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Editorial Discussion & Analysis (EDA)

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Note -

- The Newspaper clippings pasted in PDF are important from Mains point of view as it contains the fodder material for Mains Answer Writing.
- Also watch DND video lectures everyday @ 4 PM on Sleepy's YouTube channel in order to understand how to get the most out of everyday's Newspaper .

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1. Ethics & Integrity

1.1. Interference an Investigating officer can do Without

- Context- Judicial Intervention vs Judicial Interference in Criminal Investigation by Police.

Why this issue needs to be contested?

- This view should be examined in the background of growing instances of subordinate judicial officers, and even High Courts directing the investigating officer to effect the arrest of a particular individual.

What is Supreme Court's take on this matter?

- SC has stated that courts have no authority to direct an investigating officer to in turn direct the arrest of any particular individual connected with a crime.
- Unreasonable intervention by the courts can cut at the roots of criminal justice ethics. The standard principle of law remains "innocent until proven guilty"

How does Judicial interference impacts Policing?

- Harmful to police morale and cuts at the roots of field policing. There already exists a huge trust deficit between the public and the police.
- Lack of faith in police ability and integrity will make grass-root level police men even more arbitrary than now.
- Court intervention is different than court interference. While the former is constructive, the latter is not sanctioned by law.

What are the provisions in law for Police to perform its Investigation duties?

- Code of Criminal Procedure (CrPC) vests sufficient discretion in the investigating officer to take decisions as arrests and searches, or dropping of the charges after filing of FIR.
- Courts should remember that the police are a well-established hierarchy that is obligated to ensure objectivity during a criminal investigation

Is the Registration of FIR mandatory?

- Well-established by law that a First information report is MANDATORY and not an act of charity.
- The complaint may even be false or malicious in order to settle personal scores, nevertheless the basic requirement is registration of FIR.
- CrPC makes it obligatory for the investigating officer to write a diary that details the action taken every day following registration.

Conclusion

- The courts can question an IO on the merits of his/her investigation in the case post registration of FIR.
- Courts CAN'T direct the officer to arrest anyone before the evidence has been scrutinised. This action of court is unsustainable by law.



- Not justified to paint all the police officers with the same brush of Dishonest, Money gobbling officials. This serves as a disincentive to those who perform their duties diligently.

1.2.A Strong Indian State Must Be Humane

Context- International opinion on India's "liberal" values

Global Views on Stan Swamy's Death

- United States Commission on International Religious Freedom "condemned in the strongest terms the deliberate neglect and targeting by the government of India"
- United Nations Special Rapporteur on the situation of Human Rights Defender- He was arrested on "false charges of terrorism"
- United Nations High Commissioner for Human Rights, Michelle Bachelet, stated, "We are deeply saddened and disturbed"

Defence by Ministry of External Affairs against Global Criticism

- "India's democratic and constitutional polity is complemented by an independent judiciary, a range of national and state level Human Rights Commissions that monitor violations, a free media and a vibrant and vocal civil society"

What should be expected from the State?

- Diplomacy requires engagement with international liberal opinion, not wooden and inflexible assertions of general principles only.
- India's core security interest are paramount, however they should not come in the way of civil liberties.
- India's commitment post independence was to achieve development not through an authoritarian polity but a democratic and liberal one
- Strong and effective state can and must also be a humane state

What are the expectations from Judiciary?

- Special laws are essential to meet the challenges that arise from violence, however they must be applied rationally.
- "Jail is the rule, Bail is the exception" principle can cause a lot of loss of dignity and liberty to an individual who has been arrested under the "special laws".
- Strong evidence, not 'suspicion' must exist to prove his/her guilt.
- SC should conduct an audit of cases where prisoners are languishing in jail for years with insufficient evidence against their charges.

1.3.Post Pandemic Doctor

- Context- Role of Doctors and Medical Education Post Covid

How can Covid-19 become a Catalyst in revamping Medical Ethics?

- New competencies among young doctors amidst the changing channels of demand and delivery of health services.
- Need to revive the Scientific precepts and moral values of the medical profession, which had been obscured by the greed of commercialised healthcare.
- Ability to judge emerging scientific evidence for correctly guiding clinical practice.
- Unfiltered medical information during the pandemic needs to be challenged by sound scientific methodology.

How can Medical Education be more Effective?

- Medical education must teach the essential principles of epidemiology and statistics that underlie good research.
- Doctors should be capable of intelligent interpretation and judicious application of new scientific information.
- Untested drugs for Covid abound in clinical practice because medical education failed to impart skills. Example, Hydroxychloroquine.

How can Medical “Naivety” be detrimental?

- It is unwise to assume that Positive test invariably means presence of disease and a negative test signifies its absence.
- Unnecessary prescription of tests can cause financial and biological cost to patients.

How can Telemedicine be Effective?

- Telemedicine has emerged as an important bridge to clinical care during periods of restricted mobility
- It can become an established component of health systems for a long time to come even when the pandemic is over.
- Medical education must impart the needed technical and social skills to make tele- consultations effective and safe.

What should be expected from Future Medical Professionals?

- Necessary skills for effective public communication and empathetic conversations with patients has been highlighted by the pandemic.
- Confusing medical jargon requires simpler and clear communication to ease the pressure of the patients and their loved ones.
- Synergy of scientific sensibility and compassion
- The duty of a physician is “to cure sometimes, to relieve often, to comfort always”- Livingston Trudeau



2. Socio -Economic issues

2.1. On Caste, The Road not Taken

Context- Social Justice vs Caste Discrimination

- Remedies for removing caste discrimination keep eluding us due to
- caste-based interests
- political self righteousness

Legacy of Mandal Commission

- Three decades ago, the marriage between politics and jurisprudence gave birth to a consensus which had 3 dimensions
 - ✓ Accepting that caste is the main cause of tradition-born backwardness.
 - ✓ Resorting to “reservation” as the easiest policy response.
 - ✓ Accommodating the political aspirations of the backward sections by expanding the social base of the political elite.
- **Marriage between politics and jurisprudence has resulted in an unwanted child i.e Deadlock on Social Justice**

What are the dimensions of the current Deadlock?

- Represented by demands for reservation made by relatively better-off and politically powerful castes (Jats, Marathas)
- Deep gap that exists within backward sections
- Sharpening caste identities and a weakening social justice agenda

Because of the misuse and overuse of the weapon of reservation, energy generated by the Mandal Commission is now Exhausted.

What are the issues which require consideration in politics and policy discussions?

- Intra-OBC differentiations- Most states have resorted to clumsy arrangements for “most” backward within the OBC.
- Specific advantages and logic of reservation in the three different arenas of employment, education and political representation.
- Limits of reservation and the need to think of additional measures to augment the policy of social justice.

How to quantify backwardness?

- Confusion in distinguishing between backwardness due to
 - ✓ Group's social location in traditional social order
 - ✓ Backwardness resulting from distortions of the political economy

Observation

- Reservation is bound to become the plaything of the political clout of different communities which will produce a regime of separate reservation for relatively dominant castes.
- Time is ripe for a 3rd Backward class commission.

Backward Class Commissions so far

- ✓ Kalelkar Commission- Adhering to Article 340 of the Constitution of India, the First Backward Classes Commission was set up by a presidential order on 29 January 1953.
 - ❖ Its objective was to identify backward classes other than the Scheduled Castes and Scheduled Tribes at the national level.
- ✓ Mandal Commission- Headed by B.P Mandal 1979 by the Janata Party government under Prime Minister Morarji Desai.
- This report though completed in 1983, was implemented by the V.P Singh Government in 1990.
- **Mandal Commission recommended increasing the existing quotas, which were only for SC/ST, from 22.5% to 49.5% to include the OBCs.**



3. Governance

3.1. India Needs A Renewed Healthcare System

Context- Focus on Public health and Regulate Private Healthcare

- How have the Developed states fared in the response towards the health crisis?
- Considering the example of Maharashtra and Kerala , which share a similar per capita Gross State Domestic Product, it has been observed that fatality rates are hugely different – this being 0.48% for Kerala and 2.04% for Maharashtra.

What is the reason behind this?

- Studies suggest that there are huge differences in the effectiveness of public health systems
- Kerala has per capita two and a half times more government doctors higher proportion of government hospital beds when compared to Maharashtra.
- In comparison Kerala allocates per capita over 1.5 times higher funds on public health every year.

Maharashtra has a large Private health care sector which is weaker as compared to the Strong Public health care services in Kerala.

What should be the Immediate focus of the new Health Minister?

- National Health Mission (NHM)- Since 2017-18, Union government allocations for the NHM have declined in real terms
- This results in inadequate support to States for core activities such as immunisation.
- This year's Central allocation for the NUHM is ₹1,000 crore, which amounts to less than ₹2 per month per urban Indian.

Why should the Private Sector be regulated?

- Massive hospital bills have caused untold distress even among the middle class
- The 'Remdesivir panic' was significantly linked with major overuse of this medicine by unregulated private hospitals.
- Irrational use of steroids in COVID-19 patients, especially diabetics, led to frequent outbreak of Mucormycosis

Do we have a provision in law to deal with Private Healthcare?

- Clinical Establishments (Registration and Regulation) Act (CEA)
- Passed in 2010 and presently applicable to 11 States across India, this Act is not effectively implemented.
- Despite this provision 15 State governments invoked disaster-related provisions to regulate rates for COVID-19 treatment in private hospital.
- Comprehensive regulation of private health care in public interest now must be a critical agenda .

What does NITI Aayog report prescribes?

- NITI Aayog has recently published the document, 'Investment Opportunities in India's Healthcare Sector.'
- No acknowledgement towards the negative aspects of unregulated private health care; No mention of the need for regulation of private hospitals

Conclusion

- COVID-19 epidemic should not be used as a prime business opportunity to be exploited.
- Proposals for handing over public hospitals to private operators, who would then operate on commercial objectives, is deeply worrisome.
- Critical to rebuild people's trust in public health systems.
- Moves for further privatisation, will benefit health-care corporates and not ordinary people.

3.2.Why Section 124 A

Context- Do we need a Sedition Law after 75 years of Independence

What are the Views of Supreme Court?

- Colonial-era legacy that penalises "sedition" with a maximum punishment of life imprisonment and empowers the police to arrest without a warrant.
- Chief Justice N V Ramana questioned the need for "a law that was used by the British to silence Mahatma Gandhi and Tilak.
- CJI observed that courts should ask more questions to law enforcement agencies when they invoke 124A.

What was the view post 1962, Kedar Nath Singh Judgement?

- In 1962 apex court upheld the constitutional validity of the sedition law.
- Ruled that citizens have a right to criticise the government as long as they do not incite violence
- However, it has been observed by the SC that in recent times, the lower courts have failed to apply the Kedar Nath criteria in probing the arrest orders

Pre Independence Perspective

- The offence of sedition under section 124 A of the IPC was inserted in the code in 1870.
- In 1922 (post Non Cooperation Movement) Gandhiji was tried under the sedition act of IPC
- Mahatma Gandhi On Sedition "*Perhaps the Prince among the political sections of IPC designed to suppress liberty of citizen*"
- Mahatma Gandhi felt that One should be free to express his/her disaffection so long as there is direct call/action of inciting or committing violence.



Post Independence Judgments

- Kedar Nath Singh (1962) The SC stated that incitement to violence is gist of "offence of sedition"
- Balwant Singh (1995) - slogans for a separate Sikh state was not found to be seditious as far as the "essential ingredient" for incitement to violence is concerned
- In the recent Vinod Dua (2021) The top court observed that a Journalist cannot be booked for sedition expressing dissent.,

3.3. Abolish Sedition

Context- Instead of Raising Questions, the Court should resort to measures

Will Judicial Reconsideration give "Good Riddance" from Sedition?

- If the legal challenge is efficacious, the SC will declare the law unconstitutional.
- Court may resort to an alternative and instead read down the law to a stricter and limited interpretation of the offence.

What were the Observations in Kedar Nath Judgement?

- Originally defined as the act of inciting disaffection, which included feelings of enmity, hatred, contempt and disloyalty against the government.
- If there is no tendency which will result in disorder through incitement of violence against the government, the charge of sedition cannot be upheld.

Criticism of this Judgement

- Ambiguous test where the speech is measured on the parameter of its "tendency" to result in public disorder.
- No clarification on how to gauge the tendency of a speech

Observations

- Abolition of the offence of sedition - would be posed against a lacuna in the law which would allow for incitement to violence against government to be covered under protected speech
- Nullify the law criminalising sedition can be perceived as protecting the right to incite violence against the government.

What can be the Solution ahead?

- "Incitement to violence against government" was an idea introduced by the court in Kedar Nath case.
- Court needs to establish a relationship between expressions against the government and their repercussions on public order.
- **Abolishing the offence of sedition will be in the best interest for restitution of the constitutional right to free speech.**
- However only the courts can validate its unconstitutionality.