Paper – 1

Total Question Discussed: 04
Question Numbers: Q.2 (a)[i], Q.2 (a) [ii], Q.2 (b), Q2. (c)

2 (a) (i) Discuss the powers and functions of the Lokpal and the Lokayukta under the Lokpal and Lokayuktas Act, 2013. How do you think the office of Lokpal is better than other anti-corruption mechanisms?

Introduction	• **General Introduction Like evolution, significance, rationale**
Body	• **Structure and Function of Lokpal and Lokayukta.** • **There is difference between structure and function do not mix the same. Write under different heading**
Conclusion	• **Advantage of Lokpal over other anti-corruption mechanisms**

The Lokpal and Lokayukta Act, 2013 provided for the establishment of Lokpal for the Union and Lokayukta for States. These institutions are statutory bodies without any constitutional status.
They perform the function of an "ombudsman" and inquire into allegations of corruption against certain public functionaries and for related matters.

Structure of Lokpal:

- Lokpal is a multi-member body, that consists of one chairperson and a maximum of 8 members.
- Chairperson of the Lokpal should be either the former Chief Justice of India or the former Judge of Supreme Court or an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- Out of the maximum eight members, half will be judicial members and minimum 50% of the Members will be from SC/ ST/ OBC/ Minorities and women.
- The judicial member of the Lokpal either a former Judge of the Supreme Court or a former Chief Justice of a High Court.
- The non-judicial member should be an eminent person with impeccable integrity and outstanding ability, having special knowledge and expertise of minimum 25 years in the matters relating to anti-corruption policy, public administration, vigilance, finance including insurance and banking, law and management.
- The term of office for Lokpal Chairman and Members is 5 years or till the age of 70 years.
- The members are appointed by the president on the recommendation of a Selection Committee.

- The selection committee is composed of the Prime Minister who is the Chairperson; Speaker of Lok Sabha, Leader of Opposition in Lok Sabha, Chief Justice of India or a Judge nominated by him/her and One eminent jurist.
- For selecting the chairperson and the members, the selection committee constitutes a search panel of at least eight persons.

Functions and Powers:

- Jurisdiction of Lokpal includes Prime Minister (except on allegations of corruption relating to international relations, security, the public order, atomic energy and space), Ministers, members of Parliament, Groups A, B, C and D officers and officials of Central Government.
- The Lokpal does not have jurisdiction over Ministers and MPs in the matter of anything said in Parliament or a vote given there.
- Its jurisdiction also includes any person who is or has been in charge (director/ manager/ secretary) of anybody/ society set up by central act or any other body financed/ controlled by central government and any other person involved in act of abetting, bribe giving or bribe taking.
- The Lokpal Act mandates that all public officials should furnish the assets and liabilities of themselves as well as their respective dependents.
- The Inquiry Wing of the Lokpal has been vested with the powers of a civil court.
- Lokpal has powers of confiscation of assets, proceeds, receipts and benefits arisen or procured by means of corruption in special circumstances.
- Lokpal has the power to recommend transfer or suspension of public servant connected with allegation of corruption.
- Lokpal has the power to give directions to prevent the destruction of records during the preliminary inquiry.

Structure of Lokayukta: Lokayukta are appointed for 5 years or till attaining age of 70 years.
His salary is equivalent to Chief Justice of India and salary of its members is equivalent to Judge of Supreme Court.
They can be removed from the office by the governor, on the charge of misbehaviour or incapacity proved in the state legislature by 2/3rd majority.

Powers and Functions of Lokayukta
Matters which may be investigated by the Lok Ayukta –

- Subject to the provisions of the Act, the Lok Ayukta may investigate any action which is taken by or with the general or specific approval of chief minister, a minister, a member of the State legislature, the Chairman, Vice-Chairman or a member of an authority, Board or a committee etc. In any case where a complaint involving a grievance or an allegation is made in respect of such action.
- Lokayukta may investigate any action taken by the public servant if it is referred by the state government.
- In the process of investigation, the Lok Ayukta deals with the issue of search warrant. For the said purpose, they have all the powers of a civil court which trying a suit under CPC, 1908 in respect of summoning and enforcing the attendance of any person and examining him on oath, production of

any document, received evidence of affidavits, getting any public record or copy from any court office etc.

- The Lok Ayukta after investigation shall make a declaration with regard to the governor or chief minister of the state to the vacation of office of the said official.

Advantage over Other anti-corruption mechanisms:

Central Bureau of Investigation:

- The Supreme Court of India has criticised the CBI by calling it a "caged parrot speaking in its master's voice", due to excessive political interference in its functioning.
- The powers and jurisdiction of members of the CBI for investigation are subject to the consent of the State Govt., thus limiting the extent of investigation by CBI.

- Lokpal has the powers **to superintendence over**, and **to give direction to CBI**. The Lokpal can summon or question any public servant if there exists a prima facie case against the person, even before an investigation agency (such as vigilance or CBI) has begun the probe. Any officer of the CBI investigating a case referred to it by the Lokpal, shall not be transferred without the approval of the Lokpal.

Chief Vigilance Commission:

- CVC is often considered a powerless agency as it is treated as an advisory body only with no power to register criminal case against government officials or direct CBI to initiate inquiries against any officer of the level of Joint Secretary and above.
- A false complaint filed with lokpal could attract a fine of Rs 1 lakh or jail term, while CVC doesn't have such a harsh approach towards false complaints. Moreover Lokpal will have powers of superintendence and direction over it

Lokpal provides a more comprehensive framework to tackle corruption at the highest levels.

(ii) Explain the Pardoning Powers of the President. Examine how far the Judicial Review can be exercised over such powers.

Introduction	Introduce with the nature of the powers enjoyed by the President in India
Body	List down constitutional provisions on the powers of President. Discuss the nature of pardoning power of the president and examine whether it can be subjected to judicial review. Enumerate case laws on the same.
Conclusion	Conclude generally

The President has been vested with many powers under the Constitution and all the decisions and actions of the Government are taken in his name. But while there are many powers which are enjoyed by the president, many of them are in actual practice, residing with the Council of Ministers which is headed by the Prime Minister.

Judicial Powers of the President
Under Art. 72, the President has power to grant pardon, reprieve, respite or remission of punishment or to suspend, remit or commute the sentence to any person convicted of an offence
(i) in cases where the punishment is by Court Martial,
(ii) for offences against laws made under Union and Concurrent Lists - matters to which executive power of Union extends,
(iii) for death sentences.

Art. 72 further lays down that the power conferred on the President, however, does not affect the power conferred by any law on any officer of the Armed Forces to suspend, remit, or commute a sentence passed by Court Martial, and also the power exercisable by the Governor of State under any law to suspend, remit, or commute a death sentence. It may be noted that the British King and the U.S. President also possess such judicial powers.

Pardoning Power:
The object of conferring this judicial power ("mercy jurisdiction")... is to correct possible judicial errors, for no human system of judicial administration can be perfect.

A Pardon - rescinds both the sentence and conviction, and absolves offender from all punishments.
Commutation - from harder to lighter punishments e.g. from death to rigorous imprisonment.
Remission - reduction of amount of sentence without changing its character e.g. from 1 year to 6 months.
Respite - awarding a lesser punishment on special grounds e.g. pregnancy.
Reprieve - a stay or suspension of execution of death sentence e.g. pending a proceeding for pardon or commutation.

"While exercising his pardoning powers, the President can scrutinize the findings/witnesses on the record and come to a different conclusion both on the guilt of the accused and the sentence imposed on him. In doing so, the President did not amend/modify/supersede the judicial record which remained intact" **(Kehar Singh's case).**

Judicial Review of Pardoning Power: Case Laws
The pardoning power can be exercised before, after or during the trial. The power is exercised, on the advice of the Council of Ministers. The power cannot be exercised when the matter is sub judice in the Supreme Court.

In **Kuljeet Singh v Lt. Governor of Delhi**, the Supreme Court held that the exercise of the President's power would have to be examined' from case to case. It is submitted that to examine case-to-case implies the court's 'judicial review' on a matter which has been vested by the Constitution solely in the executive. The question of standards and guidelines for the exercise of the power by the President under Art. 72 however, were left open by the Court.

In **Kehar Singh v UOI (1989),** regarding the assassination of Prime Minister Indira Gandhi, the President rejected the petition on advice of Union government without going into the merits of Supreme Court's

decision of death sentence. The court held that a pardon is an act of grace and therefore it can't be demanded as a matter of right. The Court need not spell out specific guidelines for the exercise of power... because this power is of the 'widest amplitude' and can
contemplate a myriad kinds of cases with varying facts. The order of the President cannot be subjected to judicial review on its merits.

In **Epuru Sudhakar v Govt, of Andhra Pradesh (2006)**, the Apex Court has held that the pardoning powers of the President under Art. 72, and the Governors under Art. 161 are subject to judicial review. Pardoning power cannot be exercised arbitrarily on the basis of caste or political reasons. It held that if the pardoning power has been exercised on the ground of political reasons, caste and religious considerations it would amount to violation of the Constitution and the Court will examine its validity.

Pardoning/Clemency Power not Unbridled:

In **State of Haryana v Jagdish (2010)**, the Apex Court observed and held: "The power under Arts. 72 and 161 was never intended to be used or utilised by the executive as an unbridled power of reprieve. Power of clemency is to be exercised cautiously and in appropriate cases, which in effect, mitigates the sentence of punishment awarded and which does not, in any way, wipe out the conviction. It is a power which the sovereign exercises against its own judicial mandate. The act of remission of the State does not undo what has been done judicially. The punishment awarded through a judgment is not over-ruled but the convict gets the benefit of a liberalised policy of State pardon.

The power of the sovereign to grant remission is within its exclusive domain and this responsibility was cast upon executive through the constitutional mandate to ensure fulfilment of some public purpose by grant of remission in appropriate cases."

Conclusion: The President of India is a nominal head. He is bound by the advice of the executive. However, he has given some significant powers and immunities at his disposal.

(b) "Distinction between quasi-judicial and administrative functions is no longer the exclusive criteria for deciding whether or not the rule of Natural Justice apply." Critically examine this statement.

Introduction	• Concept of Natural Justice
Body	• General Principles of Natural Justice relating to administrative law • Distinction between Administrative action and Quasi-judicial function • Examine how far the distinction is relevant as to the application of the principles of natural justice
Conclusion	• Differential application of rules of natural justice in administrative action and quasi-judicial action

The principles of natural justice in terms of admisnistrative law are:

- A quasi-judicial authority cnnot make any decision adverste to any party without giving him an effective opportunity of meeting any allegation against him.
- That every person whose civil right is affected must have a reasonable notice of the case he has to meet.
- That he must have a reasonable opportunity of being herard in his defence.
- That he must have the opportunity of adducing all relevant evidence on which he relies.

Distinction between administrative action and Quasi-judicial function:

Administrative action is the residuary action, which is neither legislative nor judicial. It is concerned with treatment of a particular situation and is devoid of generality.

In **A.K. Kraipak vs. The Union of India,** the Court was of the view that in order to determine whether the action of the administrative authority is quasi-judicial or administrative, one has to see

1. the nature of the power conferred
2. to whom power is given
3. the framework within which power is conferred
4. the manner in which that power is expected to be exercised.

Thus broadly speaking, acts, which are required to be done on the subjective satisfaction of the administrative authority, are called 'administrative' acts, while acts, which are required to be done on objective satisfaction of the administrative authority, can be termed as quasi-judicial acts.

However, In **D.K. Yadav v. J.M.A Indiustries Ltd** the Supreme Court further observed that the distinction between quasi-judicial and administrative action which had become thin lined is now totally eclipsed and obliterated.

Application of Rules of Natural Justice: Whether the distinction is the only criterion?

It is well settled that the old distinction between a judicial act and administrative act has withered away and we have been liberated from the pestilent incantation of administrative action.

In A.K. Karipak v. Union of India, it was held that the rules of natural justice operate are not embodied rules and their aim is to secure justice or to prevent miscarriage of justice. If that is their purpose, there is no reason why they should not be made applicable to administrative proceeding also.

In **Chandra Bhavan And Lodging Banglore V/s State of** Mysore, the Supreme Court held that it is not necessary to classify an action of the administrative authority as quasi-judicial or administrative because the administrative authority is bound to follow the principles of natural justice in any case. In this case, the question was whether the power to fix a minimum wage under the minimum wages Act is quasi- judicial or administrative.

Administrative rule-making action is controlled by parliament and and the courts. In the condition of quasi-judicial action, only that classifying determinant can be reasonable which is institutional rather than functional. There are administrative bodies exercising adjudicatory powers which are as full courts. It is only the will of the legislation that these are not classified.

The dividing line between an administrative power and a quasi judicial power is quite thin and is being gradually obliterated. The concept of the rule of law would lose its validity if the instrumentalities of the State are not charged with the duty of discharging their functions in a fair and just manner. Administration decision-making action is not required to follow the elaborate judicial procedure, rather, it is sufficient if, in the absence of any statutory requirement, the action is rendered by the following the minimum procedure of natural justice.

Conclusion:

Administrative action is the residuary action, which is neither legislative nor judicial. It is concerned with treatment of a particular situation and is devoid of generality. It has no procedural obligation of collective evidence and weighing argument and it is based upon subjective satisfaction where decision is based on policy and expediency. It does not mean that principle of natural justice can be ignored completely when the authority is exercising "administrative powers". Unless the statute provides contrary, a minimum of the principle of natural justice must always be observed depending on the factual situation of each case, and impose administrative duty, that while taking "administrative action" the authority must act "fairly"

(c) With the help of illustrations, discuss and differentiate co-operative federalism and competitive federalism.

Introduction	Introduce with the concept of federalism
Body	Differentiate between cooperative and competitive federalism Constitutional provisions pertaining to federalism
Conclusion	How india is faring up its federalism, cite recent examples

The term 'federalism' refers to the constitutionally allocated distribution of powers between two or more levels of government in the modern nation-state system—one, at the national level and the other, at the provincial, state or local level.

Constitutional Position

- Article 1 of the Constitution states, "India, that is Bharat, shall be a Union of States". While the Constitution doesn't mention the term "federal", it does provide for a governance structure primarily federal in nature.
- It provides for separate governments at the Union and in the states. Further, it specifies and demarcates the powers, functions and jurisdictions of the two governments. Lastly, it details the legislative, administrative and financial relations between the Union and the states.
- The distribution of legislative powers has been divided into three lists: the Union List, the State List and the Concurrent List. The Union List, comprising the "vital interests of the State", is the longest.'

- On the Union List, Parliament has exclusive powers to legislate. While the state has exclusive powers to legislate on the State List, in certain situations, Parliament can also do so.
- As per the Concurrent List, the issue is more complex.
- In case of a conflict between a state and a Central legislation, the parliamentary legislation shall prevail.
- This, coupled with the fact that residuary powers of legislation are vested in the Union, gives a "unitary" tilt to federalism in India.
- A disconcerting trend has been observed since 1950. While the Union and Concurrent Lists have expanded, the State List seems to have shrunk. This has led many to question the structure of Indian federalism and to propose its remodelling.

Co-operative Federalism	Competitive Federalism
• All levels of government interact cooperatively and share their responsibilities. • It enables states' participation in the formulation and implementation of national policies. • The scheme of tax sharing between the Centre and the State is an example of Cooperative federalism.	• It refers to the vertical (states and centre) and horizontal (one state with other) relationship between the state organs. • States compete not only among themselves but also with the Centre for benefits. • The idea of Competitive federalism gained significance in India post 1990s economic reforms.

Major instances in recent history:

- Formation of Telangana under Article 3 of the constitution raised a lot of questions against the federal nature of the polity.
- 100th amendment of the constitution where land was transferred to Bangladesh has posed as a serious threat to federalism in India.
- Introduction of Goods & Services Tax is a moot point. Whereas the supporters of GST argue that states too should levy taxes under it, the naysayers argue on the autonomy of states.

Steps toward Competitive Federalism:

- The acceptance of the 14th Finance Commission's recommendations, apart from significantly enhanced devolution (devolution of 42% of the divisible pool to states during 20015-16 to 2019-20, against 32% suggested by the previous commission), enables states to design and implement programmes better suited to their needs.
- Competitive federalism is not yet embraced by all the states. But a handful of states are clearly taking steps to strengthen their business environments, including initiating difficult reforms on land acquisition and labour flexibility.

- Federalism is no longer the fault line of Centre-State relations but the definition of a new partnership of team India.

India needs a mix of Competitive and Cooperative federalism:

- There needs to be a mix of competitive and cooperative federalism for India to move ahead.
- The future for India is cooperative and competitive federalism. Competitive federalism provides the dynamism that needs to be unleashed.
- We need cooperative federalism to balance competitive federalism.
- Constitution needed to catch up with economics to “favour integration over granting sovereignty" to promote Indian internal integration.
- GST which seeks to introduce the concept of one nation-one tax, in order to economically unify the country for the first time, is described this as “pooled sovereignty", which would bring a big change in the working of federalism in the country.

Conclusion:

Cooperative and competitive federalism are not mutually exclusive. They have the same basic principle underlying i.e. development of the nation as a whole.
The passage of GST Bill does usher in a new era in cooperative fiscal federalism and a growing political consensus for economic reforms.
Further, the government’s structural reforms particularly for land and labour, are now widely seen as necessary for realising the potential of the economy.

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