

1. What are the factors leading to high numbers of tax litigation in India? What are its implications for the business climate? What measures have been taken recently to reduce tax litigations? Examine.

Approach

Since question is asking you to examine which is to probe deeper into the topic and understand the topic in detail. Here a candidate is expected to investigate and establish the key facts and issues related to the question.

Introduction

The tax dispute resolution mechanism in India is multi-layered and time consuming, affecting the environment for doing business in India. The country has an extensive tax appeals system that goes up to the Supreme Court of India. However, this system is subject to overuse. The income tax department is a major generator of tax appeals filed under the current dispute resolution procedure.

Body

FACTORS LEADING TO HIGH NUMBERS OF TAX LITIGATION IN INDIA

- Compared with other countries, India's tax litigation numbers, pendency, and resolution times are significantly higher.
- India's income tax department has a very low rate of success in its tax appeals compared with other countries.
- A taxpayer, after receiving an assessment order, can take an appeal through four appellate forums – CIT (Appeals), ITAT, High Courts, and the Supreme Court. The current tax litigation process in India could take 12-14 years (if appeals go up to the Supreme Court) to resolve a tax dispute.
- The lag is mainly because no timelines are mandated for conclusion of proceedings at the appellate forums, significant workload, lack of a fast-track dispute resolution mechanism, etc.
- If an order is passed by the appellate authority [i.e., the CIT(A)] in favour of the taxpayer, the assessing officer has the statutory power to challenge the order passed by the CIT(A) to the ITAT, High Court, and the Supreme Court. This appeal process is the primary reason for long pendency of tax disputes.

ITS IMPLICATIONS FOR THE BUSINESS CLIMATE

- Litigation is a pressing concern for all corporates in India and a consequence of tax uncertainty, inconsistent application and law-related ambiguity.
- A number of cases that have emerged in the recent past have drawn media attention globally and alarmed foreign investors.

- While tax disputes related to interpretation and application are inevitable in many jurisdictions, what makes the experience especially frustrating in India is the incapability of the system to resolve them expeditiously without resorting to a prolonged and expensive litigation process.
- This leads to the global perception that India is a difficult jurisdiction to operate in or to do business with.
- Enforcing contracts and paying taxes are areas where a weak dispute resolution procedure weighs heavily on the business environment in India.

MEASURES THAT HAVE BEEN TAKEN RECENTLY TO REDUCE TAX LITIGATIONS

- To reduce this burden of tax litigation, Indian tax authorities have taken a number of measures.
- One of these is stipulating monetary thresholds (of tax effect) below which Indian tax authorities will not file appeals and withdraw the ones that have already been filed.
- Appointed additional officers (independent or additional charge) to decide taxpayer appeals.
- To reduce pendency and enable faster disposal of pending cases in Supreme Court, 22 issues totalling about 1,000 pending cases have been identified and a request has been made to the Supreme Court for priority resolution of cases.
- The Central Technical Committee (CTC) has been created at the level of CBDT to resolve contentious legal issues and formulate departmental view/settled view.
- As a long-term measure to reduce litigation at higher judicial fora, a proposal for Alternate Tax Dispute Resolution (ATDR) initiated by a member (A&J) is under deliberation of the finance ministry.
- A national talent pool and regional talent pool of departmental officers is being created to use their specialised knowledge and experience in managing complex judicial cases at ITAT/HC/SC.

Conclusion

A number of initiatives have been taken to reduce pending tax litigation. The additional measure taken by the government in the Budget 2020 is the proposal for a legacy tax dispute resolution scheme for which a legislation has been introduced in the parliament as detailed earlier. Given that most of the tax litigation is generated by tax authorities, it needs to be realised that the income tax department, which is in appeal in these cases has a very low success rate. It is obvious that such a scheme can only succeed if the taxpayer (who would have a ruling in his favour at the lower level) is offered a substantial reduction on the original tax demand itself besides no levy of interest or penalty. The government will need to forgo an appropriate percentage of its “paper” demands in the scheme, so that taxpayers consider it worthwhile to opt for the scheme to gain tax certainty and reduce their litigation costs in terms of both money and time.

2. What are the ordinance making powers of the Executive? Under what circumstances can the ordinance making powers be used? Examine.

Approach:

The question is very straight forward in its approach students have to plainly mention ordinance making powers of the executive in the first part, in the second part mention circumstances under which ordinance can be made and conclude by giving a balanced overview of the ordinance making power in few lines.

Introduction:

The President is at the head of the Union Executive. Consequently, all executive powers are exercised in his name. The executive power of the Union to be exercised by the President is extended to the matters with respect to which Parliament has power to make laws and to conclude treaty and agreement. Ordinances are like a law but not enacted by the Parliament but rather promulgated by President of India when Lok Sabha and Rajya Sabha or either of those is not in session. Similarly, Governor is the head of executive in states and all actions are taken in his name, He too has the powers of promulgating ordinance when state legislature is not in session.

Body:

Ordinance making power of Executive-

- Article 123 of the Constitution grants the President certain law-making powers to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an Act of Parliament but are in the nature of temporary laws. Likewise, the Governor of a state can issue ordinances under Article 213 of the Constitution, when the state legislative assembly (or either of the two Houses in states with bicameral legislatures) is not in session.
- The ordinance making power is the most important legislative power of the President and the Governor. It has been vested in them to deal with unforeseen or urgent situations.
- Ordinance can be promulgated by the president on the recommendation of the union cabinet, similarly in the states Governor can promulgate ordinance on the recommendation of state cabinet only. In other words, it can be said that cabinet both in union and states are the real executive and are vested powers of recommending when Ordinances are to be promulgated.

Under Article 123 constitution has provided a detailed circumstance under which an ordinance can be promulgated which are as follows-

- If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require.
- An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament but every such ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, of before the expiration of that period resolutions disapproving it are passed by both Houses of the parliament.
- The president may withdraw an ordinance at any time. However, he exercises his power with the consent of council of ministers only.
- A constitutional amendment cannot be made through ordinance route. In this case there is a separate provision in the constitution for making amendments in the constitution. A bill for Amendment in the constitution can be brought in either house of parliament and not in state legislature and the President must give his assent to the bill.
- Article 213 deals with the Ordinance making power of the Governor of a state. However, the Governor cannot issue an Ordinance without instructions from the President in three cases where the assent of the President would have been required to pass a similar Bill i.e. if a bill containing the same provisions would have required the previous sanction of the President for introduction into the legislature, if the Governor would have deemed it necessary to reserve a Bill containing the same provisions for the consideration of the President and if an Act of the legislature containing the same provisions would have been invalid unless it received the assent of the President.

Supreme Court's observations-

- In AK Roy vs. Union of India (1982) while examining the constitutionality of the National Security Ordinance, 1980, which sought to provide for preventive detention in certain cases, the Court argued that the President's Ordinance making power is not beyond the scope of judicial review.
- In T Venkata Reddy vs. State of Andhra Pradesh (1985), the Court held that the motives behind the exercise of this power cannot be questioned, just as is the case with legislation by the Parliament and state legislatures.
- In DC Wadhwa vs. State of Bihar (1987), the Supreme Court held that courts could strike down re-promulgated ordinances.

Conclusion:

Ordinance making is an extraordinary power vested with the executive to deal with unforeseen events, in order to make sure that the power isn't misused by the ones who bear it, the Supreme Court limited the Executive's power to issue ordinances. The sanctity of the Constitution rests on the fact that there be a never-ending tussle amongst the three branches of the government, so that the bird of democracy may sing its beautiful song all day.

3. Discuss the underlying principles of the doctrine of separation of powers. What are the current issues related to the doctrine?

Approach

A straightforward question where you need to discuss the underlying principles of the doctrine of separation of powers in the first part of the answer while in the second part, you need to highlight the current issues related to the doctrine.

Introduction

The doctrine of Separation of Powers deals with the mutual relations among the three organs of the Government namely legislature, executive and judiciary. The origin of this principle goes back to the period of Plato and Aristotle. If this principle is not followed then there will be more chances of misuse of power and corruption.

Body

- The definition of separation of power is given by different authors. But in general, the meaning of separation of power can be categorized into three features:
 1. That the same person should not form more than one of the three departments of the government. Eg: Ministers should not sit in the parliament.
 2. That one department of the government should not interfere with any other department. Eg: The judiciary should be independent of the executive or that Ministers should not be responsible to Parliament.
 3. That one department of the government should not exercise the functions assigned to any other department. Eg: The Ministers should not have legislative powers
- Montesquieu believed that if all three powers were held by the same person, then there would be a dictatorship and arbitrary rule would prevail. Another writer, John Locke mentioned that the three organs of the state must not get into one hand as it may be too great a temptation to human frailty.
- The term separation of powers can be defined in the strict sense and the liberal sense. In the strict sense, separation of powers but in a liberal sense, separation of powers means there could be overlaps in functions and personnel between the three organs but there should also be checks and balances between the three organs.
- The doctrine of separation of powers has no place in strict sense in Indian Constitution, but the functions of different organs of the Government have been sufficiently differentiated, so that one organ of the Government could not usurp the function of another.
- In the case of Indira Gandhi vs Raj Narain, the court held that in our Constitution the doctrine of separation of power has been accepted in a broader sense. Unlike in American and Australia Constitution where a rigid

sense of separation of power applies, this is not applicable in India. But the doctrine of Separation of Powers has been included in our basic structure doctrine as has been ruled and upheld by the Supreme Court in a number of cases.

- In India, not only is there a functional overlapping but there is personnel overlapping also. The Supreme Court has the power to declare void the laws passed by the legislature and the actions taken by the executive if they violate any provision of the Constitution or the law passed by the legislature in case of executive actions.
- Even the power to amend the Constitution by Parliament is subject to the scrutiny of the Court. The Court can declare any amendment void if it changes the basic structure of the **Constitution**. The President of India in whom the Executive Authority of India is vested exercises law-making power in the shape of ordinance making power and also the judicial powers under **Article 103(1)** and **Article 217(3)** to mention only a few.
- The Council of Ministers is selected from the Legislature and is responsible to the Legislature. The Legislature besides exercising law-making powers exercises judicial powers in cases of breach of its privilege, impeachment of the President and the removal of the judges. The Executive may further affect the functioning of the judiciary by making appointments to the office of the Chief Justice and other Judges.

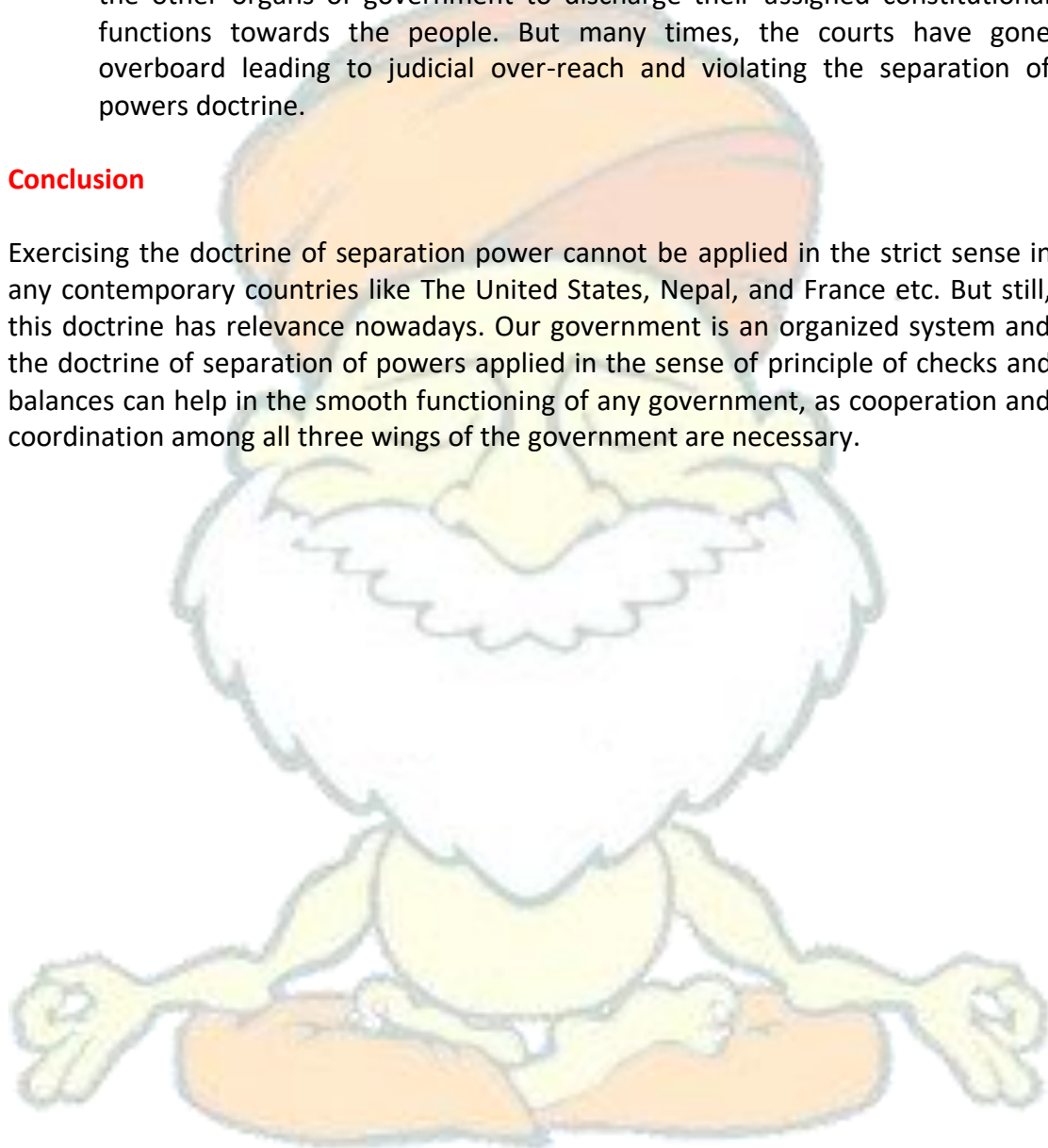
Unlike the US constitution, instead of having strict separation of power India follows the principle of 'checks and balance' which is evident from the various constitutional provisions dealing with executive, legislative and judicial organs. All three of them are strong pillars of India which support and strengthen each other. But as with any system, there are also many issues involved in this aspect, some of which include –

- Since its inception Indian Constitution has undergone various amendments, however, our constitution hadn't undergone major changes as changing the constitution entirely due to its principle of separation of power and checks and balances. But many provisions have also been an undoing for the principle.
- Provision of Emergency powers (Article 352-360) under constitution keep scope for totalitarianism violates principle of separation of power. Use of instrument of President's rule by more than 125 times by union government to remove state governments in different states. It was envisaged as dead letter which proved deadly weapon against states and hampered separation of powers.
- Governor's office: Constitutional and situational discretions are used by office of governor in inappropriate manner. Political activism shown by governor's office in West Bengal and Maharashtra in recent time reduces the stature of constitutional office in Indian polity. It also exemplifies violation of constitutional morality by indulging in jurisdiction of state's powers.

- One nation one policy initiatives erode the federal independence and innovation in their own jurisdiction like taxation, social sector schemes and electoral matters. E.g. push for one nation one election, one nation one tax.
- Sheer number of subjects under state list is much less than union list; still there is constant encroachment by union on the subjects of state list. E.g. Farmers acts of 2020.
- Judicial activism connotes the assertive role played by the judiciary to force the other organs of government to discharge their assigned constitutional functions towards the people. But many times, the courts have gone overboard leading to judicial over-reach and violating the separation of powers doctrine.

Conclusion

Exercising the doctrine of separation power cannot be applied in the strict sense in any contemporary countries like The United States, Nepal, and France etc. But still, this doctrine has relevance nowadays. Our government is an organized system and the doctrine of separation of powers applied in the sense of principle of checks and balances can help in the smooth functioning of any government, as cooperation and coordination among all three wings of the government are necessary.



4. What are your views on this year's budget proposals? Is it a progressive budget? Critically comment.**Approach**

Students are expected to write about budget and present views on this year's budget proposals and critically comment whether it's a progressive budget.

Introduction

According to Article 112 of the Indian Constitution, the Union Budget of a year, also referred to as the annual financial statement. Budget 2021, hailed by many as the Economic vaccine, is expected to boost revival of the Indian economy, which is currently in distress due to the impact of COVID-19 pandemic and the ensuing national lockdown.

Body

Important budget proposals:

- Production-linked incentive (PLI) scheme: Finance minister Nirmala Sitharaman has earmarked Rs 1.97 lakh crore for Production-linked incentive (PLI) scheme, whose scope has been expanded beyond the electronics segment. To mainly envisions to create an Atmanirbhar Bharat.
- Health reforms: The Pradhan Mantri Atma Nirbhar Swasthya Bharat Yojana will support the National Health Mission. With Rs 64,180 crore to build up primary, secondary and tertiary healthcare systems in the next six years.
- Power sector: To break the monopoly of power distribution companies (DISCOMS), the Centre has now given consumers the right to select the DISCOM of their choice to increase competition and to function financially efficient.
- Divestment gets a boost: The government has set targets for strategic disinvestment of Container Corporation of India, Air India BPCL, Pawan Hans and IDBI Bank in the ensuing financial year.
- Capital injunction: The government has decided to set up an Asset Reconstruction and Management Company for Stressed Assets to take over bad loans. Besides, the finance minister has made provision for a Rs 20,000 crore equity infusion to bail out public sector banks.
- Development Financial Institution: A Development Financial Institution (DFI) will be set up with Rs 27,000 crore capital. The funds will be used to finance social and economic infrastructure projects identified under the National Infrastructure Pipeline.

The FM managed to present a progressive budget which will not only help push the economic growth forward but also takes care of the healthcare and welfare of the people such as:

- The government presented the first paperless budget - 2021-22 against the backdrop of a pandemic-induced Global economic slowdown.

- Under the 'Sankalp of Aatmanirbhar Bharat' the Budget focused on six pillars, which include – Health & Well-being, Inclusive Development, Human Capital, Innovation and R&D.
- To shed its pro-corporate image and strengthen PSU banks, decided to set up a Big Bad Bank. The Asset Reconstruction Company will enable banks to improve its lending to productive sectors of the economy.
- It has also clearly conveyed that some banks and an insurance company will be privatised and they further increased Foreign Direct Investment (FDI) in the insurance sector. This shows the government's thinking that it is essential to involve the private sector in the long run.
- Post-pandemic budget estimates a deficit of 9.5% for the current fiscal year, from April 2020 to March 2021. This is up from around 7% expected by most analysts before the Budget. The reason for the jump in numbers is because the government has decided to officially admit to the extent of its borrowings and to be transparent in numbers.
- Budget 2021 is also humanist in its approach. To this end, senior citizens aged 75 years and above with only pension and interest income will be exempted from filing their income tax returns.

This budget made a brave-effort to make good use of lesson learnt from the global health crisis and economic set back due to ensuing national lockdown. But needs to be done more to call it purely progressive budget such as:

- A lot more could have been done to address the chronic underinvestment in India's public health infrastructure by appreciably raising expenditure.
- There is no tax relief for the salaried middle class, which will continue to pay 30% to 35% tax plus cess when the corporate sector pays 25%.
- There is no mention and any measures against the stupendous rise in economic inequality during just the last year. While the poor lost their jobs and livelihoods-in 2020, corporate India's profits zoomed.
- However, the household balance sheets have been smashed badly since the pandemic savings rate declining by 5 percentage points of GDP. The key question was how will aggregate demand improve in the next two years if households don't spend this was supposed to be addressed in budget.
- This year also saw the passage of a new National Education Policy (NEP) that called for a doubling of government expenditure over the next 10 years, starting from this year there were expectation from budget to increase the allocation.
- National Family Health Survey which pointed to an alarming trend of worsening nutrition indicators across the country. Nutrition services delivered through anganwadis and mid-day meals in schools were also neglected in the Budget, with zero increase to their allocations.
- The big infrastructure investments announced through roads and railways is welcome, but it appears rural infrastructure was left out of the priority list. Given that rural infrastructure provides both immediate cash relief to workers and fills critical infrastructure gap in remote areas it should have been in priority list.

Conclusion

However, the Budget has given a clear message in favour of reviving the economy, infrastructure and markets. This should be followed up by reducing red-tape, simplifying the tax and regulatory framework, and reforming the financial sector to create a conducive environment for investment.



5. What are the key pillars of 'Atmanirbhar Bharat'. Discuss.

Approach- Question is straight forward. A short background of atmanirbhar bharat scheme can be given in the introduction, then in the body, main themes can be covered with the way ahead and future of the programme.

Introduction

Prime Minister Modi On 12 May 2020, raised a clarion call to the nation giving a kick start to the Atmanirbhar Bharat Abhiyaan (Self-reliant India campaign) and announced the Special economic and comprehensive package of INR 20 lakh crores - equivalent to 10% of India's GDP – to fight COVID-19 pandemic in India. He further outlined five pillars of Aatma Nirbhar Bharat – Economy, Infrastructure, System, Vibrant Demography and Demand.

Body

The five pillars of 'Atmanirbhar Bharat' are economy, infrastructure, technology driven system, vibrant demography and demand.

Economy

Contemplates not an Incremental change but a quantum leap so that we can convert the current adversity into an advantage.

Infrastructure

That can be an image of modern India or it can be the identity of India.

Systems: driven by 21st-century technology, and that is not based on old rules.

Democracy: a vibrant democracy that is the source of energy to make India self-reliant.

Demand: where the strength of our demand and supply chain is utilized intelligently.

Significance of Atmanirbhar Bharat Abhiyan

- Talking about turning a crisis into an opportunity, he gave the example that the production of PPE kits and N-95 masks in India has gone up from almost being negligible to 2 lakh each, daily.
- Remaking that self-reliance is the only way out for India, the PM quoted from our scriptures "Eshah Panthah", that is – self-sufficient India.
- Self-reliance will make globalization human-centric. The definition of self-reliance has changed in a globalized world and it is different from being self-centred. India's fundamental thinking and tradition of "Vasudhaiva Kutumbakam" provides a ray of hope to the world. This should be seen in the

context of Human-Centric Globalization versus Economy Centralized Globalization.

- Self-reliance does not mean cutting India off from the world. India believes in the welfare of the world and India's progress is linked with the world. The world trusts that India has a lot to contribute to the development of the entire humanity.
- The PM also stressed on the need to be vocal for local products and urged people to buy only local products.

Criticism of Atmanirbhar Bharat Abhiyan

- **Inflated figures**
Several economists pointed out that as per the calculations by many economists, the actual government expenditure in the Atmanirbhar package is just 1%.
- The actions of RBI were included as part of the government's fiscal package whereas government expenditure and RBI's actions cannot be clubbed together.
- **Need to spend more**
The Indian economy likely to contract and the Gross Value Added across sectors is likely to fall. According to an assessment by Prof N R Bhanumurthy of the National Institute of Public Finance and Policy (NIPFP), India's GVA will contract by 13% this year under the Base case scenario (The Base case scenario refers to a scenario where governments bring down their expenditure in line with their falling revenues to maintain their fiscal deficit target).
- **Credit easing will not work immediately**
Direct expenditure by a government such as direct benefit transfer or by construction will mean that money reaches the people. But credit easing by the RBI is not direct government expenditure and banks will be hesitant to lend the money available with them.
- **Nothing to stimulate demand** – many economists have opined that the government stimulus tries to resolve only supply-side issues. There is nothing to generate demand. This could only be done by putting money in the hands of people.
- **Modest MSME package** – according to opposition leaders, the MSME package was modest and the measures were skewed in favour of the larger ones. Moreover, the unorganized sector was not catered to.
- **Insufficient support for the state governments** – the state governments which are at the forefront of fighting the pandemic have not been supported adequately via fund transfers.
- **The philosophy of self-reliance:** India, like most countries, has been following the principles of globalisation since the LPG reforms in 1991. Even though the globalised world shrank into isolated countries in the COVID19 period, it is yet to be seen if self-reliance can be adopted as a viable economic policy by a country like India, post-COVID.

Conclusion

The strategy of Atmanirbhar Bharat Abhiyan seems to give a strong supply-side push by boosting the availability of capital on easy terms and through supporting agriculture and business sectors. But it cannot be denied that there is a desperate need for demand stimulus now. People's purchasing power needs to be increased and demand for industrial products and services must be created to achieve dream of five trillion dollar economy.

