hence, the doctrine can be better appreciated as a doctrine of checks and balances.
- The doctrine of separation of powers in today's context of liberalization, privatization and globalization cannot be interpreted to mean either “separation of powers” or “checks and balance” or “principles of restraint”, but “community of powers” exercised in the spirit of cooperation by various organs of the state in the best interest of the people.

Conclusion-

The separation of powers doctrine also intends to improve the energy and efficiency of government by allowing each branch to specialize, in effect, in order to fulfil its unique function. That is why we also often refer to the ‘separation and balance of powers’. The main purpose of the separation of powers is therefore to prevent the abuse of power.

Q-3-The president of India's recent comments regarding timely and affordable justice highlight an essential aspect of judicial reforms.comment .

Approach -

In this question candidates should write about importance of timely and affordable justice is essential aspect of judicial reforms .

Introduction -

Speedy and affordable Justice is not only a fundamental right but also a prerequisite of maintaining the rule of law and delivering good governance. Hence, appropriate reforms as needs to be taken in order to have a robust justice system ensuring timely justice.

Body -

Inordinate delay, cost of legal processes and inaccessibility are impeding the effective delivery of justice to the common man.

- Equal Justice: Accessible and Affordable Justice has been enshrined in DPSP under article 39 (A). However, due to various structural and systematic challenges, the aspiration to meet this objective looks blur.
- High Pendency of Cases: The total pendency of cases in the several courts of India at different levels, sums up to a total of about 3.7 crores thus increasing the demand of a better and improved judicial system.
- The National Court Management, a report of the Supreme Court in 2012, studied the data of pendency of cases and vacancy of judges.
- It showed that in the last 3 decades, the number of cases increased by 12 folds while the number of judges increased only by 6 folds.
- Widening Gap: The gap between the number of judges and cases is widening. In the next 3 decades, the number of cases is expected to rise by approximately 15 crores requiring a total no of judges about 75000.
- In fact, currently the 25 high courts have the strength of less than 1200 judges.
- Article 39 (A) of the Constitution directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity and shall, in particular, provide free legal aid by suitable legislation or schemes or in any other way.
- Though 'access to justice' has not been specifically spelt out as a fundamental right in the Constitution, it has always been treated as such by Indian courts.
- In Anita Kushwaha v. Pushpa Sadan (2016), the Supreme Court held unambiguously that "life" implies not only life in the physical sense but a bundle of rights that also means right to access justice.
- Further, the court pointed out four important components of access to justice. It pointed out the need for adjudicatory mechanisms. It said that the mechanism must be conveniently accessible in terms of distance and that the process of adjudication must be speedy and affordable to the disputants.
- The Government has undertaken several measures to make available affordable, quality and speedy justice to the common man. The Legal Services Authorities (LSA) Act, 1987 provides free and competent legal services to the weaker sections of the society including beneficiaries covered under Section 12 of the Act .
- To ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities, and to organize Lok Adalats to secure that the operation of the legal system promotes justice on a basis of equal opportunities.
- For this purpose, the legal services institutions have been set up from the Taluk Court levels to the Supreme Court. During the period from April, 2021 to November, 2021, 60.17 lakhs persons have been provided with free legal services and 132.37 lakhs cases (pending in courts and disputes at pre-litigation stage) have been settled through Lok Adalats.
- Legal Aid Clinics have also been set up in jails, observation homes, juvenile justice boards which are manned by panel lawyers and para legal volunteers of legal services authorities.

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- Further, to enable equitable access to justice, National Legal Services Authorities (NALSA) has also launched Legal Services Mobile App on Android and iOS Version to enable easy access to legal aid to common citizens.
- The Government has launched two important legal empowerment initiatives which includes Nyaya Bandhu (Pro-bono Legal Services) programme to link the persons eligible to avail free legal aid under Section 12 of LSA Act, 1987 with the pro-bono lawyers. 3840 pro bono advocates have been registered under the programme and 1440 cases have been registered by the beneficiaries.
- The other initiative is the Tele-law: Reaching the Unreached, being run by the Government which provides legal advice to public including persons entitled for free legal aid under Section 12 of LSA Act, 1987, at pre-litigation stage by the Panel Lawyers through the Common Service Centers (CSCs) at the Panchayats. Tele-law has served more than 13.7 lakh beneficiaries till date.

Way Forward-

- Streamlining the Appointment System: The vacancies must be filled without any unnecessary delay.
- A proper time frame for the appointment of judges must be laid down and the recommendations must be given in advance.
- The Constitution of the All India Judicial Services is also an important factor which can definitely help India establish a better judicial system.
- Use of Technologies: People are becoming more and more aware of their rights and which is why the number of cases filed in court are also increasing.
- To deal with that judicial officers need to be trained, vacancies for the judges must be filled up expeditiously and in addition the use of technology particularly artificial intelligence must be encouraged.
- Dispute Resolution: The adjudication of disputes within a short time frame is important to ensure the trust of the people within the judicial system.
- Out of Court Settlement: Resolving every case within the court premises is not mandatory; other possible systems must also be accessed.
- Alternate dispute resolution (ADR): As stated in the Conference on National Initiative to Reduce Pendency and Delay in Judicial System- Legal Services Authorities should undertake pre-litigation mediation so that the inflow of cases into courts can be regulated.
- The Lok Adalat should be organized regularly for settling civil and family matters.
- Gram Nyayalayas, as an effective way to manage small claim disputes from rural areas which will help in decreasing the workload of the judicial institution.
- Village Legal Care & Support Centre can also be established by the High Courts to work at grass root level to make the State litigation friendly.

Conclusion -

The fundamental requirement of a good judicial administration is accessibility, affordability and speedy justice, which will not be realized until and unless the justice delivery system is made within the reach of the individual in a time bound manner and within a reasonable cost.