

GS TEST – 13 MODEL ANSWERS

1. The recent debates on Article 35A in Jammu and Kashmir have become more political than legal. Comment. Also, highlight the anomalies of the article with respect to fundamental rights and gender justice. 12½

Approach of an Answer

- Introduce by elaborating the political sensitivity of Article 35A.
- Briefly discuss the genesis and the provisions of Article 35A.
- Highlight how the article is in contravention to fundamental rights and gender justice.
- Conclude on an optimistic and progressive note.

Introduction

The Centre's decision not to support the State Government's stand in the Supreme Court for dismissal of the petition, which has called for striking down Article 35A has charged the political atmosphere in the state. It has united both the main and opposition parties of the state and warned the center that any tinkering would lead to massive protests and the other side of the political spectrum too raised the ante for full integration of the state there by vitiating the political atmosphere of the state.

Genesis and Provisions

Article 35A, which was added to the Constitution by a Presidential Order in 1954, accords special rights and privileges to citizens of Jammu and Kashmir. It was added by then President Rajendra Prasad on the advice of the Jawaharlal Nehru Cabinet. The controversial Constitution (Application to Jammu and Kashmir) Order of 1954 followed the 1952 Delhi Agreement entered into between Nehru and then Prime Minister of Jammu and Kashmir Sheikh Abdullah. The Presidential Order was issued under Article 370 (1) (d) of the Constitution.

Some of the provisions of article 35A are:

- Article 35A of the Indian Constitution is an article that empowers the J&K state's legislature to define "permanent residents" of the state and provide special rights and privileges to those permanent residents.
- It also empowers the state's legislature to frame any law without attracting a challenge on grounds of violating the Right to Equality of people from other states or any other right under the Indian Constitution.
- Article 35A permits the legislature of Jammu and Kashmir to define a list of "permanent residents" of the state, who are eligible to vote, work for the state government, own land and property within the state as well as secure public employments and college admissions.

Article 35A as violation of Fundamental Rights and Gender Justice

The Permanent Resident classification backed by the Article 35A violates the Article 14 of the Constitution, which

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confers the fundamental right to equality before the law. The Art 35A is in direct violation of the fundamental right as the non-resident Indian citizens cannot have the rights and privileges, same as permanent residents of Jammu and Kashmir.

The resolutions passed by the State legislature under this Article give succession rights to the children of men who are married to non-permanent women residents, but deny the same to the children of women in the same position. It leads to the violation of the right of a woman to 'marry a man of her choice'. If a J&K woman marries a non-Permanent Resident of J&K, their heirs loose to any right to property.

Conclusion

Jammu and Kashmir is an integral part of India. The State occupies a special status in the political realm of the country due to historical and geographical factors. The Article 370 of the Indian Constitution accords legal backing to this understanding and act like a bridge between the Indian Constitution and the Constitution of Jammu and Kashmir. As the present controversy over the Article 35A, albeit indirectly, is touching upon some of the fundamental tenants governing the Centre-State relationship vis-à-vis Jammu and Kashmir, the judiciary, as the custodian of the Constitution, is the right platform to decide upon the issue. Instead of politicization the issue, it has to be dealt in the most prudent way and considering the welfare of the state as a whole along with upholding the constitutional validity and gender equity.

2. **Recently, Supreme Court has given a landmark judgment on Right to Privacy. In this background, describe the evolution of Right to Privacy as a fundamental right since Independence. Examine the implications of recent judgment on Section 377 of the Indian Penal Code (IPC).** 12½

Approach of an Answer

- Introduce by discussing the recent debates around privacy.
- Describe the evolution of Right to Privacy in India.
- Add a brief note on the recent Supreme Court judgment on right to privacy.
- Examine the judgment and its implication on Section 377.
- Conclude on an optimistic and progressive note.

Introduction

It was the Aadhar push by the Central government which made many citizens file petitions before the Supreme Court – to declare Privacy as Fundamental Right. The petitioners wanted Supreme Court to recognize, among other things, a fundamental right to privacy under the Constitution. Globally too privacy vs security debates are ever increasing especially in the light of influx terrorism.

Evolution of the Right to Privacy

The earliest recordings of 'right to privacy' in Indian jurisprudence were in the late 1800s when a local British court upheld privacy of a pardanashin woman to access her balcony without the fear of the neighborhood gaze. The jurisprudence has evolved ever since and the right to privacy was read into 'Article 21' of our Constitution by the Supreme Court as an integral part of 'personal liberty'.

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That privacy is not a fundamental right was first told to us by the Supreme Court in the year 1954. An eight-judge bench in *M.P. Sharma v. Satish Chandra* case dismissed the existence of a right to privacy on the basis that the makers of Constitution had not envisaged a fundamental right to privacy similar to the 4th Amendment in the U.S.

Our desire for a private life made a comeback after nine years before a six-judge bench of the Supreme Court in the case of *Kharak Singh v. State of Uttar Pradesh*, only to be rejected again. Our desire for a private life made a comeback after nine years before a six-judge bench of the Supreme Court in the case of *Kharak Singh v. State of Uttar Pradesh*, only to be rejected again.

Twelve long years later, the Supreme Court, albeit a smaller three-judge bench, when faced with a similar factual matrix in *Gobind v. State of Madhya Pradesh*, upheld the existence of a fundamental right to privacy under Article 21. However, the right was not absolute and could be interfered with by a procedure established by law.

Privacy jurisprudence was further strengthened in the post-liberalisation era. In the case of the infamous gangster from Bangalore, "Auto Shanker" (*R. Rajagopal v. State of Tamil Nadu*), the Supreme Court dealt with a conflict between the freedom of press and the right to privacy and held that the latter had acquired a Constitutional status.

By this time, privacy had assumed an inherent role in our fundamental rights jurisprudence that helped us lead a dignified life without fearing surveillance.

Supreme Court Judgment on Right to Privacy

Delivering a unanimous verdict, Supreme Court overruled the earlier eight-judge bench judgment in **MP Sharma case** and six-judge bench judgment in **Kharak Singh case** – both of which had ruled that privacy is not a Fundamental Right.

Supreme Court of India has held that right to privacy is a Fundamental Right and it is protected under Article 21 of the Constitution of India. This verdict has a huge impact on the lives of 134 crore Indians.

Implication of SC judgment on Section 377

Apart from obvious implication on policy making, the judgment has perhaps very important implication on section 377. Section 377 of IPC which came into force in 1862 defines unnatural offences. It says, "Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to 10 years, and shall also be liable to fine. Homosexual intercourse was made a criminal offense under Section 377 of the Indian Penal Code, 1860.

The Supreme Court, in its judgment on privacy, said that right to privacy and the protection of sexual orientation lie at the core of the fundamental rights guaranteed by Articles 14, 15 and 21 of the Constitution. The court noted that sexual orientation is an essential attribute of privacy, and discrimination against an individual on the basis of sexual orientation is deeply offensive to the dignity and self-worth of the individual. The rights of the lesbian, gay, bisexual and transgender (LGBT) population cannot be construed to be "so-called rights", the court noted. The court held the 2014 verdict upholding section 377 of the Indian Penal Code is flawed. The apex court held that discrimination against an individual on the basis of sexual orientation is deeply offensive to the

The court's judgment reinforces the Delhi High Court judgment in the Naz foundation case as the correct constitutional position. The judgment gives a new lease of life to the prolonged fight to decriminalize Section 377 of the IPC, a colonial-

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era provision criminalizing consensual sexual acts of LGBT adults in private. The Supreme Court may draw inspiration from the recent verdict of primacy of privacy which has been recognized as one of the Fundamental Rights

3. **Paid news not only undermines the credibility of the fourth estate but also corrodes the fundamentals of electoral democracy. Comment. Also, examine the reasons on the growing menace of paid news.** 12½

Approach of an Answer

- Introduce with a brief description about Paid News.
- Discuss the problem of Paid News and its reasons for its growth.
- Suggest some ways to deal the problem of Paid News.

Introduction

The Election Commission's order disqualifying Madhya Pradesh Minister Narottam Mishra for three years is an important step in curbing 'paid news' in the electoral arena.

India is the world's largest democracy. A vibrant and diverse mass media is an important pillar of democracy in the country. The independence of the media facilitates adherence to democratic norms. Article 19 of the Constitution of India confers the right to freedom of speech and expression to all citizens of the country and to the media as well.

Media provides a service that is akin to a public utility – it exercises its right to inform because the public has a right to know. The press thus functions as a repository of public trust and has the obligation to provide truthful and correct information to the best of its ability.

Problem of Paid News

However, In recent years, corruption in the Indian media has gone way beyond the corruption of individual journalists and specific media organizations - from "planting" information and views in lieu of favours received in cash or kind, to more **institutionalized and organized forms** of corruption wherein newspapers and television channels receive funds for publishing or broadcasting information in favour of particular individuals, corporate entities, representatives of political parties and candidates contesting elections, thus misleading the public and hampering the ability of people to form correct opinions.

According to the **Press Council's report**, paid news is "any news or analysis appearing in any media (print & electronic) for a price in cash or kind as consideration".

The EC feels that paid news, as defined by the Press Council, "plays a very vitiating role in the context of free and fair elections" since electors attach greater values and trust news reports more compared to clearly specified advertisements. "Paid news is masquerading as news and publishes advertisements in the garb of news items, totally misleading the electors. To make matters worse, the whole exercise involves use of unaccounted money and underreporting of election expenses in the accounts of election expenses of the candidate..."

Of the 22 states in which Assembly elections were held between 2010 and 2013, Madhya Pradesh was in the top three for the highest number of cases of alleged paid news. 279 notices were issued in the state in 2013, and 165 were confirmed,

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as per EC data from 2014. States with larger numbers of cases of alleged paid news were Punjab and Gujarat, both of which voted in 2012. In Punjab, 339 notices were issued; 523 cases were confirmed. In Gujarat 495 notices were issued; 414 cases confirmed.

In February 2011, the EC wrote to the Law Ministry proposing to amend the Representation of the People Act, 1951, (RPA) to include “paid news” in electoral offences with a minimum two-year jail term for publishing or abetting the publishing of paid news.

Reasons for Rise in Paid News

- Corporatisation of media.
- Owners having themselves the editorial roles.
- Decline in autonomy of editors/journalists due to emergence of contract system and poor wage levels of journalists.
- Lack of restriction on ownership across media segments or between content and distribution could give rise to monopolistic practices.

Way Forward

- Appointing ombudsmen in media organizations and better self-regulation are options to check the “paid news” phenomenon.
- An amendment to Section 123 of the Representation of the People Act, 1951, to declare the exchange of money for “paid news” as a corrupt practice or an “electoral malpractice”.
- Financial accounts of the media houses should be subject to examination, especially the revenue source for a suspected paid news case.
- Regulator(s) should have the power to take strong action against offenders and should not include media owners/interested parties as members.
- Transparent and unbiased policy for distribution of advertisements by the central and state governments, with provisions for scrutiny.
- Conduct study to evaluate the mechanism adopted by other countries to tackle the problem of paid news.
- Naming and shaming of media houses involved in paid news
- The existing laws of the land (including the provisions of the Indian Penal Code, the Criminal Procedure Code, the Representation of the People Act, the Income Tax Act) have the potential to check such malpractices provided the concerned authorities, including the Election Commission of India, are not just proactive but also act in an expeditious manner.

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Conclusion

Owners of media companies need to realize that in the long term, such malpractices undermine not just democracy in the country but the credibility of the media as well. Thus, there is an urgent need to protect the right of the public to accurate information before voters exercise their franchise in favour of a particular candidate in the electoral fray for sustaining healthy democracy and achieving the true potential of our Nation as enshrined in our constitution.

4. **Given the limited talent pool and dwindling standards of judgments, attracting best talent is a prerequisite for reforming judiciary. In this background, do you think that the creation of an All- India Judicial Service (AIJS) along the lines of the All India Services (AIS) would solve human resource problem being faced by judiciary? Critically examine.** 12½

Approach of an Answer

- Introduce by discussing the issues and the need for reforms in Judiciary.
- Give a brief evolution of the demand for AIJS.
- Highlight the arguments for and against AIJS along the lines of AIS.
- Conclude on an optimistic note on the needs of AIJS.

Introduction

“Justice delayed is justice denied” - goes the famous adage. Timely Justice is therefore an integral part of the fundamental right to justice. However, as many studies including the 245th Law Commission Report, indicate that the Indian judicial system is unable to provide timely justice due to the huge backlog of cases. Statistics show that as many as 3.20 crore cases continue to remain pending before various courts. Of these as many as 40 Lakh cases are pending before the Indian HCs, while close to a crore are pending before the subordinate courts.

The main reasons for the pendency of cases include the - chronic administration under capacity and under-resourced judiciary. Moreover, non transparency in appointments, opaqueness in judicial functioning calls for overhauling our judicial architecture. The need for AIJS and demands therein are becoming even louder. Under this, the district judges will be recruited centrally through an all-India examination. They will then be allocated to each State along the lines of the All-India Services.

Demand for All Indian Judicial Service (AIJS)

- The proposal for an All-India Judicial Service (AIJS) in lines of All-India Services was proposed as early as 1950.
- The idea was first mooted by the Law Commission in the 1950s to have an All-India Judicial Services (AIJS).
- The Constitution of India was amended in 1977 to provide for an All-India Judicial Services under Article 312 but it excluded anyone below the rank of district judge.
- The Chief Justices conferences in 1961, 1963, and 1965 favoured the creation of All-India Judicial Services and even the Law Commissions (1st, 8th and 11th, 116th) had suggested the creation of the service. However, each time it was faced with opposition.

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- The proposal was again floated by the ruling UPA government in 2012 but the draft bill was done away with after opposition from High Court Chief Justices who labeled this an infringement of their rights.
- Most recently, the Central Government after holding a meeting presided over by the Law Minister Ravi Shankar Prasad had sought the advice of its two top law officers – Attorney General Mukul Rohtagi and Solicitor General Ranjit Kumar – on the question of constituting All-India Judicial Services just on the lines of All-India Civil Services.

AIJS along the line of AIS

Arguments for AIJS

- The creation of AIJS would bring accountability, transparency and consistency in the lower judiciary.
- The merit based recruitment process, the right incentives of pay, promotion and career progression would attract bright and capable young law graduates to take over as judges in the lower courts.
- Uniformity in the selection criteria will improve the quality of personnel in different High Courts, as 1/3rd of the judges are promoted from the subordinate courts. Similarly, a number of judges of the Supreme Court are drawn from the High Courts.
- The bottom-up approach in the recruitment would also address issues like corruption and nepotism in the lower judiciary. It will improve the quality of justice dispensation in the lower levels of society.
- Human resource is the key issue plaguing judiciary. Some of them are standard of legal education across the country except for a few law schools is not improved or updated for a long time. Despite effort by the Supreme Court to ensure uniformity in pay scales across States in the All India Judges' Association case, salaries remain un-remunerative to attract best talents. Also, judiciary has fewer avenues for growth, promotion and limited avenues for career advancement. There is low district judge representation in the High Courts, as less than a third of seats in the High Courts are filled by judges from the district cadre. The rest are appointed directly from the Bar. AIJS is presumed to solve some of these issues.

Arguments against AIJS

- Concerns have been raised that lack of knowledge of regional languages among the judicial officers could affect their judicial efficiency.
- Nine High courts are against this proposal and hence disapproving this proposal.
- The status of legal education in India is very much mismanaged. Except for a few national law schools, others do not prioritize the legal education too much. Law is taken as the last report that does not get into medicine, IITs etc.
- Un-remunerative pay is a big issue. Despite an effort by the Supreme Court to ensure uniformity in pay scales across States in the All India Judges' Association case, it is still very low.
- Also, the judiciary has fewer avenues for growth, promotion and limited avenues for career advancement.

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- There is low district judge representation in the High Courts, as less than a third of seats in the High Courts are filled by judges from the district cadre. The rest are appointed directly from the Bar.
- It will be difficult for the less privileged background to enter the profession. Again coaching institutes etc would flourish and education would be commercialized.
- Currently, the judges of subordinate courts are appointed by the governor in consultation with the High Court which will not be so if AIJS is implemented. Hence it will be against the Independence of Judiciary as some other body will have a control in appointment and integration because in the judiciary, higher level controls and evaluates lower level.
- Both the decentralized approach of each High Court conducting its own appointment and a centralized one seem to have roughly the same efficacy in filling up the vacancy.

Conclusion

AIJS is facing hurdles from the administrative block and also from High Courts, even though Supreme Court has asked for AIJS twice. Therefore, AIJS should be designed in a manner to remove its shortcomings and it can be an effective solution to the vacancy in Judiciary.

Despite the limitations, the establishment of AIJS makes a strong case because, if Civil servants can learn the local language of the state they are posted in, even a judicial service officer can. Thus, the language shouldn't be a barrier. Pay scale, issue of transfers, career growth etc should be looked after. Moreover, after the selection, a Judicial service officer can be provided sufficient training to handle the job.

A meritocratic judiciary is the need of the hour which is possible with a competitive recruitment process. It is in the interest of all concerned that cases should be disposed of as quickly as possible. This, in turn, is possible only if there are adequate judges. Adequate judges can be made available only if they are recruited in large strength through AIJS just like we see in case of IAS, IPS, IFS and other civil services. Hence, there should be no more delay.

5. Preventive detention is a negation of the Rule of Law and the principle of fair trial. Analyze. Given the rampant misuse, do you think that it is time do away with Preventive detention all together? Give reasons for your answer.

12½

Approach of an Answer

- Introduce by briefly discussing about the preventive detention.
- Highlight the safeguards provided in the Constitution against the preventive detention.
- Discuss the frequent misuse of preventive detention.
- List out the arguments for and against Preventive detention.
- Conclude by highlighting the need for Preventive detention.

Introduction

Preventive Detention is the most contentious part of the scheme fundamental rights in the Indian Constitution. The Article 22(3) of the Indian constitution provides that if a person is arrested or detained under a law providing for preventive

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detention, then the protection against arrest and detention under Article 22 (1) and 22 (2) shall not be available.

Preventive detention is action taken on grounds of suspicion that some wrong actions may be done by the person concerned. An anticipatory measure and does not relate to an offence while criminal proceedings are to punish a person for an offence committed by him. Preventive detention can however be made only on four grounds.

The grounds for Preventive detention are:

- Security of state,
- Maintenance of public order,
- Maintenance of supplies and essential services and defence,
- Foreign affairs or security of India.

Safeguards provided in the Constitution

Safeguarding provisions are mentioned in Article 22 (1), 22(5), 22 (6).

- Every case of preventive detention must be authorized by law and not at the will of the executive.
- The Preventive detention cannot extend beyond a period of 3 months.
- Every case of preventive detention must be placed before an Advisory Board composed of Judges of the High Court (or persons qualified for Judges of the High Court).
- The case must be presented before the Advisory Board within 3 months.
- A continued detention after 3 months must be having a "favours" of the Advisory Board".
- The person will be given opportunity to afford earliest opportunity to make a representation against the preventive detention.
- No person can be detained indefinitely.

However article 22 (7) provides exception to the above provisions. This Article mandates that:

- When parliament prescribes by law the circumstances under which a person may be kept in detention may be kept in detention beyond 3 months without the opinion of the advisory board.
- Parliament by law can also describe under the same law, the maximum period of detention.

Misuse of Preventive Detention

Preventive detention laws in the country have come to be associated with frequent misuse. Such laws confer extraordinary discretionary powers on the executive to detain persons without bail for a period that may extend to one year and courts tend to review them on the touchstone of strict adherence to the prescribed procedure. Sometimes they question the invocation of the draconian power when sufficient provisions are available in the ordinary laws of the land. Several States

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have a law popularly known as the 'Goondas Act' aimed at preventing the dangerous activities of specified kinds of offenders. In a recent order, the Supreme Court has questioned the use of words such as "goonda" and "prejudicial to the maintenance of public order" as a "rhetorical incantation" solely to justify an arbitrary detention order. It struck down the detention of a man who had allegedly sold spurious chilli seeds in Telangana, holding that the grounds of detention were extraneous to the Act. This detention order has captured what is wrong with the frequent resort to preventive detention laws. The court rightly termed this as a gross abuse of statutory powers.

Arguments against Preventive Detention

- Under Article 22, preventive detention may be implemented any time and the constitution expressly allows an individual to be detained — without charge or trial so it is a devastating blow to personal liberties of the citizens of the country.
- It violates the Article 4 of the International Covenant on Civil and Political Rights (ICCPR) which permits that rights can only be limited "in time of public emergency which threatens the life of the nation" because it allows detention in peacetime as well.
- It does not provide any procedural protections such as to reduce detainees' vulnerability to torture and discriminatory treatment; and to prevent officials' misusing preventive detention for subversive activities.
- The long period of detaining (3 months) poses a threat of torture.
- Constitution of India allows the government to pass preventive detention laws against its own citizens in the name of national security and "maintenance of public order" as per Entry 9 of List I and Entry 3 of List III of the Constitution, this is quite unbelievable.
- In the absence of proper safeguards, preventive detention has been misused, particularly against the Dalits and the minorities.
- The Power of states to form similar legislations has been misused.
- Before a preventive detention case is brought before the High Court, a three member Advisory Board headed by a sitting High Court Judge is constituted by the government to examine whether the detention is justified or not. But, the proceedings of the Board are confidential except for that part of the report which expresses the opinion of the Board.

Arguments supporting Preventive Detention Laws

- The constitutional philosophy of personal liberty is an idealistic view, the curtailment of liberty for reasons of State's security; public order, disruption of national economic discipline, etc. are envisaged as a necessary evil to be administered under strict constitutional restrictions.
- India is a large country and many separatist tendencies against the national security and integrity existed and existing and a strict law is required to counter the subversive activities.

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- The number of persons detained in these acts is not a very large and due attention is made before preventive detention.
- Having such kind of acts has a restraining influence on the anti-social and subversive elements.
- The state should have very effective powers to deal with the acts in which the citizens involve in hostile activities, espionage, coercion, terrorism, etc.
- The citizens of India have enjoyed the personal liberty for a long period since independence except two years of emergency.
- Such acts are required to deal with the antisocial elements such as terrorist attacks on innocent people which target lot of lives.

Conclusion

The PDA is a “necessary evil”. In a country like India where a lot of subversive activities are being carried out by our own citizens, the philosophy of the Article 22 remains valid even today akin to the conditions prevalent in the country at the time of independence.

6. **“The power of the Union Government to enter into international treaties cannot be absolute or unchartered in view of the federal structure of legislative and executive powers.” In the context of above statement, examine the need for greater involvement of states in the foreign policy making process.** **12½**

Approach of an Answer

- Start with a general introduction about the foreign policy as sole prerogative of Centre.
- Argue for a great involvement of states in the foreign policy making process.
- Conclude on taking this stand.

Introduction

Foreign policy, traditionally has been seen as a function of the central government and not the states. This was considered necessary to maintain wholesomeness of foreign policy as also the sovereignty of the country in foreign affairs. While Article 51 deals with the State’s endeavour to promote international peace and security, Article 253 gives unfettered powers to the Union government to legislate on any matters for implementing any treaty or agreement.

Though the treaties are signed by the Central Government, there are allegations that the Union tends to act unilaterally compromising the interests of the states. Examples being that of Indus Water treaty where it is being argued that interest of the state of J&K were compromised by giving waters of western rivers to Pakistan or of giving Katchatheevu Island to Sri Lanka, compromising the interests of Tamil Nadu fisherman.

Arguments in favour of states

A closer look at India’s map shows that barring Delhi, Madhya Pradesh, Chhattisgarh, Jharkhand, Haryana, all Indian states

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have borders with a foreign country or they have international waters. Therefore, it is important to appreciate that Indian states have a natural stake in the foreign policy of the country.

In the era of globalization, the interests of states are affected by the treaties the Government of India signs. This is particularly true of the FTAs, CEPAs, climate change and a host of others issues. The negotiations at the Doha round of WTO have been blocked for more than a decade because of the interests of the farmers. Similarly, the government has taken a position at the Climate Change negotiations to protect the livelihood of the poorest sections of the society. Such issues cut across states.

States are also key players in the implementation of the economic reforms policy. The acute debate on the FDI in multi-brand retail sector where the government was forced to give options to the states whether or not they wanted to implement the policy further reflect the important role played by states in shaping foreign policy of the nations.

Though previously, Parliament had a limited role in the day today task of making the foreign policy, there used to be a healthy practice of debating the issues in the parliament. This gave the government a good idea of the national sentiment, but in the recent years, the situation has changed drastically.

A Comparison with US bring forwards the important role played by the senate committee in ratifying international agreements signed by the presidential executive providing the states an equal voice in the policy formulation process. Such a process allows for acting as a collective body echoing the interest of the states in international policy formulation process

The members of the ruling coalition often have large influence on the foreign policy. The government was forced to stake its survival by seeking a vote of confidence on Indo-US civil nuclear deal. More recently, it had to agree to a debate followed by vote on FDI in retail which is unprecedented and brings forward the role of regional parties in the coalition, which tends to prioritize the state's interest.

Thereby, the government has to devise ways to accommodate the interests of the states. Though, it is being done on an ad hoc and sporadic manner, it is not enough. Most of such interactions are sporadic & need based. There ought to be a systematic interaction between the centre and the states to determine what the interests of the states are.

Further, there are several constitutional mechanisms which could be activated. Some foreign policy decisions can be taken in inter-state council and national development council where states are represented at chief minister level.

However, in democracy all policy is essentially politics. A government's policies are the result of political compromises. Foreign policy is no exception. As seen w.r.t some recent events, the influence of the states on foreign policy is increasing, particularly since the advent of coalition polity. Thus, the central government has the difficult task of determining what the national interest is, and whether it reflects the interests of the states.

7. **The emergence of 'Doctrine of Basic Structure' of the Constitution has helped not only in adapting to the changing needs of the society but also in maintaining the overall constitutional scheme. Discuss.** 12½

Approach of an Answer

- Introduce with the need of living constitution.
- Write in brief the emergence of 'Doctrine of Basic Structure'.
- Explain how this doctrine has maintained the overall constitutional scheme while reflecting the changing need of the society.
- Conclude on a positive note.

Introduction

No Constitution can work in a vacuum. It has to serve the society that has created it. It has to respond to the changes that take place in the society and meet its demands that are legitimate. A Constitution, therefore, cannot afford to be unamendable. If the Constitution cannot be amended, it will lose its dynamism, lag behind the changes that take place constantly in the society and become a legal dinosaur.

Evolution of the 'Doctrine of Basic Structure'

When the Supreme Court in *Golak Nath vs. State of Punjab* 1967 case ruled that the Parliament did not have the power to amend the Constitution, including the Fundamental Rights, it put the Constitution at the risk of becoming static.

The Supreme Court quickly revised its stand on the issue of amendability of the Constitution in the *Keshavananda Bharti vs. State of Kerala* 1973 case by postulating the "doctrine of basic structure of the Constitution." This ruling has contributed to the evolution of the Constitution in the following ways:

- It has set specific limits to the Parliament's power to amend the Constitution. It says that no amendment can violate the basic structure of the Constitution;
- It allows the Parliament to amend any and all parts of the Constitution (within this limitation); and
- It places the Judiciary as the final authority in deciding if an amendment violates basic structure and what constitutes the basic structure.

Basic Structure maintaining the overall constitutional scheme

In the past, this decision has governed all interpretations of the Constitution and all institutions in the country have accepted the theory of basic structure. In fact, the theory of basic structure is itself an example of a living constitution. There is no mention of this theory in the Constitution. It has emerged from judicial interpretation. Thus, the Judiciary and its interpretation have practically amended the Constitution without a formal amendment.

In a sense, the basic structure doctrine has further consolidated the balance between rigidity and flexibility: by saying that certain parts cannot be amended, it has underlined the rigid nature while by allowing amendments to all others it has underlined the flexible nature of the amending process.

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The Supreme Court by declaring supremacy of the Constitution, secularism, rule of law, independence of judiciary, judicial review etc as parts of the basic structure of the Constitution prevented such pillars on which the constitutional edifice has been built from being destroyed. Thus the basic structure concept is at the foundation of maintaining the overall constitutional scheme intact, while allowing the Constitution to be amended by the Parliament wherever necessary.

From the various judgements, the following have emerged as 'basic features' of the Constitution or elements/components/ingredients of the 'basic structure' of the constitution:

- Supremacy of the Constitution.
- Sovereign, democratic and republican nature of the Indian polity.
- Secular character of the Constitution.
- Separation of powers between the legislature, the executive and the judiciary.
- Federal character of the Constitution.
- Unity and integrity of the nation.
- Welfare state (Socio-Economic Justice).
- Judicial Review.
- Freedom and dignity of the individual.
- Parliamentary system.
- Rule of law.
- Harmony and balance between Fundamental Rights and Directive Principles.
- Principle of equality.
- Free and fair elections.
- Independence of Judiciary.
- Limited power of Parliament to amend the Constitution.

8. Although meant to function as watchdogs, human rights institutions in India are treated as subordinate departments with scant regard for their autonomy or statutory character. Analyze. 12½

Approach of an Answer

- Start with a contextual based introduction.
- Highlight the problems being faced by human rights institutions in India.
- Suggest some reform measures for these institutions to functions as watchdogs.

Introduction

The National Human Rights Commission (NHRC) chairman Justice H L Dattu recently said the rights watchdog needed some teeth to enforce its orders on remedial measures in cases relating to violations. He said NHRC is a toothless tiger.

Problems with NHRC

- NHRC's recommendations do not percolate to the ground level as the NHRC does not have the backing of the

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Protection of Human Rights Act to penalise authorities which do not implement its orders.

- The Act does not extend to Jammu and Kashmir and hence the commission has to keep its eyes closed to human rights violations there.
- The Act does not apply to those states where AFSPA is in force.
- The Act requires that three of the five members of a human rights commission must be former judges but does not specify whether these judges should have a proven record of human rights activism or expertise or qualifications in the area. Regarding the other two members, the Act is vague, saying simply: “persons having knowledge and experience of human rights.”
- Under the Act, human rights commissions cannot investigate an event if the complaint was made more than one year after the incident. Therefore, a large number of genuine grievances go unaddressed.
- The powers of the National Human Rights Commission relating to violations of human rights by the armed forces have been restricted to simply seeking a report from the Government, (without being allowed to summons witnesses), and then issuing recommendations.
- **Non-filling of vacancies:** Most human rights commissions are functioning with less than the prescribed Members. This limits the capacity of commissions to deal promptly with complaints, especially as all are facing successive increases in the number of complaints.
- **Non-availability of funds:** Scarcity of resources – or rather, resources not being used for human rights related functions – is another big problem. Large chunks of the budget of commissions go in office expenses, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programmes.
- **Too many complaints:** NHRC is deluged with too many complaints. Hence, in recent days, NHRC is finding it difficult to address the increasing number of complaints.
- **Bureaucratic style of functioning:** As human rights commissions primarily draw their staff from government departments – either on deputation or reemployment after retirement – the internal atmosphere is usually just like any other government office.

Reform Measures

- The effectiveness of commissions will be greatly enhanced if their decisions are immediately made enforceable by the government. This will save considerable time and energy as commissions will no longer need to either send reminders to government departments to implement the recommendations or alternatively to approach High Courts through a cumbersome judicial process to make the government take action.
- A large number of human rights violations occur in areas where there is insurgency and internal conflict. Not allowing NHRC to independently investigate complaints against the military and security forces only compounds the problems and furthers cultures of impunity. It is essential that commission is able to summons witnesses and documents.

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- As non-judicial member positions are increasingly being filled by ex-bureaucrats, credence is given to the contention that NHRC is more an extension of the government, rather than independent agency exercising oversight. If it is to play a meaningful role in society, it must include civil society human rights activists as members. Many activists have the knowledge and on-the-ground experience of contemporary trends in the human rights movement to be an asset to the Commission.
- NHRC needs to develop an independent cadre of staff with appropriate experience. The present arrangement of having to rely on those on deputation from different government departments is not satisfactory as experience has shown that most have little knowledge and understanding of human rights issues. This problem can be rectified by employing specially recruited and qualified staff to help clear the heavy inflow of complaints.
- A culture of human rights ought to be promoted through education. Human rights education in India is extremely important, given the fact that society is witness to numerous violations and abuse of powers and that the ability of the people to fight these injustices is limited. The strategy for inculcating human rights culture among the people needs to be based on a number of factors: social, legal, political, judicial, and institutional.

9. **Economic Survey 2016-17 highlighted that there are two India's with reference to demographic profile. Elaborate. Discuss its growth consequences and policy implications to reap demographic dividend.** **12½**

Approach of an Answer

- Start with factual based introduction.
- Describe the economic survey observations about India's demographic dividend.
- Highlight the growth consequences of such demographic pattern.

Introduction

2016 was a turning point in global demographic trends. It was the first time since 1950 that the combined working age (WA) population (15-59) of the advanced countries declined. Over the next three decades, the United Nations (UN) projects that China and Russia will each see their WA populations fall by over 20 percent. India, however, seems to be in a demographic sweet spot with its working-age population projected to grow by a third over the same period; always remembering that demography provides potential and is not destiny.

Economic Survey Observations about India's Demographic Dividend

- India's share of working age to non-working age population will peak later and at a lower level than that for other countries but last longer. The peak of the growth boost due to the demographic dividend is fast approaching, with peninsular states peaking soon and the hinterland states peaking much later.
- There is a significant north-south divide on demographic growth in India as seen in the 2011 census. This divide in the WA/NWA ratio of the peninsular and the hinterland states can be traced to the difference in their levels of TFR.
- Demographically speaking, there are two Indias, with different policy concerns: a soon-to- begin-ageing India where the elderly and their needs will require greater attention; and a young India where providing education,

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skills, and employment opportunities must be the focus. Of course, heterogeneity within India offers the advantage of addressing some of these concerns via greater labour mobility, which would in effect reduce this demographic imbalance.

- The southern states are showing faster decline in the population growth rate as compared to the northern states. For instance as per recent data, one in every 3 children in 0-14 is from UP or Bihar. On the other hands southern states have stabilized their population long back and are now seeing a rapid rise in their old age population.
- As a result of this, there is scarcity of unskilled labor in the south which is currently filled in by migration from other parts of the country.
- India will have extremely different structure of population across states; while in some states the population age structure will be adult concentrated and will move to old age, other states will have still more concentration of child and young population. This implies that the governments need entirely different policies to tackle issues in these contexts.
- It means that northern states need to invest more on education, skill building etc. While southern ones due to their ageing population should invest more on healthcare, pensions, insurance.

Growth Consequences

This demographic pattern will have two important growth consequences.

- First, it seems that the peak of the demographic dividend is approaching fast for India.
- The second growth consequence relates to the distributional impacts across India.

Conclusion

The growth boost from the demographic dividend is likely to peak within the next five years, as India's share of working age population plateaus. However, India may not see the sharp growth decelerations experienced by the East Asian countries because its working age ratio will fall much more gradually than those in other countries. In addition, the sharp demographic differences between peninsular India and hinterland India will generate wide differences in the timing of the peak, as well as opportunities to attenuate demographic imbalances via greater labour mobility. Even so, the urgency of reforms to maximise this soon-to-recede dividend cannot be overstated.

10. Planning Commission was replaced by NITI Aayog in keeping with the changing times. In this context, critically comment on the performance of NITI Aayog in the last three years.

12½

Approach of an Answer

- Start with a general introduction about NITI Aayog.
- Discuss in brief the difference between Planning Commission and NITI Aayog.
- Highlight the achievements of NITI Aayog.
- Give some criticisms of NITI Aayog.

Introduction

The National Institution for Transforming India, also called NITI Aayog, was formed via a resolution of the Union Cabinet

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on January 1, 2015. NITI Aayog is the premier policy 'Think Tank' of the Government of India, providing both directional and policy inputs. While designing strategic and long term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States.

The Government of India, in keeping with its reform agenda, constituted the NITI Aayog to replace the Planning Commission instituted in 1950. This was done in order to better serve the needs and aspirations of the people of India. An important evolutionary change from the past, NITI Aayog acts as the quintessential platform of the Government of India to bring States to act together in national interest, and thereby fosters Cooperative Federalism.

NITI AAYOG vs PLANNING COMMISSION

- Planning Commission was an advisory body, and so is Niti Aayog. But the key difference between them is that while the former had powers to allocate funds to ministries and states; this function will be now of finance ministry. Niti Aayog is essentially a think tank and a truly advisory body. Other differences are as follows:
- The role of states in the planning commission era was limited. The states annually needed to interact with the planning commission to get their annual plan approved. They had some limited function in the National Development Council. Since Niti Aayog has all chief ministers of states and administrators of UT in its Governing Council, it is obvious that states are expected to have greater role and say in planning/ implementation of policies.
- The top down approach is reversed in Niti Aayog. It will develop mechanisms to formulate credible plans to the village level and aggregate these progressively at higher levels of government.
- The provision of regional council is there in Niti Aayog to address local/regional development issues.
- One of the new functions of Niti Aayog is to address the need of the National Security in the economic strategy.
- While the planning commission formed Central Plans, Niti Aayog will not formulate them anymore. It has been vested with the responsibility of evaluating the implementation of programmes. In this way, while Niti Aayog retains the advisory and monitoring functions of the Planning commission, the function of framing Plans and allocating funds for Plan assisted schemes has been taken away.

Significant Achievements of NITI Aayog

- Vision Document, Strategy & Action Agenda
- Reforms in Agriculture
 - Model Land Leasing Law: Taking note of increasing incidents of leasing in and out of land and suboptimal use of land with lesser number of cultivators, NITI Aayog has formulated a Model Agricultural Land Leasing Act, 2016 to both recognize the rights of the tenant and safeguard interest of landowners. A dedicated cell for land reforms was also set up in NITI. Based on the model act, Madhya Pradesh has enacted separate land leasing law and Uttar Pradesh and Uttarakhand have modified their land leasing laws.
 - Reforms of the Agricultural Produce Marketing Committee Act: NITI Aayog consulted with the States on three critical reforms: Agricultural marketing reforms, Felling and transit laws for tree produce grown at

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private land, Agricultural land leasing. Subsequently, Model APMC Act version 2 prepared.

- Agricultural Marketing and Farmer Friendly Reforms Index: NITI Aayog has developed the first ever 'Agriculture Marketing and Farmer Friendly Reforms Index' to sensitise states about the need to undertake reforms in the three key areas of Agriculture Market Reforms, Land Lease Reforms and Forestry on Private Land (Felling and Transit of Trees). The index carries a score with a minimum value "0" implying no reforms and maximum value "100" implying complete reforms in the selected areas. As per NITI Aayog's index, Maharashtra ranks highest in implementation of various agricultural reforms. The index aims to induce a healthy competition between States and percolate best practices in implementing farmer-friendly reforms.
- Reforming Medical Education: A committee chaired by Vice Chairman, NITI Aayog recommended scrapping of the Medical Council of India and suggested a new body for regulating medical education.
- Digital Payments Movement:
 - Appropriate literature in print and multimedia was prepared on the subject for widespread dissemination. Presentations/ interactions were organized by NITI Aayog for training and capacity building of various Ministries/Departments of Government of India, representatives of State/UTs, Trade and Industry Bodies as well as all other stakeholders.
 - NITI Aayog also constituted a Committee of Chief Ministers on Digital Payments with the Chief Minister of Andhra Pradesh, Chandrababu Naidu, as the Convener to promote transparency, financial inclusion and a healthy financial ecosystem nationwide.
 - To incentivize the States/UTs for promotion of digital transactions, Central assistance of Rs.50 crore would be provided to the districts for undertaking Information, Education and Communication activities to bring 5 crore Jan Dhan accounts to digital platform.
 - Cashback and referral bonus schemes were launched by the Prime Minister to promote the use of digital payments through the BHIM App.
 - Niti Aayog also launched two incentive schemes to promote digital payments across all sections of society - the Lucky Grahak Yojana and the Digi Dhan Vyapar Yojana. Over 16 lakh consumers and merchants have won Rs.250 crore under these two schemes.
 - Digi Dhan Melas were also held for 100 days in 100 cities.
- Atal Innovation Mission: The Government has set up Atal Innovation Mission (AIM) in NITI Aayog with a view to strengthen the country's innovation and entrepreneurship ecosystem by creating institutions and programs that spur innovation in schools, colleges, and entrepreneurs in general.
- Sub-Group of Chief Ministers on Rationalization of Centrally Sponsored Schemes: Based on the recommendations of this Sub-Group, a Cabinet note was prepared by NITI Aayog. Among several key decision, the sub-group led to the rationalization of the existing CSSs into 28 umbrella schemes.

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- Sub-Group of Chief Ministers on Swachh Bharat Abhiyan: Constituted by NITI Aayog, the Sub-Group has submitted its report and most of its recommendations have been accepted.
- Sub-Group of Chief Ministers on Skill Development: The recommendation and actionable points emerging from the Report were approved by the Prime Minister and are in implementation by the Ministry of Skill Development.

Criticisms of NITI Aayog

- In the last two years since its inception, the restructuring has given rise to ambiguity regarding its advisory stature despite broader political representation. Niti Aayog has become a think tank that lacks teeth and neither central ministries nor states feel to heed its advice.
- Despite the advent of NITI Aayog, it is yet to be clear how it has differentiated itself from the 65-year-old Planning commission in its action. It has been repeatedly reported that there is a lack of clarity in defining its roles.
- The non-statutory nature of the council filters out the authoritative tone and makes its recommendation a mere piece of advice.
- Any think tank has to be slightly distant from the Government. The members and Vice Chairman of NITI Aayog have been defending Government on all issues which is actually the role of various ministries of the Government. If that role is taken by the think tank, then there is a conflict between justifying Government and giving advice to the Government on right issues.
- As far as demonetization is concerned, NITI Aayog had no role in conceptualizing this move, affirming this policy or implementation. Even on MDGs, NITI Aayog could not generate a Report as to why India could not achieve them in 2015.
- Some of its policy recommendations on energy and regulation of healthcare do make a lot of sense, but these have not found traction with the arms of the government charged with formulating and implementing policy.
- The suggestions on privatisation of Air India, and on a larger disinvestment plan apart, its roadmaps with respect to areas such as agriculture, job creation and energy planning are less than compelling. For instance, its suggestions on agriculture marketing reforms are no different from prescriptions of the past; they do not shed any light on managing the transition from an old set of institutions to new ones. The more noteworthy ideas have, in fact, emanated from the PMO, be it Digital India, Skills India, Make in India, Start-Up India and Swachh Bharat.
- NITI Aayog could have shed some light on how India can be both a services and manufacturing powerhouse in a rapidly changing world, where automation is rendering a host of existing skills redundant, while rapidly opening up spaces for new ones. The government shown little inclination to either seek consultation or take advice on policy issues.
- It's yet to evolve as an authoritative voice in policy making.
- Indeed, NITI Aayog's big-ticket agenda, which could have been more game-changing in nature, has been overlooked: China-style coastal economic zones and labour law reform in employment-intensive sectors (only textiles saw a change).

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Conclusion

The NITI Aayog, in its current form, is more evolved in structure but weaker in authority. It needs empowerment and capacity building to prevent it from becoming a retiring lounge for experienced bureaucrats and politicians. To enable NITI Aayog to perform its functions in a more effective manner, a constitutional status may put a greater emphasis on its policy recommendations and free it from the whims of the political bosses in power. However, it seems a distant reality keeping the political spectrum in both the houses of the parliament. The Standing Committee on finance, has strongly recommended the government to confer executive power on the Niti Aayog which would provide a major boost to its stature. And this can be done by amending the allocation of business rules in such a manner that clearly defines the powers and span of control of the institution, beyond a think tank.

11. The co-existence of under-nutrition and morbid obesity exemplifies the extreme inequalities of wealth and income in India. In this background, explain the 'double burden' of malnutrition being faced by India. Suggest some measures to deal with this unique paradox. 12½

- Almost 20% of India's adult population is overweight, while approximately 20% of school-aged children are obese, according to a study by the All India Institute of Medical Sciences. At least half of infant deaths in India are related to malnutrition. India is in the unenviable position of being in the bottom quartile worldwide of infant mortality under the age of one. Malnutrition and disease are the principal culprits. The Global Hunger Index based on three leading indicators: child malnutrition, rate of child mortality and percentage of people who are calorie deficient, ranks India 67 out of 84 countries surveyed.
- Underweight and overweight are both forms of malnutrition, a term that encompasses either a lack of or excess in energy and/or nutrients. The Dual burden of Malnutrition presents a unique challenge for public health. Programmes should promote nutritious foods and a healthy lifestyle to address both types of malnutrition at the same time.
- The Health system should be responsible for screening persons for over-nutrition, while ICDS and health programmes should be responsible for screening for under-nutrition.
- The ICDS requires strengthening and restructuring, with special focus on pregnant and lactating mothers and children under three years. The ICDS also needs to forge strong institutional convergence with the National Rural Health Mission and the Total Sanitation Campaign particularly at the district and village levels.
- As mandated by the PM's National Council on India's Nutrition Challenges, a Multi-sectoral Nutrition Programme should be implemented. The Multi-sectoral Nutrition Programme is designed to (i) focus action on the critical age groups to prevent and reduce under-nutrition as early as possible, across the life cycle (pregnancy, lactation, infancy and early childhood, adolescence); (ii) address key inter related determinants of malnutrition together by facilitating convergence; (iii) provide local flexibility, support pilots and innovative panchayat led models of convergent action and (iv) to focus on districts with the highest burden of malnutrition, so that reduction in maternal and child under-nutrition is accelerated.
- Despite breastfeeding having numerous recognized advantages, and several initiatives to promote breast feeding, early and exclusive breastfeeding rates in most states of India are low. There is a need to promote optimal infant

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and young child feeding (IYCF) practices.

- There is need to have strategies to combat micro- nutrient deficiencies (Iron, Vitamin A and Iodine) in children, women and adolescent girls. A comprehensive approach should be adopted which includes complementary strategies to address micro-nutrient malnutrition including: (i) Infant and Young Child Feeding Practices; (ii) Dietary Diversification; (iii) Horticultural interventions; (iv) Nutrient Supplementation; (v) Food fortification; and (vi) Public Health Measures.
- Nutrition and health education through all available modes of communication should emphasize the need for: (i) eating balanced diets; and (ii) adopting healthy lifestyles with adequate physical activity.
- Health interventions should be carried out by the health system including, (i) screening persons for over-nutrition whenever they access health care; (ii) using of BMI for adults and BMI-for-age in children and adolescents for early detection of over-nutrition; (iii) identification of over-nourished persons and personalised advice regarding modification of dietary intake and life style; and (iv) monitoring the improvement and providing focused care to those who are facing problems in modifying their lifestyles.
- Effective monitoring of national nutrition programmes requires both monitoring and assessment of processes and outcomes. A responsive and dynamic Nutrition Surveillance System (NSS) should be put in place in order to capture nutrition related information. It would help assess the current situation, analyse the causes/reasons of the problem and based on the analysis and available resources, suggest solutions to improve the situation.
- A nation-wide information, education and communication campaign should be launched against malnutrition.

12. Corporate Social Responsibility (CSR) has emerged as a mechanism, through which the rich and the big corporates “give back” to the society. In this context, critically analyse the effectiveness of the CSR measures in India. 12½

Approach of an Answer

- Introduce with the provisions of Companies Act, 2013 that mandates CSR.
- Analyse the effectiveness of CSR measures along with some facts.
- Suggest some measures for the improvement of CSR implementation.

Introduction

Section 135 of Companies Act, 2013 deals with Corporate Social Responsibility (CSR). According to this, every company having minimum net worth of 500 crore or turnover of 1000 crore or a net profit of 5 crore rupees will have to spend 2% of their net profit on CSR activities.

India is the first country to require companies to expend resources on CSR. This pool of funds is dedicated to activities that are presumably in the larger public interest.

Types of CSR

- Environmental CSR: Focuses on eco-issues such as climate change, like tree plantation, installing solar panel etc.

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- Community based CSR: Businesses work with other organizations to improve the quality of life of the people in the local community. Like education, health, housing project etc
- Human Resource based CSR: Projects that improve the wellbeing of the staff.
- Philanthropy: Businesses donate money to a good cause, usually through a charity partner like partnering with an NGO who have an infrastructure in needy areas.

According to the latest estimates, Indian firms collectively are more than complying with the CSR law during 2015-16 where they spent Rs9,309 crore on CSR projects in 2015-16, which was Rs163 crore more than the amount required by law and Rs703 crore more than the previous year.

Analysis of CSR Measures

- Most of the companies engage in social activities in the urban areas without realizing the fact that rural area is more deprived and has the 70 percent of the total population.
- There is lack of an enabling environment and also companies working in a given area tend to compete instead of collaborate.
- Lack of transparency in the companies activities in social areas.
- Lack of Enforcement - Effective enforcement mechanisms have not been set up to regulate and monitor CSR activities.
- Free rider problem - In the competitive arena, companies are reluctant to spend if their competitors don't or in some cases not spending after competitors spend to take advantage.
- Companies don't look at CSR through the same lens as they look at their business venture. They look at CSR as a burden and grudgingly instead of performing it with full vigour.
- Nature of the law: More than a dozen amendments in the law since its enactment has hampered its effective implementation. Some anomalies in tax treatment still remain in the law.
- People are unaware of the CSR of various companies and also there is a lack of communication between the people and companies as a result of which the main issues of the people are left unaddressed.
- There is some evidence that firms that were initially spending more than 2% reduced their CSR expenditure to 2%.
- Spending has not gone to democratically determined priorities, but rather to whatever the companies prefer to emphasize
- There is also an issue of geographic equity. Five states: Maharashtra, Gujarat, Andhra Pradesh, Rajasthan and Tamil Nadu account for well over one-quarter of all CSR spending.

Way Forward

- The government should play the role of an enabler to create an enabling environment for companies to undertake

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targeted initiatives.

- It is also essential for the government to ensure that companies work in collaboration with each other such that there is no duplication of effort as it will ensure a wider reach. The Government has already encouraged participation of companies in the new schemes like Skill India, Swachh Bharat, Beti Bacho Beti Padhao.
- Media should also be encouraged to highlight successful social programmes undertaken by the companies.
- Bring governance and accountability mechanisms into the picture, increasing the likelihood that the funds are being used appropriately and effectively
- Audit mechanism that actually authenticates and validates the activity represented by the certificate
- Impact assessment across multiple domains
- There should be a balance between urban and rural area and government must act as an enabler to engage local government and state government to make sure communities are aware and engage themselves.
- Clarity over CSR guidelines, its definition regulation, role of companies must be made clear.
- CSR as a subject should be made compulsory in Business schools and colleges such that the youth is sensitized regarding it and they are made aware of the ground realities.
- The government should also motivate and inspire companies by giving awards and awarding recognition to companies who have successfully implemented social development programmes. As a result of which many companies might also undertake social activities to improve their branding in public eye.

Conclusion

CSR forms an important part for the social upliftment of the country. Hence, it is essential that corrective measures be undertaken by the government to further give CSR a boost to ensure an overall development in the country - social and economic development as envisaged in article 39 DPSP of constitution.

13. The developmental model in India should include rural development schemes that are “demand driven” rather than “programme driven”. Examine with respect to the design of various social sector schemes. 12½

Approach of an Answer

- Start with a general introduction about the traditional model of development.
- Discuss the change in development schemes from ‘programme driven’ to ‘demand driven’
- Highlight some challenges related to demand driven approach.

Introduction

The understanding of development till late in India has been limited to implementation of the government programs in a top down model rather than meeting the demands of the grassroots. The program driven approaches led to the

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implementation of policies built by the experts in the ivory towers to a completely different environment where life of many got impacted. The states had long been complaining that funds for the social sector schemes were extremely restricted as per the programs prescribed by the centre like JNNURM, RKVY, AIBP, RGGVY etc. and could not be used for the special requirements of the local development. Diverse regions in India had diverse needs, for which a single handed top-down approach was not found suitable.

'Demand Driven Approach 'of Development Schemes

In the changing paradigm of development, Demand-driven governance as an approach to development places emphasis on the following characteristics which provide following benefits:

- A decentralised component of resource allocation and distribution which gives priority to the people rather than any centralizing authority;

Keeping this in mind the Saansad Aadarsh Gram Yojana (SAGY) was also formulated. Its approach focused on engaging with and mobilizing the community for participatory local level, converging different government programs, private and voluntary initiatives and to achieve comprehensive development in tune with people's aspirations.

- Substantial participation and co-determination from local actors and civil society organizations which mobilises beneficiary contribution and gives them a sense of ownership; e.g. Social sector schemes like Deen Dayal Upadhyaya Gram Jyoti Yojna are being implemented not only by the CPSU's, state government power department, state electricity board and DISCOMs alone but cooperatives share an equal role in its implementation
- Alignment and coordination with local authorities and governance structures also ensures social investment.
- A set of 'checks and balances' to ensure local transparency and allow community constituencies to hold state- and developmental systems accountable ('bottom-up accountability') ensures optimality in performance. E.g. Social audit by Gram Sabhas was the major reason behind the successful implementation of MGNREGA.
- The concept of demand-driven services is also linked to a paradigm shift in public sector reform towards responsive governance.

Challenges in Demand Driven Approach

Although demand-driven programmes represent progress over top-down approaches, but in light of available experience, certain design traps should be avoided, i.e.

- Demand-driven approaches can fragment and scatter activities. It is clear that geographical planning and convergence among the programmes should not be overlooked during the preparatory phase.
- There is an obvious need for both top-down and bottom-up infrastructure planning to allow for combining heavy and light investments within the framework of local development plans at various levels.
- Need for Capacity building at local level before such programmes.

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Conclusion

In a nutshell, the approach of bringing local level development has made a shift towards accommodating genuine community needs, community contributions and self-help with regard to the various socio-cultural needs of the people. Thereby, Rural development schemes should not only satisfy the demands of local people and empower local self governance institutions but should have capacity building initiatives ingrained and in tune with national objectives leading to a convergence, which would help in achieving overall development of our nation.

14. Citizens' participation in governance embodies a shift in the development paradigm from citizens as passive recipients to active participants in the development process. What are the different mechanisms for citizens' participation in the development process? Illustrate. 12½

Approach of an Answer

- Start with a general introduction about the role of citizens.
- Discuss the various forms of citizen participation along with examples.
- Conclude on a positive note.

Introduction

Citizens have a legitimate role in influencing decision making processes that affect their lives and businesses. Role of citizens have changed radically from non-participation to tokenism to full participation.

The three essential aspects of good governance and development i.e. transparency, accountability and responsiveness of the administration can be achieved only through citizen's participation which was acknowledged by the "Citizens' Charters" initiative which is a response to the quest for solving organizational problems providing public services.

Mechanisms of Citizen's Participation

Following are the different mechanisms for citizen's participation in the development process:

- **Seeking information** – Right to information is a fundamental right under article 19(1). Availability of information is the first step to empower citizens. RTI act is one of the success stories of India's democracy which has brought transparency and citizens like Subash Agarwal have exposed scams.
- **Giving suggestions** – government must reflect the voice of citizens. Citizens are in the best position to articulate their needs and suggest the appropriate solutions. It can be done through public hearings and surveys etc. For example, the Bangalore Agenda Task Force (BATF) holds public summits in the presence of the media to explore how to improve city services and administrative capacity.
- **Demanding better services** - government servants should be accountable to citizens. For example, the Hyderabad Metropolitan Water Supply and Sewerage Board (HMWSSB) created a campaign called the Customers' Meets campaign which "compelled senior managers to leave the comfort and security of their offices to interact directly with citizens in neighbourhoods throughout the city. The campaign was covered extensively in the media, thereby magnifying its impact.

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- **Holding service provider accountable** - the criteria of customer satisfaction requires citizens to voice their grievance. The mechanisms used could include citizens' feedback and surveys, citizens' report card and social audit. Right to education act and mid-day meal scheme have option of social auditing. Last government released its report card. Regular citizens' feedback and survey and citizens report cards should therefore be evolved by all departments.
- **Active citizens' participation in administration/decision making** - this is a more mature and intensive form of citizens' participation through which they can negotiate with for better policy, better plans, better projects etc. Gram Sabha is the best example of such participation. Government recently institutionalized keeping bills and rules for public suggestion for a period of one month.

However, certain challenges and issues that are involved in it are:

- Lack of institutionalization of citizen's participation.
- Willingness as well as ability of locals.
- Willingness of bureaucracy and politicians to share power with citizens at large.

Conclusion

Overall, citizens' participation involves a shift from a "top-down" to a "bottom-up" approach to development involving increasing decentralization of power away from the Union Government and closer to grassroots levels.

(This topic was elaborately discussed in the Discussion Class of Governance and Social Justice)

15. Forest Rights Act, 2006 when enacted was considered a game changer in the development of tribals but its implementation has been patchy in the last ten years. Critically comment. 12½

Approach of an Answer

- Start with a general introduction about the Forest Rights Act, 2006.
- Discuss how Forest Rights Act, 2006 was considered a game changer.
- Highlight the challenges in the implementation of FRA.
- Suggest some reform measures for the Act to achieve its objectives.

Introduction

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a result of the protracted struggle by the marginal and tribal communities of our country to assert their rights over the forestland over which they were traditionally dependent. This Act is crucial to the rights of millions of tribals and other forest dwellers in different parts of our country as it provides for the restitution of deprived forest rights across India, including both individual rights to cultivated land in forestland and community rights over common property resources.

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Forest Rights Act, 2006 as a game changer

For the first time Forest Rights Act recognises and secures

- Community Rights or rights over common property resources of the communities in addition to their individual rights.
- Rights in and over disputed land Rights of settlement and conversion of all forest villages, old habitation, un-surveyed villages and other villages in forests into revenue villages.
- Right to protect, regenerate or conserve or manage any community forest resource which the communities have been traditionally protecting and conserving for sustainable use.
- Right to intellectual property and traditional knowledge related to biodiversity and cultural diversity.
- Rights of displaced communities.
- For empowerment of these communities, the FRA clarified further that these communities had the sole right to sell proceeds from forests.
- Right to hold and live in the forestland under the individual or common occupation for habitation or for self, cultivation for livelihood.
- Rights which are recognized under any state law or laws of any autonomous district council or are accepted as rights under any traditional or customary law of the concerned tribes of any state.
- Right to in-situ rehabilitation including alternative land in cases where the STs and other traditional forest dwellers have been illegally displaced from forestland.

Challenges in FRA's Implementation

- The process of documenting tribal claims is not an easy one, involving democratically constituted gram sabhas (village assemblies) as per the provisions of the 73rd constitutional amendment on panchayati raj and PESA. This is compounded by the ongoing power struggle between the bureaucracy and tribal communities--one that the latter is likely to lose unless there is robust political intervention on their behalf. One of the manifestations of this has been a limited interpretation of the acts, with governments recognising only individual property and not community ownership of land. This is sometimes attributed to a lack of evidence on the ground for the stated joint ownership.
- A lot of ambiguity had been observed in the formation of Forest Rights Committee. In many states the panchayat system is not very strong and in some cases the panchayat elections are not held regularly. In that case the Gram panchayats are not operational up to the desired level necessary for implementation of the Act. The target people are primarily tribal and the Gram panchayat responsible for the formation of Forest Rights Committee comprising of these people are not efficient enough to implement the Act in letter and spirit.

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- The Gram Sabha/ Forest Rights Committee have to receive all types of claims of rights and document it with proper receiving, but in most of the states the Gram Sabha/ FRC do not have desired infrastructure and technical knowhow to keep these records
- The main target group of this Act is mostly illiterate and therefore filling and submission of forms regarding the claims becomes very difficult. In this situation many middleman and some bad elements starts operating with vested interest.
- There is lack of awareness about Community Forest Resource provisions among local communities as well as government officials. The act provides right on thirteen different types of community rights but only two or three rights are often seen to be claimed and without proper corroboration, which often led to rejection of claim.
- Community Forest Resource claiming process is complex and several evidences are often asked to be filled by officials. The evidences are needed to be collected from Revenue Department and forest department. In most cases information are not available for public domain and need to be collected through Right To Information Act. These procedures are difficult for the communities to handle. Therefore most of the time the claims are found pending because of lack of evidences.
- As per the provision in Act it's the responsibilities of the government department to provide required documents to the individual & communities as evidence but it is not taken up by the concerned departments. The person seeking rights individual or community has to struggle hard to get a piece of evidence.
- In absence of authentic records of evidence in situation discussed above the role of revenue and forest departments becomes very important and the actual eligible people also have to face serious problems in claiming rights for them.
- The tribal department has been declared as the nodal department for enactment of this Act, but the records for the forest lands are in possession of either forest department or the revenue department. In view of this situation it is really very difficult to have a good liasioning between all three departments i.e. the tribal welfare department, the revenue department and the forest department.
- In most of the cases the meeting of Gram Sabha is not organised in accordance with the requirements of the Act, again attracting the role of the middle man or official of revenue or tribal welfare department.
- Receiving the claims and its verification needs involvement of the Forest Rights Committee, the claimant, revenue official and forest officials. The liasioning among all these stakeholders is an extremely difficult task. In fact this is the most difficult activity as far as the implementation of Forest Rights Act is concerned since none of the above departments work together. One very important activity at this stage is the preparation of map for which technical expertise is a must. Thus the verification of claims and preparation of maps in the most serious bottleneck in implementation of this Act. The authentic maps are also not available in many cases again attracting the intervention of revenues or forest department.
- It is also very difficult for villagers (Forest Rights Committee) from remote areas to travel large distance to submit the claims to the Sub-divisional level Committee. In such cases the district collectors and sub-divisional officers have to authorise the official of welfare department to receive the claims from the Forest Rights Committee but

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then it is difficult to track the station of those claims as in most cases the officials are ignorant and claims are not forwarded in time.

- In most of the states the authentic data regarding the occupation of land before the cut off date i.e. 13.12.2005 such as remote sensing maps etc. are not available for whole area thereby creating a major problem in ascertaining the claims for rights over the land.
- In protected areas, the process of claiming right is continuing but due to lack of organization, there are efforts to illegally relocate them.
- In some cases sub-divisional level committee arbitrarily rejects claims on the basis of superfluous criteria and lack of evidences. At this stages also there are some confusions regarding the acceptance of the evidence for recognition of rights.
- Even at the district level committee there has been cases of serious violation such as.(a)The titles were distributed with reduction in extent of resources claimed, moreover the rights were granted on very few common property like grazing land, water bodies and Non Timber Forest Produce. Habitation rights and other such important rights are ignored.(b)The customary rights and traditional boundary are ignored in provided titles for unilateral reduction in size of land.(c) GPS technologies are abused to manipulate maps and areas for which titles are being given.(d) It is also seen that few cases are hanged between Forest Rights Act, 2006 and Sub Divisional Level Committee and are not taken to District Level Committee for further action.(e) Both IR and CFR rights are denied to Other Traditional Forest dwellers community.

Way Ahead to Reform

- The government has largely struggled to make local governance work in tribal areas. When funds are allocated for local bodies in tribal areas, they are often not accompanied by the requisite hand-holding and capacity building to utilise funds and execute projects. This has been the case even in states like Kerala that are considerably ahead of others when it comes to local governance. Without better infrastructure such as roads and markets, these communities will continue to struggle to make good use of their forest resources.
- While the eventual outcome (for the moment) in Maharashtra is disheartening, it is encouraging that the ministry of tribal affairs seems to have campaigned quite hard to protect the rights of tribal communities. Irrespective of the current decision, it leaves behind a paper trail that can be used by officials and activists in future. This is yet another reminder that the 'state' is not a monolith, and understanding that enables us to work much better with the state.
- Political support is key; and in this instance, the dice was loaded heavily against tribal communities.
- Governance in tribal areas suffers from many of the same problems that Panchayati Raj suffers from, and then some. There is an understandable degree of natural friction between the "development" priorities of the state and the "development" priorities of tribal communities, with a third perspective of the "development" priorities of civil society that is working to improve tribal welfare. Between these competing priorities, the state remains the behemoth, with an ability to invoke its power of eminent domain - part of which it had ceded through PESA and FRA. State's effort in handling Tribal rights will be key to make it success.

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16. India-Japan relations have witnessed a quantum jump in the past decade but still have not acquired the balance and density which a true partnership demands. Critically Evaluate. 12½

Approach of an Answer

- Start with a general introduction.
- Discuss the major areas of co-operation between both the countries.
- Highlight the challenges that have prevented the potential of their relationship to be fully tapped.
- Give some suggestions to take their relationship to next level.

Introduction

The India-Japan relationship is rapidly gathering momentum, taking shape faster than any of New Delhi's current strategic partnerships. The relationship between India and Japan has strengthened in the past decade. Strategic partnership agreement was signed between the two countries in 2006.

Areas of Co-operation

Some major areas of cooperation between India and Japan are:

- **Economic-** We find presence of Japan in key infra projects like bullet train, Delhi-Mumbai industrial corridor among others. JOIN or Japan Overseas Infrastructure Investment Corporation supports building of infra in collaboration with Japanese companies, JICA, JIBA among others.
- Strategic collaboration between two countries in infra sector cannot be best seen in region other than North East India. Here, Japan is supporting development in connectivity and road building, electricity and disaster management.
- **New technology development:** Japan with its expertise in technology, deep pockets (easy loan) and long experience of working in India emerged as a most suitable partner.
- **Smart city Development:** invest in smart city program for development of infrastructure
- **India-Japan Civil Nuclear Agreement** - According to the deal, six new nuclear reactors will be built for power generation. This will enhance civil nuclear capabilities which are essential for India to bring down carbon emissions.
- **Disaster Management** - Japan had developed many technologies in constructing buildings and roads which are disaster proof like earthquakes etc. India is trying to avail those facilities.
- **Securing the Maritime Commons:** As maritime democracies, both nations have argued for rules-based international order, freedom of navigation and over flight, unrestricted lawful commerce, and peaceful settlement of disputes.

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Challenges that has prevented in tapping the full potential

- Bureaucratic hurdles are the most cited. The complex Chakravayu of New Delhi's bureaucratic circle has perplexed Japanese investors.
- Security Co-operation: On the security front, a common threat emanates from China, yet the relationship has not progressed to substantial dealing. Part of the problem lies in some unique feature of Japan's military collaboration since the Second World War. Also, both are wary of upsetting China.
- **Complex Nuclear Deal:** On nuclear front, Japan has changed its policy since the Fukushima disaster. It has closed its nuclear plants, and is moving towards cleaner energy. But India is increasing its nuclear generation capacity and entering into to international nuclear lobby. Securing Japan's agreement for the nuclear lobby may take time, but engagement at other levels is possible. With the launch of Make in India, and India's own need for clean energy, collaboration in manufacturing is a possibility
- Cultural differences are also cited as a key difference. Increased people to people or track 3 diplomacy can help bridge this difference, along with other second hand ways to bridge this gap.
- **Decreasing Trade:** Trade have been sliding from \$18 billion in 2012-13 to \$13 billion in 2016-17
- India struggling to penetrate the Japanese market as a result of language barriers, high quality and service standards

Way Forward

- Reducing redtapism: The bureaucracy on both sides will have to work effectively to implement and realize the initiatives laid out in recent time.eg: A new Japanese cell has been opened in the PMO
- More engagements on multiple fronts will building trust while maintaining steady engagement with China, along with deeper involvement with US who is a close ally of Japan, is the way to go.
- Japan is looking for new partners. The US withdrawal from the TPP has provided a renewed impetus for Japan's line of thinking. India's strong naval power and its trustworthiness make it a most suitable partner for Japan's future foreign policy.
- Strong India—strong Japan will not only enrich two nations, it will also be a stabilising factor in Asia and the world. India and Japan will need to make much greater contributions towards Asia's stable balances and multi-polarity
- Japan and India can work together to build a common narrative in UNSC reforms and UN peacekeeping
- India is envisioned as a critical strategic anchor in Japan's latest 'Free and Open Indo-Pacific Strategy'

Conclusion

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Countries have lot of common reasons to have a significant partnership in all fields. India can benefit from the technological advancement of Japan. Japan can use the man power or India. India Japan relations have enormous possibilities which must be converted into a much bigger reality.

17. In the context of increasing strategic role of China in Pakistan, discuss the security, strategic and economic significance of India's agreement with Iran to develop and expand the Chabahar Port. 12½

Approach of an Answer

- Introduce with highlighting the increased role of China in Pakistan.
- Discuss the importance of Chabahar Port to India.
- Conclude on an optimistic note.

Introduction

China having emerged as an important global player is gradually increasing its influence in Indian Ocean Region. In its geopolitical strategy, it is utilising the huge leverage provided by its all-weather ally, Pakistan, which is evident from the following instances:

- China – Pakistan Economic Corridor.
- Gwadar port as a part of String of Pearls.
- Military and energy cooperation.

Importance of Chabahar Port

India being located strategically in Indian Ocean Region has made several efforts to protect its national interests. The agreement over Chabahar port, located in Sistan-Balochistan Province on Iran's southeastern coast, is one of them and it has following geopolitical and economic significance for India:

Economic Importance

- Along with increasing trade and economic engagements between India and Iran, the port will be used to ship crude oil and urea from the region and save transportation cost.
- Open gateway to market and mineral rich area of Afghanistan through Garland Highway built by India.
- Chabahar port, also referred as Golden Gate, lies at cross roads of International North – South Corridor. The project will allow sea-land access to energy rich Central Asian countries with reduced one-third transit time.

Strategic and Security Importance

- Trilateral arrangement could balance joint forays by China and Pakistan into the Indian Ocean and counter Gwadar port of Pakistan built by China.

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- Afghanistan's use of port could lower its dependency on Pakistan to export its products which will help Afghanistan strategically align towards India.
- Port is an economic bonanza for war torn economy of Afghanistan. The increased economic opportunities have potential to stabilise the country which is also in India's interests.
- Port could help in increased cooperation for anti-piracy operations among regional countries.

Conclusion

In light of the importance of this vital project, India recently proposed to build multi-modal transport between Iran and Afghanistan, which shows sustained engagement in the region as part of North-West Policy. Also, the gradually easing sanctions on Iran after historic nuclear deal would provide more space to India.

18. Though BRICS is neither a trading bloc or an economic union per se nor a political coalition, it creates space for India to move the contemporary International Order towards alternative models of development & governance. Elaborate. **12½**

Approach of an Answer

- Start with a general introduction about the BRICS.
- Discuss the significance of BRICS with special reference to creating alternative models of governance.
- Highlight some concerns in the BRICS grouping.

Introduction

BRICS is a group of 5 countries which come together with certain economic interest. It is a strategic geo-economic alliance of developing or newly industrialised countries with divergent geo-political trajectories. They together constitute 42% of world population and 20% world GDP. They come together to form a new world economic order.

They represent the voice of the growing economies which are not given sufficient space in the Bretton woods institutions. BRICS bank is a stark example of challenging hegemony of western dominated institutes.

Significance of BRICS

- The BRICS called for the reform of multilateral institutions in order that they reflect the structural changes in the world economy and the increasingly central role that emerging markets now play.
- BRICS continues to be a relevant group in its own right. It remains a coalition of emerging economies that will challenge western dominated discourses in some forums and hence provide an alternative idea of global governance. Also economic might of this grouping may compel Bretton Woods Institutions to undergo reforms eg: IMF latest reforms.

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- With growing threats of all sorts ranging from terrorism to climate change this platform provides an opportunity for countries like India to raise their voice in international forum and challenge existing order by putting forth concepts like CBDR in climate change through a sub-grouping IBSA carved out of BRICS in which India has the opportunity to lead away from Chinese influence, push for reforms in UN, also to seek cooperation of these countries in security eg: cyberspace.
- It can wrest the global power which has been concentrated in the Global North and make way for equitable world order.
- It can mutually accommodate the concerns of the member nations which are now the harbingers of new world order thus bringing Global Peace.

What are India's Interests?

- India's strategic interest must be in the continued existence of an open economic order and, as a rising power, liberal internationalism serves its interests best.
- BRICS helps India to create new instruments for global relevance and influence for each of its members, and is itself one.
- The initiatives of BRICS like NDB and china led AIIB should provide the much needed capital, expertise to middle and low income countries for infrastructure development. India with its sorry state of affairs as far as infrastructure is needed cannot miss this opportunity.
- For India, the success of the NDB and the AIIB may also allow it a greater role in the institutions established in the middle of the last century.
- BRICS should be an integral part of India's grand strategy, and a vehicle in India's journey from being a norm taker to a norm shaper.
- India can gain much more from this group as it is now the world's fastest growing economy and an emerging world leader. With proper coordination and addressing concerns in BRICS, India's voice can reach to multilateral groupings in a stronger way.

Concerns

- All these countries aspire to be regional powers and hence at some point will compete with each other.
- They have different political systems with Brazil, India and South Africa being democracies while Russia and China having authoritarian characteristics.
- Politically, India and China are divergent along with multiple issues of border, Pakistan etc. and economic competition.
- China economically dominates the BRICS and majority BRICS trade is concentrated with China. Therefore China gives economic muscle and bargaining power to BRICS. However, China has is deeply connected with United States

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economically as Chinese prosperity is tied to US (and European economic growth), hence that limits its capability to challenge the status quo. Therefore, competition will exist among the member states of this grouping.

- Russia and China don't have full concurrence with India's ambition to UNSC permanent seat.
- There is no military alliance as such or scope for much cooperation in defense.

Conclusion

The decision to form BRICS was based neither on the attractiveness of the economies of these countries nor on a cozy ideological confluence. Thus, bloc offers New Delhi greater bargaining space as India seeks to gain more prominence in institutions of global governance and shape them in the liberal international tradition with a southern ethos.

The value of BRICS today would be to show how alternative development strategies can be evolved which would actually address the concerns of people.

19. India is home to the largest number of refugees in South Asia yet it does not have a specific legal framework to deal with the problem. In this background, examine the need for a law on Refugees. **12½**

Approach of an Answer

- Start with a general introduction.
- Highlight the legal position of refugees in India.
- Elaborate on the challenges posed by refugees and argue for need of a law on refugees.

Introduction

India is a country that was born in the midst of one of the largest refugee flows on partition of Pakistan and India during declaration of Independence of both the countries and even today it sees large number of refugees, migrants crossing the border everyday. There are approximately 2 lakh refugees, victims of civil strife and war from neighbouring countries living in India, largest in South Asia.

Legal position in India

Regardless of the fact that India hosts a huge number of total global refugees, the country lacks both the resources and the legal framework for their sustenance. The masses in the country are differentiated on two grounds: either India National or foreigners.

India relies upon Foreigners act 1946 to govern the stay, entry and exit of foreigners in India. Section 2A of the Indian Foreigners Act defines a foreigner as a person who is not a citizen of India and that covers all refugees. It fails to differentiate between illegal migrant and Asylum Speaker or refugee or people willingly visiting India. The act also doesn't recognise the rights of the refugees.

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Despite hosting so many refugees, surprisingly, there is no word like Refugee in India Law. India is neither a signatory to the 1951 Refugee Convention nor does it have a domestic legislation in order. Yet, India boasts of abiding by the principle of non-refoulement and bringing refugee protection under the expansive understanding of Article 21 of the Constitution.

Challenges for India posed by refugees

India has adopted an adhoc administrative policy to accord protection to refugees ever since independence. This poses three problems

- India itself a developing country with huge population. So problem is related to lack of basic amenities.
- Problem of human right violations.
- Fear of disturbing demographic composition of the area. It might led to increase in extremism activity, as reported by IB report.

Need for Law on Refugees

- India remains the only significant democracy without legislation specifically for refugees. A well-defined asylum law would establish a formal refuge granting process with suitable exclusions (war criminals, serious offenders, etc.) kept.
- It would provide structured and institutionalised framework for addressing refugee inflows.
- On humanitarian grounds, it's a moral duty of every nation to provide a hand of help to people in distress.
- A well structured policy will aid in India's effort to contain ISIS influence in South Asia, as they are the most vulnerable to get in trap of extremism.
- It would enhance the status of India in world community and will provide a positive push for India candidature as a permanent member of UNSC.
- By adopting to international convention and treaties, India will carry forward its age old tradition of Vasudhaiva Kutumbakam which means "the world is one family".

Conclusion

India has the international image of being a compassionate nation, who has opened its gates to outsiders from historical times. There is rising pressure on government to solve the refugee problem in amicable manner. The solution can be achieved by multi-stakeholder regional cooperation of south Asian countries. Refugees problem demands the immediate and compassionate action of the world community.

20. Strengthening connectivity with Afghanistan is one of the core issues of India's policy towards Afghanistan. In this background, critically analyze the steps taken to promote connectivity with special reference to India – Afghanistan Air Corridor.

12½

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Approach of an Answer

- Start with a contextual based introduction.
- Discuss the important connectivity projects to Afghanistan.
- Highlight the benefits of India-Afghanistan Air Corridor.

Introduction

Foreign Policies run on multiple dimensions. Geo-politics is one of the important factors which require connectivity as a bed rock. India-Afghanistan relation involves geo-politics and connectivity as important factors because of following reasons:-

- Given its geography, Afghanistan is essential part for securing future energy line for India like Central Asia (Oil and gas rich region)
- Afghanistan can open gateway to Central Asia and Commonwealth Independent Nations for India and creating alternative route for the duty-free movement of goods through the Chabahar port in Iran to Afghanistan (Delaram to Zaranj highway) and NSTC (North-South Transport Corridor)
- These projects hold strategic importance in the light of CPEC, OBOR etc to counterbalance China increasing economic clout over the region.
- Recently, Air corridor has been started between nations to exchange cargo because of Pakistan reluctance to allow transaction through its border with India
- India-Afghanistan trade relation run on connectivity involving road, sea ways, air ways which contribute significantly in development of war torn nation and deepening the diplomatic relation between both countries.

India – Afghanistan Air Corridor

What prompted the Air Corridor Scheme?

The step was taken after President Ghani's demand from Pakistan for allowing Kabul to engage in trade with India through land route was turned down by Islamabad.

Unfortunately, , Pakistan being a close neighbor to Afghanistan has been playing hypocrisy games by creating hurdles for Afghan traders. Despite the Afghanistan–Pakistan Transit Trade Agreement (APTTA), a bilateral trade agreement signed in 2010 between the two countries, which calls for greater facilitation in the movement of goods amongst the two countries; however, the country hasn't been committed to the APTTA and on different pretexts impeded the Afghan exports and imports most often.

Although, based on the APTTA, Afghan trucks had the right to export limited amount of perishable goods over Pakistani territory via the Wagah crossing point to India, It did not offer Afghanistan the right to import Indian goods across Pakistani

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territory. Afghan traders would always complain about frequent stalling of shipments by Pakistani officials and unnecessary delays.

The imposed 2,430-kilometre-long Durand Line in the east and south of Afghanistan caused Afghanistan to remain a landlocked country. This de facto border which lacks legal status serves as a line of control between Afghanistan and Pakistan since British rule of Indian sub-continent, and it has thus far compelled our country to reluctantly use the Pakistani soil for exports to India and other countries.

In addition, border crossing points are often closed as Afghan and Pakistani forces clash over the disputed border occasionally, which also result in losses to Afghan farmers. During the fruits season the farmers complain of lack of market for Afghan fruit and other products which rot due to lack of shipment options. The frequent border closures on different pretexts by Pakistan and Afghan traders' lack of access to Wagah port for exporting their goods to India or other countries mainly resulted in the move of launching the air corridor.

Besides the losses incurred on Afghan traders throughout the excessive border closures, more than 800 flour mills were also closed in Pakistan due to decline in exports to Afghanistan during the month-long closure of crossing points between the two countries last February. As the Pakistan-based newspaper of Dawn admits "the collapse in exports to Afghanistan is an unnecessary and self-inflicted wound. The news puts down that the Pakistani exports in the current financial year may be in the region of \$1 billion, a drop of nearly a third, and down from a high of \$2.4 billion in 2011, is unsurprising." This was published by the daily last month.

Benefits provided from this corridor

The connectivity afforded by this corridor is a blessing for land-locked Afghanistan, as it will give the country's farmers and traders greater access to Indian markets.

"The current volume of trade between Afghanistan and India both ways is \$700 million annually. It was earlier around \$300 million. The target is ultimately \$10 billion in the years to come. A \$1 billion target is what we are looking at in the immediate future," Shailda Mohammad Abdali, Afghanistan's ambassador to India has said.

There are also hopes the new corridor will boost annual volume of trade between the two countries from \$700 million to \$1 billion in three years and would give a lift to exports of Afghanistan's agricultural products and its carpet industries.

The Afghan Chamber of Commerce and Industries (ACCI) has said the medicinal plants carried on the first flight were valued at \$11 million. ACCI officials said the cost of transporting a kilogram of vegetables and fresh fruit from Kabul and Kandahar to Indian markets will be about 20 cents per kg, and the cost of a kilogram of goods from India to Afghanistan will be about 40 cents.

Fresh and dried fruits businessmen around the country, especially in southern Kandahar province are content with the air corridor as they say the trade through the air corridor with India is "inexpensive" and "easy."

Both sides are hopeful that air cargo services will be extended to other cities of both the countries. And with the expansion of the air corridor—which provides a grand platform for Afghani products—our country's problem in transit trade will be resolved to a great extent when dependency on land routes for trade will not be needed that much, especially the Pakistani territory.

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Conclusion

Connectivity with Afghanistan, is indeed one of the crucial necessities that Indian foreign policy needs to fulfill. Although, initiatives such as the construction of the Zaranj-Delaram highway or the recently inaugurated Air Corridor may have received some applause but the long-term plans need a more sustainable enforcement. With hostility emanating from countries like Pakistan, the difficulties for India are a few notches higher. Hence, a dedicated commitment to upliftment of any initiative should be the approach on the part of India.

