Total Time Alloted: 3 Hours | Total Marks : 250

Question Paper Specific Instructions

- Please read each of the following instructions carefully before attempting questions.
- There are EIGHT questions divided in two sections.
- A candidate has to attempt FIVE questions in all.
- Questions no 1 and 5 are compulsory and out of the remaining, THREE are to be attempted choosing at least ONE from each section.
- The number of marks carried by a question /part is indicated against it.
- Word limit in questions, wherever specified should be adhered to.
- Attempts of questions shall be counted in chronological order. Unless struck off, attempt of a question shall be counted even if attempted partly. Any page or portion of the page left blank in the answer book must be clearly struck off.

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NOTE: Please take a printout of the answer Booklet and give answers in stipulate time. So that actual examination scenario is stipulated.

Name: RUPAL JAISWAL
Subject: CONSTITUTIONAL LAW
Phone: _____

good, you have explored on structure, pros & cons

Teacher's Remark

L(a) Constitutionalism is the antithesis to arbitrary powers. Elucidate.

According to Fritsch Barche, Constitutionalism is a set of ideas, attitudes and doctrines which limits the power of a government.

Constitutionalism as antithesis to arbitrariness

Constitutionalism serves following purposes

① Infuses limits in the written constitution ⇒ Keshvanand Bharati v. State of Kerala's Basic structure doctrine

② Protects rights of citizens against discretion (A or Gel

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In I. R. Coelho v/s State of Tamil Nadu, Schedule IX laws held subject to Fundamental Rights which are basic structure

③ Upholds Constitutional sovereignty like S.R. Bommai v/s Union of India held popular sovereignty, not Parliamentary sovereignty.

Thus, by serving aforesaid purposes, Constitutionalism limits discretionary powers of both Parliament and executive thereby serving safeguard against arbitrariness.

A constitution may be absent in a democracy, but constitutionalism must exist [eg. in UK] to prevent arbitrariness and establish Rule of Law.

1 (b) Rule of law has no fixed or articulate connotation. though Indian courts refer to this phrase time and again. comment in light of judicial decisions.

Sir Edward Baker defines "Rule of Law" as "King is not the law but law is the king."

Rule of law in India

Supreme Court has incorporated rule of law in Indian Constitution progressively:

① ADM Jabalpur V/s Shivakant Shukla - majority held rule of law restricted to Art 21. But dissenting judgment by Justice HR Khanna held Rule of Law runs through entire fabric and is "antithesis to arbitrariness.

② Indira Nehru Gandhi V/s Raj Narain

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– held rule of law to be "absence of privileges" thus even election of Prime Minister can be reviewed.

(3) I R Coelho v/s State of Tamil Nadu – Schedule IX can't be immune to judicial review – bar of judicial review against rule of law.

(4) Navtej Singh Johuhar v/s Union of India – Art 21 includes right to dignity, sexual orientation – constitutional morality refused with rule of law to determine rights, not rule by men.

Clearly, Indian court has evolved several principle together forming doctrine of 'Rule of Law'. As remarked by Lord Denning "Be you ever so high law is above you" correctly describes Rule of Law in India too.

1 (c) Discuss the utility of Preamble in the Indian Constitution.

Professor Nani Palkhivala describes Preamble as "Identity card of the Constitution."

Utility of Preamble in Indian Constitution

(1) Lays down basic principles/philosophy of our Constitution like "Sovereign, socialist, secular democratic republic

(2) States ideals and aspiration of people of India ie. justice equality liberty fraternity

(3) Indicates source of power/basis of constitution ie "we the people

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of India :

(4) mentions date of enactment of Constitution i.e. November 26, 1949.

(5) Guides judicial interpretation of the constitutional provisions like in Keshavanand Bharati V/s Union of India

(6) Fills gaps in the Constitution

Thus, Supreme Court rightly held in Keshavanand Bharati case that Constitution is prepared to the Constitution

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L(d) Article 14 provides positive and not negative equality. Explain

Art-14 of the Constitution states "State shall ensure to all persons equality before laws and equal protection of laws.

Negative Equality	Positive Equality
↳ All persons treated equally	↳ unequals not to be treated equally
↳ provides formal equality ie. Equality before law	↳ substantive equality ↳ equal protection of laws
↳ enshrined in Art. 14, 15, 16	↳ enshrined in Art. 15(3), (4) and Art 16(3), (4), (6).

(Article 14 and positive Equality)

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~~stat~~ N M Thomas v/s State of Kerala held Art. 14 incorporates both positive and negative equality. Thus, affirmative actions like reservations under Art. 15 and 16 is but a facet of this positive equality.

Further in Gaurit Abhiyan v/s Union of India (2023), while upholding 103rd Constitutional Amendment reserving seats for Economically weaker sections, supreme court upheld state's power to take positive measures to bring substantive equality.

Clearly, Art. 14 incorporates both positive and negative equality. Like Mandal Commission said, it is the greatest injustice to treat unequals equally.

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1(e) PIL is a tool for strengthening democracy. Elucidate

Justice PN Bhagwati (father of PIL), remarked once "no one shall be denied justice because of poverty"

Thus, Public Interest Litigation is a tool to bring true democracy.

Role of PIL in democracy

(1) Voice to the underprivileged & ex. Sandhu Mukti Morcha case, grievances of begaar workers resolved

(2) Fulfil goal of Art 39(A) – State obligation to provide free legal aid.

(3) Public spirited individuals promoted

like SP Gupta v/s Union of India allowed advocate to seek judicial independence

④ Address public grievances / group rights like in PUDR v/s Union of India, wages / working conditions of Asiad workers highlighted.

⑤ Hold government accountable like in Husainara Khatun v/s State of Bihar, a ~~welfare~~ NGO member highlighted prison apathy.

However SC highlighted in State of Bihar v/s Balwant Singh Chaufal the risk of public interest litigation becoming private interest litigation. need to curb such "busybodies" at the preliminary stage essential to ensure democratic tool's sanctity maintained.

5(a) Discuss the doctrine of eminent domain. Has it lost its relevance in India today?

Doctrine of Eminent Domain evolved to ensure State has prerogative to acquire private property to uphold public interest.

Concept of Eminent Domain based on two maxims:

↳ Salus populi suprema lex ie. public good is highest law

↳ public good to override private good

In common law, the doctrine ensures:

↳ ~~no power~~ state can acquire private property but only ~~in~~ for

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public purpose and subject to adequate compensation.

Relevance in India today

Post-deletion of 'Right to property' as fundamental Right under Art 19(1)(f), the doctrine ensured that power of state not used arbitrarily.

① Sooraniddy v/s ~~Collector~~ Raya Reddy
- Doctrine of Eminent domain contenious to limit state discretion property can't be acquired malafide or for private purpose.

② Court has read Doctrine of Eminent Domain to Art 300A "~~State~~ ~~Cannot~~ no person to be deprived of right to property unless authorized by law.

Thus, doctrine of Eminent Domain still relevant and applied by Court

5(b) What are the major constitutional provisions ensuring independence of the Supreme Court of India.

In State of Madras V/s V G Row, the Supreme Court was described as "Sentinel on the Qui Vive" ie watchful guardian of Constitution thus its independence is essential for Indian democracy.

Provisions ensuring judicial independence

① Art. 129 - Court of Record - power to punish for contempt like in In Re Vinay Chandra Mishra

② Art. 122 - conduct of judges cannot be discussed by Parliament unless resolution for their removal

③ Art. 141 - all authorities to aid

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Supreme Court

④ Art 124 : Appointment in consultation with Supreme Court [Read as 'Concurrence' in Second Judges Case, 1994]

⑤ Art 126 - power to appoint acting Judge and prescribe their conditions of service

⑥ Salaries charged on Consolidated Fund of India [Art. 112]

⑦ Removal only on resolution passed by 2/3rd of majority and simple majority of total membership of the Parliament.

Thus, Constitution has a does excellent job of securing Supreme Court's independence and SCARA v/s Union of India (2015) rightly held judicial independence as basic structure

5(c) Supreme Court recognized the right to die with dignity as a fundamental right. Discuss in light of decided cases.

Right to die with dignity implies right to die peacefully at the end of one's natural life, without suffering unnecessary pain / hardship

Supreme Court on Right to Die :

① P Rathinam Vs Union of India - held right to die implied in Right to life under Article 21.

Thus, decriminalized suicide under Section 309 (IPC)

② Gian Kaur Vs State of Punjab.
Right to die not included in

right to life. One cannot demand to end life before its natural course.

Thus, right to die not a fundamental right but right to die with dignity is.

(3) Aruna Shanbaugh v/s Union of India (2013) - permitted "passive euthanasia" of a terminally ill patient on life support provided no possibility of recovery.

Thus, recognizing right to end life/ die with dignity at the end of natural term.

Recently, Court also issued guidelines on Advance Medical Directives in Common Cause v/s Union of India, thus upholding right to die as per procedure of own choice.

Q(d) Local governance in India needs to be constitutionally reformed. Suggest measures for the same.

Local governance (third tier of polity)
Was ushered by 73rd and 74th constitutional Amendment Act on recommendation of Gadgil committee

Issues with functionality

- 3Fs issue (funds, functions, functionaries) as items under Schedule XI and XII not devolved
- Elections not held regularly as mandated (every 5 years)
- State finance Commission recommendation not accepted by states for financial devolution
- controversy over reservation for "backward classes"

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Revitalization through Constitutional Reforms

Sarkaria Commission and 2nd Administrative Reforms Commission recommended:

↳ amending Schedule IX and IX A to mandate some powers devolution

↳ prescribe clear definition of "backward classes under Art. 243(D) and 243T to enable reservation for politically backward castes [Vikas Kisanrao Gawali V/s State of Maharashtra]

↳ make recommendation of state finance commission binding with limited exceptions

Thus, ensuring genuine democratic decentralization necessary to realize Gandhian ideal of Village self-governance under Article 40.

5(e) What are the major provisions under the Constitution governing legislative power division between the Union and the States?

Indian Constitution is a principled federation [Prof. DD Basu] as it delineates clearly division of powers between Centre and States.

Provisions on legislative division of powers

① Art 245 – territorial jurisdiction of Central Parliament over entire Indian territory.

States can make laws within their territory (under schedule I) and even for those acts which produce effects in their territory [State of West Bengal v/s Union of India]

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(2) Art 246 - Subject matter jurisdiction
↳ Union List - exclusive power of Parliament to legislate
↳ State List - exclusive power of State to legislate unless Rajya Sabha resolution otherwise states (Art 249)
↳ Concurrent list - both states and Parliament can legislate

(3) Art 248 - residuary power of legislation with Parliament

(4) Art. 254 - in case of repugnancy between Parliamentary and state laws, Parliamentary law to prevail.

Test of pith and substance evolved by Supreme Court of in Union of India vs. R.C Cooper to adjudicate and resolve conflict between legislature powers.

6(a) Governor is an independent constitutional office and not subject to the control of the government of India. Discuss in light of recent judicial decisions.

Governor has been described as the ~~lynchpin~~ lynchpin of federalism in India [Prof MP Jain]. He performs dual role of being agent of the centre and as executive head of the state [under Art. 163].

Status of Governor's office

① Independent judicial office i.e not an employment under the union [B P Singhal v/s Union of India]

② Power over legislative bills [Art 200] - can accept, withold assent or

even reserve for consideration of the President.

However, Supreme Court in State of Punjab v/s Secretary, Governor of Punjab (2023) held power to withhold assent to bills not absolute. Governor must return the bill back to legislature. If legislature passes again, bound to grant assent.

(3) Power to use discretion when constitution requires like recommending President Rule [Art 356] or administer Union territories by President equals.

However, independence

of Governors office threatened due to Central government interference.

Subject to control of the Central government?

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① Doctrine of Pleasure abused – governor removed on whims and fancies of Centre

② Reports to the Centre like recommending President Rule in Uttarakhand in 2016

③ Reserves and sits over bills as per Central government direction
of under Article 200.

④ Discretion abused in certain cases eg. President rule ordered without floor test (Rameshwar Prasad V/s Union of India)

Supreme Court decisions

① Shamsher Singh Kataria v/s Union of India - Governor not to act independently of ~~Press~~ Council of Ministers of the state

② State of Punjab v/s Governor's Secretary (2023) - return bills within 3 months at the most

Thus, Supreme Court decisions impose limits on governor's discretion while reducing central influence. Judicial review of governor decisions [BP Singhal case], Nabam Rebia case (2016) help in maintaining independence of Governor's office

General Executive Position of State

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6(b) ~~Right to administer educational institutions~~ Discuss the scope of Art 19(1)(a) in the Constitution. What are various rights that flow from freedom of speech and expression

Art. 19(1)(a) guarantees "Right to freedom of speech and expression. It is in line with international Bill of rights.

Scope of Art 19(1)(a)

① Supreme Court's Doctrine of Progressive Realization of rights has ensured expansion of right under Art 19(1)(a)

↳ speech includes right to remain silent

↳ Right to vote without coercion [PUCL v/s Union of India under Art 325)

↳ right to information included held in Mazdoor Kisan Shakti Karan Sangathan v/s Union of India

↳ Right to be informed held in Tata Hq. v/s MTNL

↳ Right to express sexual orientation (Navtej Singh Jauhar v/s Union of India)

↳ Right to online speech M.s XXX v/s Union of India & Shreya Singhal v/s Union of India

↳ Freedom of Press - Indian Express Newspapers Ltd v/s Union of India

(2) Reasonable Restrictions under art 19(2) to limit freedom under Art 19(1)(a)

↳ public order (justified

internet shutdown orders under Telegraph Act in Anuradha Bhasin v/s State of Jammu & Kashmir

↳ incitement to offence of section 66B to 66E under IT Act

↳ security of state

↳ Friendly relation with sovereign state

↳ Defamation [Subramanyam Swamy v/s Union of India upheld]

↳ Contempt of Court

Supreme Court has however ensured restriction not abused prescribing necessity, proportionality and legitimate purpose [Shreya Singhal v/s Union of India].

Note new direction

6(c) Right to administer education institution accorded to minority educational institution does not include right to maladminister under Art 29 and 30.

Constitution of India grants certain cultural and educational rights to the citizens under Art 29 and 30.

Scope of Art 29

Any section of citizens have right to conserve language, script or culture by establishing institutions, administering them however not allowed to discriminate against other citizens on grounds of religion, race, caste, language [Art 29(2)]

Art. 30 scope

grants right to minorities,

whether religious or linguistic, to establish and maintain educational institutions of their choice

RIGHT TO ADMINISTER

Supreme Court in St. Xavier's College case held right to administer includes:

- ↳ Right to appoint teachers
- ↳ decide fees
- ↳ nominate management

however, regulations which aim at ensuring educative quality like syllabus, working conditions of staff, social security can be prescribed by the State.

In Francis Anthony School

case, Supreme Court held even minority educational institutions must maintain standard of education.

Further in P A Inamdar v/s Union of India, it was remarked "Right to administer does not mean right to maladminister". Thus, the minority educational institutions cannot claim exemptions from minimum secular standards of education.

Even TMA Pai case, regulation on capitation fees were held applicable to minority educational institutions.

Thus Supreme Court has limited scope of Art 30, 29 to ensure minority educational institution not maladministered

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8(a) The Council of ministers shall be collectively responsible to the Lok Sabha. Explain.

Collective responsibility of Council of ministers to the Lok Sabha is the essence of "Parliamentary system of governance.

Constitutional provisions

① Art. 75(3) - council of ministers shall be collectively responsible to the Lok Sabha.

As per Prof DD Basu, this responsibility enforced through No confidence Motion.

② Art. 110 - financial responsibility to Lok Sabha ensured. President to cause Annual

financial statement to be laid before the House.

③ Art. 75(1) - Council of ministers appointed by President on recommendation of Prime Minister and hold office during his pleasure.

This ensures, individual responsibility of council of ministers to Lok Sabha.

Implications of collective Responsibility

- A minister can dissent from a policy decision in meetings of Council but must defend the decision in public.
- Individual ministers if unable to defend decision, must resign
- If PM resigns, entire council dissolved

Efficacy of enforcement of collective Responsibility

① No confidence motion
- moved 27 times since independence but not passed once.

② Demand for Grants
voted by Parliament — ensures no uneconomical financial demands. If demand for grants not passed, can result in resignation of Council of ministers.

③ ~~Adjournment~~ Censure motion
- can be moved against an individual minister and if passed, minister may

be asked to explain, resign

(3) Vote of Thanks to Presidential Address -
moved against the Presidential address in reply to the policies mentioned in the address. If it doesn't pass, indicates no faith in Council of ministers.

Counter Question

Thus, Lok Sabha is the democratic organ, which maintains checks and balances on the Council of ministers. This collective responsibility ensures the ministers and and PM swim and sink together.

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8(b) A meaningful reform of the collegium system is due for appointment of judges in higher judiciary. Support your argument

Collegium System was evolved by virtue of Judicial pronouncements in SP Gupta v/s Union of India (1983), Second Judges case (1994) and Third Judges case (1998).

Concept of Collegium

Art. 124 provides for President to appoint judges of Supreme Court in consultation with the Chief Justice of India.

Article 214 provides for appointment of High Court judges

in consultation with Governor, CJI and HC judges.

The Supreme Court in Third Judges Case held

for Supreme Court appointment by Collegium of CJI + 4 senior most SC judges

for High Court appointment by CJI + 2 senior most SC judges

Issues with Collegium System

1. Opacity - discussions not published
2. Nepotism concerns - appointment of sons, daughters of judges
3. Exclusivity of 13.4% and 9% judges are females in HC and SC respectively
4. No voice to Executive - supremacy of judiciary

(5) No expertise in investigating judicial candidate eg. Justice Gauri Lankesh controversy.

Reforms needed

In SCARA V/s Union of India (2015) where NJAC was declared unconstitutional, Justice Chelameshwar suggested alternative:

↳ A panel of evaluators to prepare list of 3 candidate for every post vacant

↳ Supreme Court will vote as full house for appointment from these 3 candidates

→ Con Rev 4

Further, Ministry of Law and Justice suggested "Selection cum Evaluation committee to suggest names - welcome move.

Need to reform Collegium to ensure judicial independent and accountable

8½

8(c) discuss provisions relating to disqualification of members of Parliament. Is anti-defection law against democratic principle?

Art 102 of the Constitution prescribes disqualifications of members of Parliament. The same is supplemented by Representation of People Act 1951.

Provisions on Disqualification

(1) Art 102: President to disqualify in consultation with Election Commission of India if:

(a) MP declared undischarged insolvent

(b) unsound or unfit

(c) holds office of profit

(d) ceases to be a citizen of India

(e) declared disqualified by a court

Speaker power?

(2) RPA 1951:

Section 8 prescribes those MPs disqualified who:

↳ convicted of crimes with more than 2 years imprisonment

↳ accused of social crimes like dowry, untouchability

↳ fail to file election expenses

↳ conflict of interest with government contracts.

↳ convicted for corrupt or electoral malpractice

(3) ANTI-DEFECTION LAW:

Vide Schedule X (introduced in 1985), disqualifies those who give up voluntarily membership

of the party through which they were elected or vote contrary to party's directions.

Impact of anti-defection Law

1. Hinders free debate since freedom of speech restricted However, in Kihoto Hollohan v/s Zachillhu upheld constitutionally
2. Democracy cursed as cannot air grievance of electorate
3. Party bossism - party interests above voter interests

In this light, anti-defection law risks anti-democratic actions. Need to amend the Schedule 10 to prescribe whip binding only in no-confidence motion or when major policy issue (as suggested by Kihoto Hollohn)

2(a) Secularism as the basic feature of the Indian Constitution. What was implicit in the Constitution until then became explicit after the 42nd Amendment

Secularism refers to principle of state having no official religion and is free from any religious considerations in governance.

Constitutional provisions on secularism

(1) Pre - 42nd Amendment in 1976

→ Art 25 - Right to freely express, propagate, profess one's religion subject to other provisions of Part III and subject to public morality, health etc.

↳ Art. 26 - freedom to establish and administer religious institution for charitable or religious purposes

↳ Art 27 - Not be compelled to pay taxes for promotion of specific religion
However, Nasimakhatun v/s Union of India held expenditure on secular matters like education of minorities not prohibited

↳ Art 28 - No religious instruction in institution fully funded by the State. If partially funded or affiliated, religious education permitted with voluntary participation

Thus, secularism ie. detachment of state from religion was prescribed implicitly in the Constitution.

Post-42nd Amendment Act 1976

① Added "secular" to the Preamble, thus India now described as "sovereign, socialist secular, democratic Republic".

When this amendment was challenged, it was upheld in Minerva Mills case (1978).

Further, in SR Bommai case while holding secularism as basic feature of the Constitution Supreme Court held

"Secularism is engrained in various constitutional provisions since independence. What was implicit became explicit after amendment in 1976!

INDIAN MODEL OF SECULARISM

① Positive secularism as opposed to negative secularism ie. state can interfere in religious affairs for social reforms eg Shayara Bano v/s Union of India (Triple Talaq ~~decriminalized~~); Art. 17 forbid untouchability; Art 17(2) threw open Hindu religious institutions.

② Essentially Religious practices protected - Held Shirur Math case, Anand Margi case.

Reaffirming secular fabric of Indian Constitution, Supreme Court praised Places of Worship Act 1991 in M. Siddique v/s Mahant Suresh Das (2020).

Cont'd Assn

↳ Cont'd
↳ Review
↳ Cont'd Assn

Q(b) How has the judiciary evolved the definition of state under Article 12 of the Constitution?

State is prohibited from enacting laws which violate fundamental Rights (Art. 13). Thus, definition of State under Art. 12 holds immense significance for judicial review.

Definition under Art-12

↳ includes central government, Parliament, state legislatures, state government and local authorities

↳ 'other authorities'

Thus, definition is inclusive not exhaustive.

Evolution of State by Judiciary

(1) Rajasthan Electricity Corporation LH case (1967) held other authorities definition restricted to constitutional and statutory authorities

(2) RD Shetty V/s Airports Authority of India (1976) - evolved "instrumentality/agency of the state" criteria. Thus, even a non-statutory body or corporation which is
- ↳ funded
- ↳ management appointed by state
- ↳ monopoly status conferred by state or
- ↳ performs government function

it can be considered state for Art 12.

(3) Recent trends :

→ Towards restrictive definition of state again cf

(a) Pradip Kumar Biswas v/s Indian Centre for Molecular Biology and - CSIR is not state even if 70% funded by state

(b) Naresh Mirajkar v/s State of Maharashtra — judiciary is not state except when performs administrative function like framing rules.

Thus, definition of state has evolved with time. Since welfare state, definition expanded but now since privatization and market economy, constricted definition [reasoned by SC in Zee Telefilms case]

2(c) Discuss the major features of Legal Services Authority Act. How far has it been effective?

Legal Services Authorities Act, 1987 ("LSA") was passed to realize the ideal of free legal aid in Art 39A of the Constitution

Major features of the Act

① Three-tier institutional framework ie. NALSA (S.3) at National level, SLSA (S.6) at state level and District LSA at district level

② Lok adalat provision [S. 15] - Organised both ad hoc and permanent at local level as alternative dispute resolution

③ Court-affiliated Legal Service Committees
↳ SCLSC by NALSA [Sec. 3A]
↳ High Court Legal Services Committee by SLSA [Sec. 6A]

④ Funds for activities at national [National Legal Services Fund], State and District level

⑤ Wide definition of beneficiaries
[S. 12] includes women, person suffering from undeserved want, disabled, undertrials etc.

Evaluation of LSA,

① cheaper / free justice for the indigent thus realizing Art 39A

② Covered pre-trial to post-judgment

of printing, court fee, lawyers fee

(3) Lok Adalats resolved petty disputes effectively

(4) Advocacy and awareness camps by NALSA helped reach the last mile

(5) Right based approach to justice (Hussainara Khatun case recommended)

However, in Anokhi Lal v/s State of MP, supreme court decried low quality of legal services by inexperienced advocates.

Further, in Sukh Das case, Supreme Court pointed out low utilization of legal aid fund due to lack of awareness.

Such deficiencies need to be cured so that 'justice not only done but also seen to be done'