

**1. What are the socialist principles enshrined in the Indian Constitution? Discuss.****Approach**

A simple and straightforward question where in you need to discuss the socialist principles enshrined in the Indian constitution with some relevant examples from the constitution.

**Introduction**

India is a country with second largest population in the world but also it is a developing economy. The only reason of India being developing is unequal distribution of wealth as well as its dual economy character. Socialism becomes important in this background where social and economic equities are to be tackled in fulfilling India's growth story.

**Body**

- A socialist is someone who supports the political philosophy of socialism, which is governmental system that advocates community ownership and control of all lands and businesses rather than individual ownership.
- A Constitution is a set of fundamental principles according to which a state is governed. Indian constitution has different set of political philosophies in it. Many leaders of different political orientations took part in drafting this "Magna Carta of Socio-economic transformation".
- The word 'Socialist', added in the Preamble by 42nd Amendment Act, 1976 indicates the incorporation of the philosophy of "socialism" which aims to eliminate inequality in income, status and standard of living. By inserting 'socialist' to the preamble of the Constitution of India as a basic structure to the Indian Constitution.
- The Constitution had a socialist content in the form of certain Directive Principles of State Policy (esp. Arts. 39(b) and 39(c)), even before the term was added in 1976. However, the 'socialism' envisaged by the Indian Constitution is not the usual scheme of State socialism, which involves 'nationalisation' of all means of production, and the abolition of private property.
- Instead, Indian Socialism is 'democratic Socialism', influenced by Fabianism. It is a peaceful gradual transformation of the society in participation with the state and not against the state. Though the word 'Socialism' may seem to be vague, our Supreme Court has observed that its principal aim is to eliminate inequality of income and status and standards of life, and to provide a decent standard of life to the working people.

In this regard, the socialist principles enshrined in the Indian Constitution can be seen from the following points –

- Article 38 - To promote the welfare of the people by securing a social order permeated by social, economic and political justice and to minimise inequalities in income, status, facilities and opportunities.
- Article 39 - To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse.
- Article 39A - To promote equal justice and to provide free legal aid to the poor.
- Article 41 - To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement.
- Article 42 - To make provision for just and humane conditions for work and maternity relief.
- Article 43 - To secure a living wage, a decent standard of life and social and cultural opportunities for all workers. Also 43A states -To take steps to secure the participation of workers in the management of industries.
- Article 47 - To raise the level of nutrition and the standard of living of people and to improve public health.

The Indian Constitution, therefore, does not seek to abolish private property altogether but seeks to put it under restraints. Instead of a total nationalization of all property and industry, it envisages a 'mixed economy', but aims at offering 'equal opportunity' to all, and the abolition of 'vested interests'.

However, some have argued that the Indian state is deviating from its path of Socialism. The following have been cited as reasons behind this line of argument:

- The Indian state has failed to end mass poverty where 17% of the population still has incidence of multi-dimensional poverty in 2020.
- Adoption of neo-liberal economic policy: The new economic policy (1991) of liberalization, privatization and globalization has diluted the socialist credentials of the Indian state.
- Growth, which happened after the reforms of 1990s exacerbated inter-state and intrastate disparities. Further, this growth has been without any meaningful job creation.

### Conclusion

Though the present conditions demand focus on market economy, socialism cannot be completely abandoned due to India's socio-economic realities and further being a part of basic structure doctrine, it should be upheld as the concept of basic structure as such give's coherence and durability to a Constitution for it has a certain intrinsic force in it.

## 2. Discuss the key features adopted in the Indian Constitution from the Government of India Act, 1935.

### Approach

Students are expected to write about the Government of India act 1935. And discuss the important key features of government of India act 1935 adopted in Indian constitution.

### Introduction

The Government of Indian Act was passed by the British parliament in 1935 and came into effect in 1937. It was based on a report by a Joint Select Committee, led by Lord Linlithgow, set up the two houses of the British parliament. The report, in turn, was the result of the Joint Committee's scrutiny of the 'White Paper' – a scheme of constitutional proposals - prepared by the British government close on the heels of the Round Table conferences.

### Body

The Act played a key role in the drafting of the Constitution of India, 1950. A significant chunk of the Constitution, particularly the administrative provisions, are borrowed from the Act.

Key features adopted in Indian constitution from the Government of India act, 1935:

- It provided for the establishment of an All-India Federation consisting of provinces and princely states as units. The Act divided the powers between the Centre and units in terms of three lists Federal List (for Centre, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). Residuary powers were given to the Viceroy. Indian constitution took this provision in 7<sup>th</sup> schedule and placed residuary power in centre.
- The provinces were allowed to act as autonomous units of administration in their defined spheres. Moreover, the Act introduced responsible governments in provinces, that is, the governor was required to act with the advice of ministers responsible to the provincial legislature. This provision later transferred into state governments power.
- Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). Six States having a Legislative Council in addition to the Legislative Assembly through Article 169 of the Constitution.
- It extended franchise. About 10 per cent of the total population got the voting right. Article 326 in The Constitution of India 1949. Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage.

- It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces. Articles 315 to 323 of Part XIV of the constitution, titled as Services Under the Union and the States, provide for a Public Service Commission for the Union and for each state. This was adopted from the government of India Act 1935.
- It provided for the establishment of a Federal Court, which was set up in 1937. India's Supreme Court succeeded the Federal Court of India on 28 January, 1950 which was established by the Government of India Act 1935 and the Privy Council, which was the highest judicial body in the country during British era.

### Conclusion

The 1935 Act was aimed to perpetuate British rule and design to appease Nationalists. The act also had regressive provisions such as separate electorate and had divide and rule as its guiding philosophy. GOI Act, 1935 reduced the time frames of constitution creation, we should not forget that it was created to manage (or control) the affairs of a colony upon vested commercial interests of The Great Britain. At the same time, we need to accept that there were many Indian intellectuals laid a strong foundation well before GOI Act, 1935 for this cause.

### 3. What are the socialist principles enshrined in the Indian Constitution? Discuss.

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### 5. Was the constitution assembly a truly representative body? Critically comment.

### Approach

As the directive is to critically comment, overall constitution of constituent assembly can be given in first half and then arguments can be put forward about the representation and its significance.

### Introduction

It was in 1934 that idea of constitution assembly for India was put forward by M. N. Roy, a pioneer of radical democratism. In 1935, congress party officially demanded a constituent assembly to frame a constitution. This demand was finally accepted in principle by “august offer” of 1940. Finally, cabinet mission was sent to India. Mission rejected idea of two constituent assemblies, it put forth a scheme which satisfied demands of Muslim league.

### Body

#### Composition of constituent assembly

- Assembly was constituted in November 1946, under a cabinet mission plan, according to which a scheme was formulated.
- The total strength of assembly was to be 389. Of these 296 were allotted to British India and 93 allotted to princely states.
- Out of 296 allotted to British India, 292 members were to be drawn from eleven provinces and four from, four chief commissioners’ provinces i.e., British Baluchistan, coorg, Delhi, Ajmer- Mewari.
- Each province and princely state were to be allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.
- Seats allocated to British India provinces were to be decided among three principal communities- muslims, sikhs and general i.e., all except muslims and sikhs, in proportion to their population.
- The representatives of each community were to be selected by members of that community in the provincial legislative assembly and voting was done to be by the method of proportional representation by means of single transferrable vote.
- The representatives of princely states were to be nominated by the heads of princely states.

It is therefore clear that assembly was partly elected and partly nominated body. More importantly, members were indirectly elected by the members of provincial assemblies, who themselves were elected on a limited franchise.

#### Was it a truly representative body:

- The elections to constituent assembly (for 296 allotted to British Indian provinces) were held in July- august 1946. The Indian national congress won 208 seats, the Muslim league 73 seats and small groups and independents got remaining 15 seats.
- The 93 seats allotted to princely states remained empty as they decided to stay away from constituent assembly.



- Although constituent assembly was not directly elected by the people of India on the basis of universal adult franchise. The assembly comprised of representatives from all sections of society.
- Hindus, muslims, Sikhs, Jains, parsis, Anglo- Indians, Indian Christians, SC's, ST's including women of all these sections were given representation in the assembly.
- Though not a universal adult franchise, congress made it a point to make this body more representative of diversity of India. Most of the barristers were framers of the constitution. But two most important of all stayed away from constituent assembly, Mahatma Gandhi and M. A. Jinnah.

### Conclusion

Fact of matter is universal franchise was first given in independent India by constitution itself, but elections to assembly of constitution were not based on it. One might find paradox here, but we see voices of Dalit, tribal women making their opinions in assembly. Leaders from all walks of life joined this humongous task of framing a constitution. Last but not the least, united, undivided and more integrated India is evident of strong constitution and its widespread legitimacy across all sections of India.

### 6. Preamble is the philosophical key to the Indian Constitution. Elucidate.

#### Approach

A simple and straightforward question where in you need to elucidate upon the aspect of Preamble being the philosophical key to the Indian constitution through multiple examples and details of preamble.

#### Introduction

Preamble refers to the preface of the constitution. It embodies the basic philosophy and fundamental values on which Indian Constitution is based i.e., moral, political and religious. As it reflects the dreams of the founding fathers of the constitution, SC has held that Preamble is the key to understanding the mind of constitution makers.

#### Body

- The preamble of the Indian constitution, which is based on the objective's resolution drafted by Jawaharlal Nehru, summarises the ideals and thoughts the founding fathers of independent India had dreamed of. It is the central theme around which the constitution revolves.
- The Preamble does not grant any power but it gives a direction and purpose to the Constitution. It outlines the objectives of the whole Constitution. The

Preamble contains the fundamentals of the constitution. The preamble to an Act sets out the main objectives which the legislation is intended to achieve.

- The Preamble embodies the basic philosophy and fundamental values – political, moral and religious – on which the constitution is based. The Preamble is the key to the minds of the maker of the constitution. The edifice of our constitution is based upon basic element mentioned in the preamble –
1. Sovereign – India is sovereign and free to conduct its own affairs (internal and external). It can acquire foreign territory and cede also as per mentioned in the constitution (Article 1-4).
  2. Socialist – India has democratic socialism i.e., both public and private sector co-exist. This is evident in Directive principles of state policy (DPSP) socialist principle.
  3. Secular – All religion in India has the same status and support from the state. This is evident in Fundamental Rights (FR-Article 25-28) and DPSP.
  4. Democratic – The preamble has mentioned about Political, social and economic democracy. FR ensures political democracy while DPSP ensures socialist and economic democracy.
  5. Republic – The head of state is always elected directly or indirectly. Republic means political sovereignty lies in the hands of people and public offices are being opened to every citizen without any discrimination.
  6. The Idea of Justice, Liberty, Equality and Fraternity of Preamble has been ensured in the various provision of the FR and DPSP.

As Constituent Assembly member Pandit Thakur Das Bhargava observes ‘The Preamble is soul of the constitution. It is a key to the Constitution’. It acts a philosophical key with –

- Guide for the state in its functioning whether it is the socialist nature or secular government functioning.
- It instigates the state to take steps to realize the directive principles of state policy. E.g., the land ceiling policy was justified by the then government as in lines of socialist nature of state as mentioned in the preamble itself.
- It helps the judiciary in deciding the cases based on the philosophical and ideological brainstorming behind the judgements. E.g., Supreme Court in the recent Sabarimala and Triple Talaq case mentioned secularism as well as equality as mentioned in the preamble is the basic Indian philosophy which needs to be adhered.
- It acts as a guide for Indian citizens in their conduct. For instance, the philosophy of equality, fraternity as mentioned in the preamble requires citizens to stay secular, give up communal issues and so on.

As Justice Sikri observed, “It seems to me that the preamble of our Constitution is of extreme importance and the constitution should be read and interpreted in the light of the grand and noble vision expressed in the preamble.”

- The Supreme Court has stated that the preamble is a part of the basic structure of constitution. In the Kesavananda Bharati case (1973), it stated that the preamble can be used as a viewpoint to understand the basis of certain articles of the constitution. These features suggest that the preamble is the philosophical key to the constitution.
- So, one can say that Preamble is the introduction or preface to the constitution of India. Whenever there is any doubt regarding any provision in the constitution Preamble will act as guiding light and can be used for grey area (interpretation).

### Conclusion

It will not be wrong to say that the spirit or the ideology behind the Constitution is sufficiently crystallized in the preamble. The Preamble embodies the spirit of the constitution to build up an independent nation which will ensure the triumph of justice, liberty, equality, and fraternity.

**7. Even though the term 'secular' was added to the preamble by the 42nd amendment, the Indian Constitution was already secular in its principles and provisions. Do you agree? Comment.**

### Approach

Students are expected to write about the term secular in the preamble. And highlight on how Indian constitution was already a secular in its principles and provision.

### Introduction

Secularism is a doctrine that states religion is kept separate from the social, political, economic and cultural spheres of life. Religion is open to one and all and is given as a personal choice to an individual without any different treatment to the latter. In the words of P B Gajendragadkar, a former Chief Justice of India, secularism is defined as 'The State does not owe loyalty to any particular religion as such: it is not irreligious or anti-religious; it gives equal freedom to all religions.'

### Body

Secular term in the preamble:

- The Preamble of Indian Constitution aims to constitute India a Sovereign, Socialist, Democratic Republic. The terms socialist and secular were added to it by the 42nd amendment. The whole constitution is summarised in the preamble. It is the mirror to the spirit of the constitution. Indian society is a multi-religious society, it is having different caste, religion along with several religion diversification.

- It emphasises the fact that constitutionally, India is a secular country which has no State religion. And that the state shall recognise and accept all religions, not favour or patronise any particular religion.

Indian Constitution guaranteed secular principles and provision even before 42<sup>nd</sup> constitutional amendment such as:

Through fundamental rights:

- Article 25 provides 'Freedom of Conscience', that is, all persons are equally entitled to freedom of conscience and the right to freely profess, practise and propagate religion.
- While Article 14 grants equality before the law and equal protection of the laws to all, Article 15 enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.
- Article 16 (1) guarantees equality of opportunity to all citizens in matters of public employment and reiterates that there would be no discrimination on the basis of religion, race, caste, sex, descent, place of birth and residence.
- As per Article 26, every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.

Through DPSP:

- Article 44 of the Directive Principles in the Constitution says the "State shall endeavour to provide for its citizens a uniform civil code (UCC) throughout the territory of India."

Through preamble:

- Preamble secures all citizens of India Liberty of thought, expression, belief, faith and worship.

Through adult franchise:

- Article 326: Elections to the House of the People and to the Legislative Assemblies of States to be on the basis of adult suffrage. Adult franchise means that the right to vote should be given to all adult citizens without the discrimination of caste, class, colour, religion or sex. It demands that the right to vote should be equally available among all.

The constituent assembly has visualised the peculiar situations of the country and arranged Indian constitution to secure secular principles. It made incumbent upon the state to take positive as well as negative actions to promote fraternity with upholding secular provision and principles.

Threats to Secularism:

- Politicisation of any one religious group leads to the competitive politicisation of other groups, thereby resulting in inter-religious conflict.
- One of the manifestations of communalism is communal riots. In recent past also, communalism has proved to be a great threat to the secular fabric of Indian polity.

## Conclusion

Secularism undoubtedly helps and aspires to enable every citizen to enjoy fully the blessing of life, liberty and happiness, but in the pursuit of this ideal, those who believes in secularism must be inspired by a sense of ethical purpose in dealing with their fellow citizens.

### **8. Discuss the doctrine of basic structure and its significance in a constitutional democracy.**

#### **Approach-**

question is straight forward. Candidate is required to give evolution of basic structure doctrine in the beginning, laid out its significance in context of healthy working of Indian democracy.

#### **Introduction**

Basic means, base, foundation on which a thing stands. In case the base is removed, the structure will fall. The Doctrine of Basic Structure signifies the basic features of the Constitution, which cannot be changed or amended.

#### **Body**

- Since the adoption of Indian Constitution, debates have started regarding the power of the Parliament to amend key provisions of the Constitution.
- In the early years of Independence, the Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in Shankari Prasad case (1951) and Sajjan Singh case (1965).
- In both the cases the court had ruled that the term "law" in Article 13 must be taken to mean rules or regulations made in exercise of ordinary legislative power and not amendments to the Constitution made in exercise of constituent power under Article 368.
- This means Parliament had the power to amend any part of the constitution including Fundamental rights.
- Article 13(2) reads, "The State shall not make any law which takes away or abridges the right conferred by this Part (Part-III) and any law made in contravention of this clause shall, to the extent of contravention, be void."
- Since the adoption of Indian Constitution, debates have started regarding the power of the Parliament to amend key provisions of the Constitution.
- In the early years of Independence, the Supreme Court conceded absolute power to Parliament in amending the Constitution, as was seen in the verdicts in Shankari Prasad case (1951) and Sajjan Singh case (1965).
- However, in the Golaknath case (1967), the Supreme Court held that Parliament could not amend Fundamental Rights, and this power would be only with a Constituent Assembly.
- The Court held that an amendment under Article 368 is "law" within the meaning of Article 13 of the Constitution and therefore, if an amendment "takes away or abridges" a Fundamental Right conferred by Part III, it is void.

#### Keshavananda Bharati case

- The case of Kesavananda Bharati v. State of Kerala where the Supreme Court emphasising on the essence of the basic structure held that “every provision of the Constitution can be amended provided in the result the basic foundation and structure of the Constitution remains the same.” The concept of basic structure as such give’s coherence and durability to a Constitution for it has a certain intrinsic force in it.
- In the Kesavananda Bharati, SC laid down the very first list of features - “discernible not only from the Preamble but from the whole scheme of the Constitution” that would constitute the “basic foundation and structure” of the Constitution:
  1. Supremacy of the Constitution;
  2. Republican and Democratic form of Government.
  3. Secular character of the Constitution
  4. Separation of powers between the Legislature, the executive and the judiciary;
  5. Federal character of the Constitution
  6. The dignity of the individual secured by the various Fundamental Rights and the mandate to build a welfare state contained in the directive principles;
  7. The unity and the integrity of the nation;
  8. Parliamentary System.
  9. parliamentary system
  10. rule of law.

Since then, the constituents of the Basic Structure have reviewed, examined and delved into by the Supreme Court in several cases.

#### Significance

- The framers of the Constitution have built a wall around the fundamental rights, which has to remain forever, limiting the ability of the majority to intrude upon them. That wall is a part of basic structure.
- under Article 368 “one cannot legally use the Constitution to destroy itself”, as the doctrine of constitutional identity requires. The theory of basic structure is based on the principle that a change in the thing does not involve its destruction, and destruction of a thing is a matter of substance and not of form.

#### Conclusion

Basic structure of constitution is cornerstone of democratic form of government. We have witnessed altering destruction of constitution by political class in our neighbourhood and all over the world. The robustness of Indian constitution derives its power from seminal principles of basic structure which is necessary for working constitutional democracy.

#### 9. What according to you have been the two most landmark amendments to the Indian Constitution in the 21st century? Substantiate.

## Approach

As the derivative is substantiate so it necessitates an explanation in which you have to give evidence or provide information to prove that something is true

## Introduction

Under Article 368 of the Indian Constitution, the Parliament is empowered to amend it and its procedures. Amendments to the Indian Constitution are not easy to produce and require compliance with other provisions. Article 368 grants Parliament some powers allowing it to amend it while keeping its fundamental form just the same. In 73 years of Indian Independence, the constitution has been amended 104 times.

## Body

### THE TWO MOST LANDMARK AMENDMENTS TO THE INDIAN CONSTITUTION IN THE 21ST CENTURY

#### 1. THE CONSTITUTION (86TH AMENDMENT ACT-2002):

- Provides Right to Education until the age of fourteen and early childhood care until the age of six.
- One of the most important amendments, the government directed private schools to take 25% of their class strength from economically weaker or disadvantaged groups of society through a random selection process with the help of the government funding.
- This initiative was taken to try and provide elementary education to all. Moreover, the local and state governments were made to ensure its proper implementation.
- In order to make the right to free and compulsory education a fundamental right, the Act inserts a new Article, namely Article 21A, which confers the right to free and compulsory education on all children aged between 6 and 14 years.
- The Law amends the Constitution in Part-III, Part -IV, and Part-IV(A).

#### 2. THE CONSTITUTION (101ST AMENDMENT ACT-2016):

- Goods and Services Tax (GST) commenced on 8 September 2016 with the enactment and subsequent notices of the 101st Constitution Amendment Act, 2016.
- The constitution incorporated ARTICLE 246-A, 269-A, 279-A. The amendment allowed amendments to the constitution's 7th cycle.

- Union List entry 84 earlier contained duties related to cigarettes, alcoholic liquors, marijuana, Indian hemp, medicines and drugs, medicinal and bathroom arrangements. Petroleum oil, high-speed gasoline, engine spirit (petrol), natural gas, and air turbine power, cigarettes, and cigarettes goods should be listed following the amendment.
- Entry 92 has been removed (newspapers and ads published therein), they are now under GST. Entry 92-C (Service Tax) is now deleted from the list of unions.
- Entry 52 (entry tax for in-state sale) has now been removed from the State register.
- Entry 54, Taxes on the export or purchasing of products other than newspapers, according to the provisions of Entry 92-A of the List I have now been supplemented by Taxes on the selling of petroleum oil, high-speed gasoline, motor spirit (petroleum), natural gas, aviation turbine fuel and alcoholic spirit for human consumption, but not including the sale or distribution in the form of inter-State commerce or commerce Reference 55 (Taxes on Advertising) was omitted.
- Entry 62 (Luxury taxes, including taxes on entertainment, entertainment, betting and gambling) has now been replaced by these taxes only to be levied by local authorities.

### Conclusion

Article 368 is vague on whether or not the parliament has the right to change the basic structure, but this still does not mean this Article 368 imposes the restriction on the modification of the basic structure and Part III of the Constitution. Although having provisions to amend the constitution was progressive to the fathers of our nation, it is important that such provisions are not misused. Misuse could lead to undue legislative or executive authority that could rip apart the fabric of our society. Indians may not always know all the procedural details of this lengthy and imperfect document, but they know the core — that it's not the whims of political greed that governs them, but the constitutional words. And on Republic Day, this is worth celebrating.

**10. What are the latest amendments made to the provisions related to citizenship. What are your views on these amendments? Discuss.**

### Approach:

The question demands a thorough explanation of all the amendments made to citizenship act since it was enacted from 1955, also vies need to expressed in a balanced, forward looking and logical manner.

### Introduction:



Citizenship signifies the relationship between individual and state. Like any other modern state, India has two kinds of people—citizens and aliens. Citizens are full members of the Indian State and owe allegiance to it. They enjoy all civil and political rights. Citizenship is an idea of exclusion as it excludes non-citizens. Citizenship is the status of a person recognized under law as being a legal member of a sovereign state or belonging to a nation. In India, Articles 5 – 11 of the Constitution deals with the concept of citizenship.

**Body:**

- **Citizenship at the commencement of the Constitution-**

Articles 5 to 11 talk about citizenship for people at the commencement of the Constitution, i.e., on November 26th, 1949. Under this, citizenship is conferred upon those persons who have their domicile in Indian territory and Who was born in Indian territory; Whose either parent was born in Indian territory; Who has ordinarily been a resident of India for not less than 5 years immediately preceding the commencement of the Constitution.

Citizenship is regulated by the Citizenship Act, 1955. The Act specifies that citizenship may be acquired in India through five methods – by birth in India, by descent, through registration, by naturalisation (extended residence in India), and by incorporation of territory into India.

- **Amendments:**

The Citizenship (Amendment) Bill, 1986-

As per the law amendment, it is no longer adequate to be born in India to be granted Indian citizenship. At the time of birth either one of the parents has to be an Indian citizen for the person to become a citizen of India.

- The Citizenship Amendment Bill, 1992-

The Act provides that a person born after January 26, 1950 but before the commencement of the Act shall be a citizen of India if the father is Indian at the time of birth; after the commencement of the Act, the person shall be Indian if either of the parents is Indian. Also replaces references to "male persons" with "persons".

- The Citizenship (Amendment) Act, 2003-

The Act was passed by the Parliament in December 2003, and received presidential assent in January 2004. It is labelled "Act 6 of 2004". The Act amended The Citizenship Act, 1955 by introducing and defining a notion of "illegal migrant", who could be jailed or deported.

- Citizenship (Amendment) Act, 2016

In 2015 and 2016, the central government issued two notifications exempting certain groups of illegal migrants from provisions of the Foreigners Act, 1946 and the Passport (Entry into India) Act, 1920. These groups are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, who arrived in India on or before December 31, 2014. This implies that these groups of illegal migrants will not be deported or imprisoned for being in India without valid documents. The Citizenship (Amendment) Bill,

2016 was introduced in Lok Sabha on July 19, 2016 to amend the Citizenship Act, 1955. It seeks to make illegal migrants belonging to the same six religions and three countries eligible for citizenship.

#### Views-

- Citizenship act has been constantly amended since 1986 because of the very reasons of the issues in some parts of the country like Assam since 1971 with the formation of Bangladesh as a separate country from erstwhile East Pakistan with the influx of refugees in large numbers in the immediate neighbour states like Assam, West Bengal, Tripura etc but with recent amendment of 2019 there has been protests in large numbers against the provisions like providing citizenship to particular minority groups like Hindus, Sikhs, Buddhists in India coming from the countries like Pakistan, Afghanistan and Bangladesh, this with the formation of national register of citizens the fear among minority groups in India particularly among Muslims because they think it is politically directed towards them with serious negative intentions.

- **Concerns-**

It contradicts the Assam Accord of 1985, which states that illegal migrants, irrespective of religion, heading in from Bangladesh after March 25, 1971, would be deported. Critics further argue that the extensive exercise of updating the National Register of Citizens (NRC) will become Null and Void due to this Amendment act. There are an estimated 20 million illegal Bangladeshi migrants in Assam and they have inalienably altered the demography of the state, besides putting a severe strain on the state's resources and economy. It is argued that it is violative of Article 14 of the Constitution (which guarantees the right to equality and applicable to both the citizens and foreigners) and the principle of secularism enshrined in the preamble of the constitution.

India has several other refugees that include Tamils from Sri Lanka and Hindu Rohingyas from Myanmar. They are not covered under the Act.

- **Governments stand:**

The government claims that these persecuted migrants will be eligible to apply for citizenship only after intense assessment and recommendation of district authorities and state government. The government has also clarified that Pakistan, Afghanistan, and Bangladesh are Islamic republics where Muslims are in majority hence, they cannot be treated as persecuted minorities. The beneficiaries under the Citizenship Amendment Bill can reside in any state of India the burden of these persecuted migrants will be shared by the entire country and not only Assam. Moreover, these migrants were earlier given protection against legal action in the years 2015 & 2016. Long term visa protection was also granted to them. Thus, the proposed amendment will only extend these benefits further to make these persecuted migrants eligible to apply for citizenship.

**Conclusion:**

While addressing the rights of Chakma refugees, the Supreme Court in *NHRC vs. State of Arunachal Pradesh* case provided equal protection before the law and rights under Article 21 (Right to life) to all immigrants including those who are considered as illegal. With the passage of this legislation, then by means of naturalization, these persecuted immigrants would be entitled to enjoy the benefits of rights guaranteed under the constitution of India, including equality, free of speech and expression, life, vote, work, food, etc. Hence, the law should not limit itself to minorities from Afghanistan, Pakistan, and Bangladesh, but also include refugees from persecuted minorities of all religions who have made India their home.

**11. What do you understand by the term 'liberty'? Discuss. What are the key constitutional provisions related to personal liberty? Examine.****Approach**

The above question has two parts, first part demands explanation of the term Liberty very comprehensively, also it is important to define the term in Indian context as well and its importance in constitutional democracy like India. In the second part of the question, detailed explanation of constitutional provisions related to liberty is needed.

**Introduction**

"I have never thought, for my part, that man's freedom consists in his being able to do whatever he wills, but that he should not, by any human power, be forced to do what is against his will." **Jean-Jacques Rousseau**

The above quote from Rousseau underlines the importance of liberty as the epitome of human progress, and that individual is the master of his own will and liberty is the expression of the same human will which allows him to live freely without subjugation. In modern societies liberty is the backbone of a functional constitutional democracy which allows people to freely express their choices and opinions.

**Body**

- Liberty in its literal sense means the absence of restraints and rights to do whatever one likes. Liberty, therefore, means freedom to do everything provided it does not injure other's freedom. It implies necessary restraint on all to ensure the greatest possible amount of liberty for each. In this sense, Liberty can be maximized only when there is mutual respect and goodwill, and all follow a simple rule of social behaviour.
- The simple rule of man's sociability tends to harmonise his liberty with that of his fellows. It entails such restraints as reasonable and necessary to promote and ensure the greatest possible extent of liberty.

- Reasonable Restraints and restrictions do not destroy liberty; it is destroyed only when such restraints are arbitrary and unjust. It constitutes the enjoyment of those rights, and the creation of such opportunities as help man grow to be the best of himself, develop his faculties, and plan his life as he deems best. The true test of liberty lies in the laws of the State and the extent to which they help a citizen to develop all that is good in him. Liberty is, thus, a product of rights. It thrives best where rights are guaranteed to all without distinguishing sex, creed, caste, colour, or status in society.

#### In Indian context-

- Preamble of the constitution secures to all the citizens Liberty of thought, belief, faith, Expression and worship through their fundamental rights enforceable in the court of law. Liberty as elaborated in the preamble is very essential for the successful functioning of the Indian democratic system and all-round development of the individual's capabilities.

#### Constitutional Provisions-

- Liberty is the basis on which the pivots of our own freedom struggle stood, therefore, our forefathers ensured that the future generations immerse in this beautiful concept which enables every individual the right life with dignity.
- The Preamble of the Indian Constitution too proclaims that one of its objectives is to secure Liberty "Liberty of thought, expression, belief, faith and worship".
- Article 19 is the most important and key article which embodies the "basic freedoms". Article 19 provides that all citizens shall have the right to:
  - Freedom of speech and expression.
  - Assemble peaceably and without arms.
  - To form associations or unions.
  - Move freely throughout the territory of India.
  - Reside and settle in any part of the territory of India.
  - Practice any profession, or to carry on any occupation, trade or business.
- Article 21-Protection of Life and Personal Liberty- No person shall be deprived of his life or personal liberty except according to procedure established by law. This fundamental right is available to every person, citizens and foreigners alike. Article 21 provides two rights-Right to life and Right to personal liberty. The Supreme Court of India has described this right as the 'heart of fundamental rights. The right specifically mentions that no person shall be deprived of life and liberty except as per the procedure established by law. This implies that this right has been provided against the State only. State here includes not just the government, but also, government departments, local bodies, the Legislatures, etc.
- Right to Freedom of Religion (Articles 25 – 28)- This indicates the secular nature of Indian polity. There is equal respect given to all religions. There is freedom of conscience, profession, practice and propagation of religion. The

State has no official religion. Every person has the right to freely practice his or her faith, establish and maintain religious and charitable institutions.

- Preventive Detention (Article 22)- Preventive detention means detention of a person without trial and conviction by a court but merely on suspicion in the minds of the executive authority. Preventive detention is a specific law in which the executive is authorized to impose restraint upon the liberty of a man who may not have committed a crime but who it is apprehended, is about to commit acts that are prejudicial to the public safety etc.

### Conclusion

In India the concept of liberty has received a far more expansive interpretation. The Supreme Court of India has rejected the view that liberty denotes merely freedom from bodily restraint and has held that it encompasses those rights and privileges that have long been recognized as being essential to the orderly pursuit of happiness by free men. The meaning of the term personal liberty was considered by the Supreme Court in the Kharak Singh's case, which arose out of the challenge to Constitutional validity of the U. P. Police Regulations that provided for surveillance by way of domiciliary visits and secret picketing. The concept of personal liberty is not a simple or isolated issue. Its protection through law inevitably conflicts with other important values. Personal liberty is an unusually broad term, encompassing both fundamental Constitutional rights such as freedom from government intrusions into homes and the right of citizens to make decisions about marriage, contraception and abortion and less well defined and arguably less critical issues.

### 12. What were the objectives of including fundamental duties in the Indian Constitution? Discuss. Have those objectives been met? Critically examine.

#### Approach

A straightforward question where in you need to discuss the objectives of including fundamental duties in the Indian constitution while in the second part you need to critically examine whether those objectives have been met or not.

#### Introduction

The Constitution of India, the longest written Constitution of the world, has envisaged a holistic approach towards civic life in a democratic polity. Since human conduct cannot be confined to the realm of Fundamental Rights, the Constitution has envisaged certain duties, which are correlated to the rights, and those duties have been described as Fundamental Duties

#### Body

Constitution is the supreme law of India. Fundamental Duties of the citizens of India are mentioned in Article 51A of the Indian Constitution. By the 42nd Amendment of the Constitution, adopted in 1976, Fundamental Duties of the citizens have been

enumerated after the Swaran Singh Committee suggested for inclusion in the Constitution of certain Fundamental Duties and obligations which every citizen owes to the nation. In this regard, the objectives for including fundamental duties in the Indian constitution can be seen from the following points –

- The Fundamental duties have been incorporated in the constitution to remind every citizen that they should not only be conscious of their rights but also of their duties. The concept of Fundamental Duties was taken from the constitution of USSR along with the concept of Five-Year Plan.
- No democratic polity can ever succeed where the citizens are concerned only about their rights and are not willing to be active participants in the process of governance by assuming responsibilities, discharging citizenship duties and coming forward to give their best to the country.
- The Government thought that non-declaration of citizen's duty was a missing part of the 'social contract' which the citizens' are deemed to have entered into with the Government under the framework established by and under the Constitution of India.
- The general objectives behind were also to "remove the difficulties in achieving the objective of socio-economic revolution, to end poverty, ignorance, disease, inequality, etc."
- The incorporation of Fundamental Duties in the Constitution was an attempt to balance an individual's civic 'freedoms' with his civic obligations. It is expected that a citizen of India, while enjoying Fundamental Rights, should also perform these duties.
- Inclusion of this Article has brought our Constitution in line with Article 29(1) of the Universal Declaration of Human Rights which provides that: "Everyone has duties to the community in which alone the free and full development of the personality is possible."

While examining whether the objectives of fundamental duties have been met, following points can be considered –

- Fundamental duties act as a constant reminder that the citizens while enjoying their fundamental rights should not forget about their duties towards the nation. These duties act as a warning signal for the people against any type of antisocial activities.
- Some duties are of such a nature that they are being performed by the citizen in each and every case like paying respect to the National Flag and National Anthem.
- These duties have given a chance to the people to have an active participation in the society rather than being a spectator. These duties promote a sense of discipline and commitment towards the society.
- For example, the Supreme Court of India ordered cinema halls to play National Anthem while portraying the Nation Flag. This was a remarkable step taken by the Supreme Court while giving the importance to the fundamental duties.

- The courts use fundamental duties for determining constitutionality of law. If any law is challenged in court for its constitutional validity and if that law is providing force to any of the fundamental duties then that law has been held reasonable.
- For example, in *All India Students Union v. All India Institute of Medical Sciences* (1983), it has been held that Fundamental Duties though not enforceable by writ of the court, yet provide a valuable guide and aid to interpretation of constitutional and legal issues.

At the same time, it is pertinent to note that most of the objectives of fundamental duties are far from being achieved, as is evident from the following points –

- Some of the duties are vague and terms used therein are complex which even a highly educated man would find difficult to grasp like it is difficult to identify the noble ideas that inspired our national struggle for freedom. Thus, some duties are ambiguous in nature.
- There has been very less awareness in the general public with regards to fundamental duties where focus in general discourse is provided to fundamental rights but hardly anyone focuses on fundamental duties.
- There is no specific provision nor any sanction as to implementation and enforcement of Fundamental Duties. Thus, these duties cannot be enforced by a court of law so, many feel that it is of no use to include these duties in the Constitution.
- Critics don't consider the list of fundamental duties as exhaustive. They feel that many more important duties like paying taxes, casting votes that were also suggested by the Swaran Singh Committee were not included in this list.
- These duties are placed in Part IV-A of the Indian Constitution that is after the Directive Principles of the State Policy, that's why not much importance is given to them. According to the experts, it should be placed in Part III after the Fundamental Rights.
- Lip service is being paid to the doctrine of gender equality. The fact remains that generally women are still regarded as inferior both at home and workplace although there has been an improvement, however the degree of the improvement has been minimal.

#### Way Forward –

- The first and foremost step required by the Union and State Governments is to sensitise the people and to create a general awareness of the provisions of fundamental duties amongst the citizens on the lines recommended by the **Justice Verma Committee**.
- Further, the **NATIONAL COMMISSION TO REVIEW THE WORKING OF THE CONSTITUTION** recommends - Preamble to the Constitution of India and the 10 clauses of article 51A on Fundamental Duties to be appropriately displayed on all government publications, diaries, calendars and at public places so that they always remain in the focus of the citizens.

- It also recommends that Article 51A be shifted to Part II (Citizenship) of the Constitution and suitable changes may be carried out to make Fundamental Duties to form a compendium with the Fundamental Rights.
- Need to set up an autonomous body to act like ombudsman on Citizenship Values which could create a mechanism to act as catalyst towards overseeing operationalization of Fundamental Duties.

### Conclusion

In modern context, it has become increasingly important to instil a reinvigorated sense of civic responsibility among Indian citizens. This can be achieved by adding new duties to the existing list of Fundamental Duties while also laying emphasis on the performance of the existing ones. Awareness of our citizenship duties is as important as awareness of our rights. Thus, the Fundamental Duties act as the foundation of human dignity and national character. Those duties actually constitute the conscience of our Constitution.

### 13. Discuss the underlying principles of the DPSP? How relevant are the Gandhian principles for a free market democracy? Comment.

#### Approach

Students are expected to write about the DPSP in the introduction and underlying principles of the DPSP in 1<sup>st</sup> part of body. And also write about how much Gandhian principles are relevant for a free market democracy.

#### Introduction

The Directive Principles of State Policy are guidelines to the central and state governments of India, to be kept in mind while framing laws and policies. These provisions, contained in Part IV of the Constitution of India, are not enforceable by any court, but the principles laid down therein are considered fundamental in the governance of the country, making it the duty of the State to apply these principles in making laws to establish a just society in the country.

#### Body

Underlying principles of DPSP:

- Many scholars believe that DPSPs is the kernel of the Constitution. The DPSPs lay down the guidelines for the state and are reflections of the overall objectives laid down in the Preamble of Constitution.
- The expression “Justice- social, economic, political” is sought to be achieved through DPSPs. DPSPs are incorporated to attain the ultimate ideals of preamble i.e., Justice, Liberty, Equality and fraternity. Moreover, it also



embodies the idea of the welfare state which India was deprived of under colonial rule.

- The provisions contained in this Part cannot be enforced by any court, but these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

Gandhian principles are based on Gandhian ideology used to represent the programme of reconstruction enunciated by Gandhi during the national movement.

Relevance of Gandhian principles for a free-market democracy are as follows:

- Gandhi was a first-rate egalitarian and a socialist whose ideas on socialism were an improvement on present-day notions of socialism and communism. His idea was that power is to be as decentralised as possible. Gandhi had a different take on diffusing powers to the grass-root level later it culminated into 73<sup>rd</sup> and 74<sup>th</sup> constitutional amendment as directed under Article 40. And 97<sup>th</sup> Amendment Act for cooperative societies as per Article 43B. The powers were decentralised and the responsibility of every individual was to be performed effectively.
- Globalisation has turned the world into a global village while Gandhi wanted to promote a Globe of Villages. He said that developing a village is to make it self-sufficient and capable enough to develop itself against the world. The village industries are still abiding by the Gandhian Model of development. As directed under Article 43.
- Globalisation and consumerism have in fact made people's lives tougher. The gulf between the rich and poor is widening day by day. Gandhian principle of self-sustenance and serving others is a significant requirement in present times as ever. But some people repudiate the Gandhian idea of self-reliance. They are of the view that this principle has become obsolete in contemporary times, as it seems like a form of a protectionist barrier. But his values of self-empowerment and self-control are crucial in current times because people seem to have succumbed under the worldly temptations.
- Social justice is also one of the basic principle of Gandhianism. He was of the view that absolute equality is impossible but we can try to bridge the gap between the rich and poor as far as possible. Starting from universal healthcare under Ayushman Bharat, Reservation programmes for SC, ST and other weaker section of society as directed under Article 46, scheme like Sarva Shiksha Abhiyan to Obamacare policy in the United States of America, the contemporary world has adopted the concept of social justice as a guiding principle in recent times.
- His principle of Swadeshi is quintessential in times of globalisation. Globalisation results in local producers being harmed. Gandhi always said to wear Khadi and use products which are made in India, but in present times this is not the case. Government and even the citizens need to work and encourage the producers to use local resources and make local products. The central government's initiative of Make in India and Atmanirbhar Bharat is one step ahead to achieving self-sufficiency.

- The main tenet that he propagated was Satya. As opposed to this, in contemporary times, people are not truthful and they are not presented with the existing reality of the system. Here, technology plays its part. Technology can help bring the reality and truth out of the systems. It can curb our main evil, corruption. Information and Communications Technology plays a significant role in this.

### Conclusion

All the climate deals, environment conservation treaties and Sustainable Development Goals follow the Gandhian principle of self-sustenance directed in DPSP. The Gandhian idea of trusteeship is one of the most significant principles in these dire times. We need to realize that we don't own the universe and how our behaviour disrupts nature and sustainable living is the need of the hour.

### 14.The Basic Structure has maintained the integrity of Indian constitution. Elucidate

#### Approach:

As the directive in the question is elucidate it is important to explain the doctrine of basic structure clearly and then explain, how it has maintained integrity of the Indian constitution over the period of time, also question demands to highlight important court judgements which have followed subsequently.

#### Introduction:

The constitution empowers the Parliament and the State Legislatures to make laws within their respective jurisdiction. Bills to amend the constitution can only be introduced in the Parliament, but this power is not absolute. If the Supreme Court finds any law made by the Parliament inconsistent with the constitution, it has the power to declare that law to be invalid. Thus, to preserve the ideals and philosophy of the original constitution, the Supreme Court has laid down the basic structure doctrine. According to the doctrine, the Parliament cannot destroy or alter the basic structure of the constitution.

#### Body:

##### Origin-

- The origins of the basic structure doctrine are found in the German Constitution which, after the Nazi regime, was amended to protect some basic laws. The original Weimar Constitution, which gave Parliament to amend the Constitution with a two-thirds majority, was in fact used by Hitler to his advantage to made radical changes. Learning from that experience, the new German Constitution introduced substantive limits on Parliament's powers to amend certain parts of the Constitution which it considered 'basic law'.

- The Supreme Court recognized the Basic 'Structure concept' for the first time in the historic 'Kesavananda Bharati' case in 1973. Ever since the Supreme Court has been the interpreter of the Constitution and the arbiter of all amendments made by parliament. In this case validity of the 25th Amendment act was challenged along with the Twenty-fourth and Twenty-ninth Amendments. The court by majority overruled the 'Golak Nath' case which denied parliament the power to amend fundamental rights of the citizens. The majority held that article 368 even before the 24th Amendment contained the power as well as the procedure of amendment. The Supreme Court declared that Article 368 did not enable Parliament to alter the basic structure or framework of the Constitution and parliament could not use its amending powers under Article 368 to 'damage', 'emasculate', 'destroy', 'abrogate', 'change' or 'alter' the 'basic structure' or framework of the constitution. This decision is not just a landmark in the evolution of constitutional law, but a turning point in constitutional history.

### **Maintaining Integrity-**

The essence of the constitution lies in its values like justice, equality, rule of law, separation of powers, secular character, a unique form of federalism etc. Basic Structure plays an important role in cementing these values as the base of constitutionalism in India.

- Subsequent to the evolution of Basic Structure in 1973 Supreme Court in its various rulings tried to protect the integral features as mentioned in the Keshvananda Bharti case by striking down laws which are in contravention to the Basic Structure of the Constitution. For example, in *Minerva Mills Vs Union of India* the Supreme Court used the Basic Structure doctrine to strike down the 39th Amendment and the parts of 42nd amendment respectively and paved the way for restoration of Indian democracy.
- In *I. Coelho Vs State of Tamil Nadu*, the Supreme Court held that all laws were subject to the test of being consistent with fundamental rights which are the part of Basic Structure thus giving primacy to the fundamental rights as an integral feature and its importance in upholding the essence and values of the constitution because rights are the base of any constitution if it has to succeed in principle.
- Basic Structure paved the way for executive and parliament to follow certain ideologies and principles such as socialism and secularism in letter and spirit. Thus, allowed political dispensation to play an important role in the socio-economic justice.
- If the majority of the Supreme Court had held (as six judges indeed did) that Parliament could alter any part of the Constitution, India would most certainly have degenerated into a totalitarian State or had one-party rule. At any rate, the Constitution would have lost its supremacy. One has to only examine the amendments that were made during the Emergency. The 39th Amendment prohibited any challenge to the election of the President, Vice-President, Speaker and Prime Minister, irrespective of the electoral malpractice. The 41st

Amendment prohibited any case, civil or criminal, being filed against the President, Vice-President, Prime Minister or the Governors, not only during their term of office but forever. Thus, if a person was a governor for just one day, he acquired immunity from any legal proceedings for life. If parliament were indeed supreme, these shocking amendments would have become part of the Constitution.

- Supreme Court fairly relied on the Basic Structure to strike down the 99th constitutional amendment act which sought to set up NJAC (National Judicial Appointments Commission) to replace the appointment of judges by the collegium system. This, despite the bill being passed by the two-third majorities of both houses of the parliament and 20 state legislatures. Thus, prohibiting the influence of executive interference in the judicial appointments which comes under the basic structure of the constitution.

### **Conclusion:**

In a country governed by a written Constitution, the democratic right flows from the attribute of constitutional sovereignty. We cannot claim our fundamental right or any other legal rights, unless we retain the structure of our sovereignty, the respect of the Constitution is effectively the respect of its basic structure, even that may not be immune to reconsideration by a bench larger than the one which presided over Kesavananda Bharati (a review of the judgement by a 13-Judge Bench was almost undertaken in 1975). In any case, perhaps the only things whose constancy can and must be taken for granted in a constitutional democracy are the existence of a Constitution and democracy. And both should be directed at preserving the nation, its identity, integrity and those institutions which are essential for its survival as a constitutional democracy.

### **15. The 42nd amendment is considered a watershed in India's constitutional history. Why? Justify.**

#### **Approach**

A simple and straightforward question where in you need to justify with reasons why the 42<sup>nd</sup> constitutional amendment act is considered a watershed in India's constitutional history.

#### **Introduction**

The year 1976 is remembered as a landmark for the Indian Constitution, because of the sweeping 42<sup>nd</sup> Constitutional Amendment Act (CAA). It was majorly based on the proposals made by Swaran Committee. The amendment amended the Preamble of the Constitution, 40 Articles, Seventh Schedule and added 14 New Articles to the Constitution.

#### **Body**

The 42<sup>nd</sup> CAA had brought about widespread changes to the Constitution, whose effects can still be felt to this day. Overall, the 42<sup>nd</sup> amendment is considered a watershed in India's constitutional history, this is evident from the following details –

- **Preamble** – The characterization of India as “Sovereign Democratic Republic” was changed to “Sovereign Socialist Secular Democratic Republic”. The words ‘unity of Nation’ replaced with ‘unity and integrity of Nation’.
- **Directive Principle of State Policy** - Four new directive principles were added
  - To secure opportunities for healthy development of children (Article 39)
  - Enabling free legal aid Article 39A
  - Protection of workers in factories Article 43A
  - Protection of environment and to safeguard Forest and Wildlife Article 48A
- **Fundamental Duties** - Part IVA was added to the Constitution enabling Fundamental Duties to the citizens.
- **Federal** - Insertion of Article 257A, to enable the Centre to deploy armed forces to deal with any grave situation of law and order arising in any State.
- **Emergency** - It authorized the President to declare emergency in any part of the country.
- **Legislature** - Life of Lok Sabha and State Legislative Assembly was extended from 5 to 6 years.
- **Executive** - Article 74(1) was added, which stated that President shall act in accordance to the council of ministers.

**Judiciary** - Insertion of Article 32A in order to deny Supreme Court the power to consider the Constitutional validity of a State law. Another new Article

- 131A, gave the Supreme Court an exclusive jurisdiction to determine question relating to the Constitutional validity of a central law.

The 42<sup>nd</sup> amendment is also sometimes called ‘mini-Constitution’ or ‘Constitution of Indira’, and was the most comprehensive amendment carried out during internal emergency (1975-1977). This background of being enacted during an emergency also makes the amendments controversial, even to this day.

- As it was undertaken at the time of Emergency, when most of the opposition leaders were detained in preventive detention, so it became more or less a party affair. The Act introduced several changes, most of which sought to tilt the power in the favour of executive away from the Judiciary.
- History often takes note of the introduction of the words secular and socialist to the Preamble. But although the original Preamble did not contain these specific words, several provisions in the Constitution, especially those relating to “Fundamental Rights” and “Directive Principles of State Policy” entrenched particular variations of secularism and socialism in keeping with the vision of the framers.
- The 42<sup>nd</sup> amendment to the constitution is seen in the context of efforts towards a growing global consciousness for the protection of the environment

in the seventies. This is evident from Article 48A, part of the Directive Principles of State Policy and Article 51A (g), part of the Fundamental Duties, added through this amendment.

The 42<sup>nd</sup> amendment was also watershed for its aftermath where for the first time in Indian history, a non-congress led government was formed in India after elections post emergency. Under the leadership of Morarji Desai, Janta Party Government started the work of reforming the Constitution.

- The powers of the Supreme Court and High Courts were provided back to them through the 43<sup>rd</sup> Amendment.
- Along with the strengthening of the Judiciary and removing the 42<sup>nd</sup> amendment, the 44<sup>th</sup> Amendment has also done the task of strengthening the Constitution even more than ever.
- This amendment did many changes to escape the situation like the 42<sup>nd</sup> Amendment in the future. The term “Armed Rebellion” was added in the place of “Internal Unrest” in Emergency related provisions. Along with this, this amendment also strengthened the fundamental rights.

### **Conclusion**

A Constitution to be living must be growing. Using Article 368, the 42<sup>nd</sup> Constitutional Amendment Act of 1976 has touched upon almost all the parts of the Constitution, disturbing the balance between various organs of government as well as the federal structure but Indian democracy and constitution proved to be resilient and were further strengthened from this shock in the future.

### **16. How does the principle of checks and balances operate in the Indian polity? Explain in the light of constitutional provisions.**

#### **Approach**

Students are expected to write about the checks and balance in the Indian polity and how it operates in the light of constitutional provisions.

#### **Introduction**

There is a system of checks and balances wherein the various organs impose checks on one another by certain provisions. The aim of checks and balances is to safeguard that different branches of government control each other internally (checks) and serve as counter weights to the power possessed by the other branches (balances).

#### **Body**

Principle of Checks and balance in the Indian polity:

The doctrine of separation of powers is a part of the basic structure of the Indian Constitution even though it is not specifically mentioned in it. Hence, no law and amendment can be passed violating it. The system of checks and balances is essential for the proper functioning of three organs of the government. Different organs of the state impose checks and balances on the other.

The following examples illustrate the checks and balances:

- Judiciary exercises judicial review over legislative and executive actions. Judiciary has the power to void laws passed by the Parliament. Similarly, it can declare the unconstitutional executive actions as void.
- Legislatures review the functioning of the executive.
- Executive appoints the judges.
- Legislative branch removes the judges. It can also alter the basis of the judgment while adhering to the constitutional limitation.

Some of Indian constitution provisions which emphasizes the checks and balance are the following:

- The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights). A system of checks and balances has been embedded so much so that the courts are competent to strike down the unconstitutional amendments made by the legislature.
- Article 50 This article puts an obligation over the State to separate the judiciary from the executive. But, since this falls under the Directive Principles of State Policy, it is not enforceable.
- Articles 121 and 211 The legislatures cannot discuss the conduct of a judge of the High Court or Supreme Court. They can do so only in matters of impeachment. It, in a way, provides for the separation of the legislature and the judiciary. This article states that the conduct of justice or the way a judge discharges his duties of any Court cannot be discussed in the legislature (state or union).
- Articles 122 and 212 The courts cannot inquire the validity of the proceedings of the legislatures. This article is aimed at keeping the judiciary (the law interpreting body) and the legislature (the law-making body) separated. It does so by stripping the judiciary of any power to review and question the validity of proceedings that take in a legislature or the Parliament.
- Articles 53 and 154 respectively, provide that the executive power of the Union and the State shall be vested with the President and the Governor and they enjoy immunity from civil and criminal liability.
- Article 361 This article separates the judiciary and the executive. It states that the President or any governor of any state is not answerable to any court in the country for actions and activities are taken in performance/exercise of the powers and duties of their office.

Weakening System of Checks & Balances:

- **Judicial Activism:** In many recent judgments, the Supreme Court has become hyper-activist in making judgements that are deemed as laws and rules. This transgresses the domain of legislature and executive.

- Executive Excesses: Executive in India is alleged of over-centralisation of power, weakening of public institutions like CIC & RTI and passing laws to strengthen law, order & security of the state but curbs freedom of expression as well like UAPA.
- Weakened Legislature Scrutiny: According to data by PRS Legislative Research, while 60% of the Bills in the 14th Lok Sabha and 71% in the 15th Lok Sabha were referred to Department-related Standing Committees (DRSCs) concerned, this proportion came down to 27% in the 16th Lok Sabha.

### Conclusion

For a democratic polity and diverse society like India, a Constitutional system with strict separation of powers is undesirable and impracticable. However judicious and calculated constitutional functional overlapping makes way for democratic collaboration of the three organs of the government. Such mutual cooperation bridges the executive, legislative and judicial gap facilitating smooth functioning of government.

### 17. What are the most pressing challenges of governance arising due to India's federal polity? Examine.

#### Approach:

As the directive in the question is 'examine' it is important to mention challenges in a detailed manner with clear logical exposition, use of proper and appropriate examples is a must, moreover explanation of the state of India's federal system is also important.

#### Introduction:

Federalism in its literal sense is a system of government in which power is divided between a central authority and constituent political units. India's federal structure is very peculiar in nature, it encompasses all those features which suit India's polity according to its own needs and thus has helped India to grow as the largest functional democracy of the world. According to K.C. Wheare the Indian Constitution, can be described as "a system of government which is Quasi Federal a unitary state with subsidiary federal state with subsidiary unitary features." Prof. Wheare observes that "the federal principles is the method of dividing powers so that the general and regional government are each within a sphere are co-ordinate and independent. Both the federal and the regional governments are co-ordinating and independent in their spheres and not subordinate to one another."

#### Body:



**Structure of India's federal polity-**

- Article 1 of the Constitution of India states that 'India that is Bharat shall be a union of states. Indian federation was not a product of coming together of states to form the federal union of India. It was rather a conversion of a unitary system into a federal system. It is a compromise between two conflicting considerations such as autonomy enjoyed by states within the constitutionally prescribed limit (State List) and the need for a strong centre in view of the unity and integrity of the country (Union List).
- India's federalism is asymmetric in nature the main forms of administrative units in India are the Centre and the States. But there are other forms, too, all set up to address specific local, historical and geographical contexts. Besides the Centre and the States, the country has Union Territories with a legislature, and Union Territories without a legislature. Just as the Centre and the States do not have matching powers in all matters, there are some differences in the way some States and other constituent units of the Indian Union relate to the Centre. This creates a notable asymmetry in the way Indian federalism works. Examples are Article 371, The Sixth Schedule to the Constitution contains provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram. These create autonomous districts and autonomous regions.

**Challenges of governance due to federal polity-**

- India has 25 major river basins with most rivers flowing across states, with rivers being shared between states. Adequate involvement of centre is necessary for preservation and equitable distribution of river water. However inter-state rivers have become sites of contestation between states because of the conflictual federalism dispute resolution has become a long and tiresome process which creates problems of water availability, for agriculture and drinking purpose. Centre's role only comes in dispute resolution in spite of legal framework in the form of Inter State River Water Disputes Act 1956 and River Boards Act 1956.
- Even as Indian Federalism has a tendency towards centralised form, states have sought to assert their interests and influence over the years. This led to imbalance and inconsistency in central governments approach towards the issues which effect country in general such as Tamil issue in Srilanka, river water dispute with Bangladesh etc.
- Increased regional demands such as creation of new states developmental issues ad excess to the resources has led to the conflicts taking India's internal security a hostage.
- One of the most pressing needs of India after its independence was the distribution of land to the landless who have suffered at the hands of colonial powers, but because of the nature of federal polity with distribution of subjects and agriculture and land distribution coming under the purview of states idea of land reforms could not be materialised as envisaged.
- Uneven development is one of the important issues arising out of the existing federal structure in India many of the states in spite of being resource rich

could not prosper because policy paralysis and politics based on emotions of caste, and communalism thus development took a back seat.

- Lax attitude of states in implementing centrally sponsored schemes has led to an imbalance in critical social sectors like health and education among the states. An important scheme in the health sector like Jan Arogya has not been implemented in states like West Bengal, Maharashtra etc.
- In India it is too hard and difficult to bring in comprehensive socio economic and political reforms because of the nature of federal polity. Recent initiatives like GST which revolutionised indirect tax structure in India took around 15 years of deliberations and discussions between states and centre.
- New challenges like environmental issues are impossible to implement unless states play an important role to the commitments in implementing the decisions taken at central level and the commitments India have made at the Paris Conference on Climate Change.
- With the advancement of technology like Industrial Revolution 4.0 and internet of things machine learning, role of states is important in bringing out reforms like ease of doing business, skill development, infrastructural development so that India does not lag behind and could reap the benefits of demographic dividend.

### **Conclusion:**

A diverse country like India needs a proper Balance towards maintaining the needs of the states where they can frame and implement laws and policies according to their needs. The GST reform tells us that consensus building is not a one-time exercise. Sustained dialogue and deliberation are important to allow a maximum convergence of interests between centre and states in dealing with the issues created out of the existing federal structure. Centralisation is not a panacea for all the ills rather harmonious relationship cooperation and collaboration is important to strengthen cooperative federalism

### **18. While briefly explaining the concepts, illustrate the benefits of cooperative and competitive federalism?**

#### **Approach**

A straightforward question where in you need to explain the concepts of cooperative and competitive federalism in brief in the first part of the answer while also illustrating the benefits of both competitive and cooperative federalism in the second part of the answer.

#### **Introduction**

The quasi-federal structure of the Indian nation was settled in after the country became free of colonialism and gained independence from the British. This style of

federalism is responsible for the introduction of its cooperative as well as competitive variants in the country.

### Body

- The Constitution of India has created a strong Central government, but at the same time, it has not made the state governments weak and has not reduced them to the level of administrative agencies for the execution of policies of the Central government. Rather, the states have an independent constitutional existence.
- The concept of cooperative federalism professes a horizontal relationship between the Central as well as the State governments. This essentially means that the legislature at the Union as well as the State levels cooperate to serve the larger public interest. Such an arrangement, if executed successfully, would be a significant leap in enabling the participation of States in determining national policies.
- Usually, cooperative federalism is seen in socialist economies where most of the resources are controlled by the government. It is being promoted in India through steps like the formation of NITI Aayog, passing of GST etc.
- On the other hand, competitive federalism, the States share a vertical relationship with the Central government while competing amongst themselves. Essentially, States individually work towards attracting funds and investment to aid their developmental activities. This leads to the formation of a free market scenario amongst the States wherein they play the role of the sellers and the investors become the buyers.
- A type of Competitive federalism is seen in India where states want more funds and perks from the state government for growth. Also, states can be involved in International treaties and business deals. They are also trying to woo MNCs to get more FDI.

The benefits of co-operative federalism can be seen from the points given below –

- The essence of co-operative federalism is that the Centre and the State Governments should be guided by the broader national concerns of using the available resources for the benefit of the people.
- Co-operative federalism encourages the Government at different levels to take advantage of a large national market, diverse and rich natural resources and the potential of human capabilities in all parts of the country and from all sections of the society for building a prosperous nation.
- Co-operative federalism makes it possible to raise all the available resources by the Government at different levels in a co-ordinated way and channel them for use for the common good of the people. This requires a harmonious relationship and co-operative spirit between the Centre and the States and among the States themselves.

- Co-operative federalism is intended to ensure a minimum bundle of basic services and a nationally acceptable level of living for all the people of the country.

Similarly, the benefits of competitive federalism are listed in the points below –

- Competitive federalism follows the concept bottom-up approach as it will bring the change from the states. It ensures inclusive development in the country.
- It instils a spirit of positive competition and help utilisation of successful models of development across many states. Thus, it helps in reducing inter-states and intra-states inequalities through development.
- It ensures that every limb of the whole country is developing. E.g., there are many disparities between various cities in terms of development, competitive sub-federalism reduces such disparities. It helps in instilling sense of responsibility in city administrations, ensuring no one have been left out.
- The policy of one-size-fit-all is replaced with different policies of various states based on the own priorities with in the state. Each state will design their own policies for development of the cities with self-fund. The concept also promotes discipline among the states.

Cooperation as well as Competition on a national level is not a small feat to achieve and thus it requires a mutual understanding between the Central and State governments. While prosperous States may be able to execute both policies effectively but economically backward States would require the Centre's support to achieve their goals.

### **Conclusion**

Instituting a system of cooperative and competitive federalism has been a hallmark of India's policy-making in the past five years and has achieved considerable results. Cooperative and competitive federalism are complementary ideas that will drive India's growth story in the coming decades

### **19. Critically evaluate the efficacy of the manner in which powers are distributed between the Union and the States.**

#### **Approach**

Students are expected to write about the distribution of power between union and states. And then critically evaluate the efficacy of the manner in which powers are distributed.

#### **Introduction**

According to Dicey, power distribution is an essential feature of a federation. The object behind the formation of a federal State involves an authoritative division between the National Government and the Government of the separate States. The federal tendency is restricting every side of the Governmental action, and separation of the strength of the State among parallel and independent authorities is particularly noticeable as it forms a significant distinction between a federal system and unitary system of Government.

### Body

The Constitution of India provides a dual polity with a clear division of powers between the Union and the States, each being supreme within the sphere allotted to it.

Efficient Manner in which powers are distributed between the union and states:

- **Demarcation:** The 7th schedule of the Indian Constitution having 3 lists is formulated to ensure the federal character of Indian polity. The division has been helpful in demarcation of subjects and fixing responsibility for lapses in administration.
- **International relations and communications:** UNO, foreign affairs etc., are subjects in Centre list and hence decisions are taken with uniformity and certainty. E.g., Ex-UN secretary Kofi Annan noted Indian foreign policy as stable and credible.
- **Holding Accountability:** The lists have demarcated the functions and thus help in holding the state/Centre government answerable. E.g., imposition of president rule in UP after Babri masjid incident.
- **Uniformity in Administration:** subjects like trade and commerce, Banking, regulation of mines, labour etc., ensure uniformity. E.g., uniform interest rate in banks, labour costs etc., ensure that every state is competent in the sphere of economic attraction.
- **External security:** central government being responsible has been fairly successful in taking timely decisions with necessary force whenever required. E.g., any delays during war time causes set back. Quick decision taken during Kargil was possible only because the defence was entirely with the Centre.

Time and again centre-state relations come under scanner due to increasing centralization of power such as:

- **Asymmetric distribution:** States complain that Centre has more and important subjects and there is asymmetry in division. Thus, it results in unitary bias. E.g., Raising loans from international market, Banking regulations etc.
- **Balance between flexibility and uniformity:** Some laws leave little flexibility for states to sync the laws according to their needs for achieving uniformity. A higher degree of detail in law ensures uniformity across the country and provides the same level of protection and rights, however, it reduces the flexibility for states to tailor the law for their different local conditions.
- **If a Proclamation of Emergency is in operation:** During the operation of the Proclamation of Emergency, the Parliament shall be empowered to legislate for the entire Indian territory or any of its parts with respect to all the matters enumerated in the State List.

- Limited capacity of states: Some laws enacted by Parliament in the concurrent list might require state governments to allocate funds for their implementation. But due to federal supremacy while the states are mandated to comply with these laws, they might not have enough financial resources to do so.
- Constitutional practice indicates that use of residuary powers has been at the cost of provincial autonomy, even though the principle of continuing exhaustiveness remains key to the structure of the Seventh Schedule.
- Composition variation: States allege that the union and concurrent list has grown over the years at the cost of state list. A majority government at the Centre helps in this. E.g., 42nd constitutional amendment transferring 5 subjects from state to concurrent list.
- Infringement in the domain of states: Some Bills may directly infringe upon the rights of states i.e., relates to central laws on subjects that are in the domain of state legislatures. E.g., anti-terrorist laws, Lok pal bill, issues with GST and Aadhar etc. where states' power are taken away in a cloaked manner.
- Colourable legislation: The allegations on Centre to encroach upon the state jurisdiction finding the loopholes. E.g., the recent Jammu Kashmir reorganization bill was passed under president rule. The President gave assent to the controversial farm Bills passed by Parliament.

Way forward:

- Strengthening of Inter-State Council: Over the year committees starting from Rajamannar, Sarkaria and Punchi have recommended strengthening of Interstate Council where the concurrent list subjects can be debated and discussed, balancing Centre-State powers.
- Autonomy to states: Centre should form model laws with enough space for states to manoeuvre. Centre should give enough budgetary support to states so as to avoid budgetary burden. There should be least interference in the state subjects.

### Conclusion

The Indian constitution aim at reconciling the national unity while giving the power to maintain state to the State governments. It is true that the union has been assigned larger powers than the state governments, but this is a question of degree and not quality, since all the essential features of a federation are present in the Indian constitution. It is often defined to be quasi-federal in nature. Thus, it can be safely said that Indian Constitution is primarily federal in nature even though it has unique features that enable it to assume unitary features upon the time of need. Federal but its spirit is unitary.

**20. What role do States play in extending the welfare measures of the Union to the intended population? Explain. What are the current challenges on this front? Discuss.**

**Approach:**

In the first part of the question, the answer should mention about the role of states in implementing and helping the centre for the welfare of the people. It entails, the effectivity of State Governments in the implementation of Centrally Sponsored Schemes and Central Sector Schemes. In the second part, the challenges with respect to these welfare measures need to be mentioned. Finally, the conclusion should hinge upon improving the Centre-State relations to effectively extend the welfare measures of the Union.

**Introduction:**

The Indian Constitution provides a strict demarcation between the legislative competences of the Union and the States. Yet, the Union, which also has far greater control over the nation's finances than the States, plays a leading role in determining welfare priorities for the nation through schemes and budgetary allocations (Article 246). In order to provide a uniform framework for the holistic development of the country as a whole, the Union Government does provide budgetary allocations and schemes. These schemes- Central Sector Schemes, Centrally Sponsored Schemes aim at the social and economic welfare of the Indian republic, but need effective coordination of the Indian states being a part of the quasi-federal set-up.

**Body:**

For the first fifty years of the Indian republic, social and economic welfare was primarily administered through ad hoc measures known as schemes. In the early 2000s, there was a shift to "rights-based welfare." The Government of India codified several important aspects of social welfare into statutes. These included Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA), the Right of Children to Free and Compulsory Education Act, 2009 (RTEA) and the National Food Security Act, 2013 (NFSA). This was welcomed by the academic community, who described it as a "new social contract" between Indians and the State.

**Role of States:**

In the present federal set-up of India, the seventh schedule of the Constitution provides a tight-model of distinction of powers between Centre and States. However, ultimately it is the states which work at the grassroot level for the development of their respective states. The fourteenth Finance Commission substantially enhanced the share of the States in the Central divisible pool from 32% to 42%. which was untied and can be spent by the States as desired. However, doing so it delinked many schemes which were previously centrally funded, thus sharing the burden of the welfare between Centre and States.

- In case of Centre Sector Schemes like Bharatnet, PMSAMPADA even though the Central government is primarily responsible for funding and implementation. The collaboration and concurrence of the state governments is equally needed for the effective implementation. As such, states like

Karnataka, Andhra Pradesh are way ahead in providing internet facilities in the rural areas as compared to Bihar, Jharkhand and Odisha.

- In the Centrally Sponsored Schemes, states have even a greater role to play to ensure that the particular scheme is effective in carrying out its desired objectives. For instance, case of MGNREGA where the devolution is 60:40 between Centre and States, the role of state governments is paramount for the effectivity of the scheme. States like Tamil Nadu, Rajasthan, Kerala have had nearly 90% efficiency when it comes to enhance the output, while Jharkhand, Bihar and Uttar Pradesh have just been 60% effective.
- Schemes like Public Distribution System, Mid-Day Meal Scheme have directly been under the State Government Implementation and therefore the comparative performance of the states, depend on the manpower, effective funding and the resources the state government attempt to spend on these schemes.
- National Health Rural Mission under NHM provides for development of the quality health-care at the primary health-centers in villages which is directly overseen by the State Governments. Therefore, State Governments are critically important in ensuring that there is effective disposal of the Centrally mandated welfare for the intended population.

#### Challenges at the Front:

The Union Government plays a prominent role in determining State level development priorities through CSS. These are grants made by the Union for a specific purpose, i.e., the scheme guidelines, to be implemented by the States. However, there are certain challenges:

- Article 282 of the Constitution confines the Union's power to making grants on the state subject, implying that the implementation should be left entirely to the states. However, with Centrally Sponsored Schemes, the states are left with little discretion with respect to how these are to be implemented.
- With the central schemes on the anvil, the state governments actually depend on the Central Government funds. Recently, the delaying of the funds in schemes like MGNREGA, PDS have witnessed the tussle between Centre-State relations.
- Parliament has limited powers and wide discretion under Article 282, meaning that it is not bound to make consistent, predictable grants to States year after year. That is problematic with states being highly dependent on the Centre for these welfare schemes.
- Even at the Third-Tier government, the Centre Government has again at the loggerheads when it comes to Finance Devolution and implementation. Even these grassroot level governments are indirectly dependent on the Central Government which again creates problems for the effective implementation.
- The scope of economic and social rights in India is properly within the domain of the legislature, and the States ought to play a pivotal role on matters within their competence. By making Union grants variable and highly discretionary,



States are unable to plan for consistent and predictable welfare measures — such as those provided by statute — year after year.

### Conclusion

There is no doubt that the Union should still play an important role in determining national priorities for development. One way to do so is to encourage the creation of clear entitlements through statute wherever possible, as in the case of MGNREGA and NFSA. Another possibility is to provide a greater share of Union assistance through block grants and to allow States a greater role in designing welfare measures implemented at the State. In any event, there is an urgent need for greater cooperation between the Union and the States of India to create a strong, rights-based welfare system for its citizens.

**21. What is the Interstate Council? What are its mission objectives? Discuss. What potential does it hold to transform the dynamics of centre-state and interstate cooperation? Examine.**

### Approach

Address the question in few parts where the first part should address what is the Interstate Council and the next part should discuss its mission objectives. The next part of the answer, you need to examine the potential inter-state council holds to transform the dynamics of centre-state and interstate cooperation.

### Introduction

Inter-State Council (ISC) is a constitutional body as provided by Article 263 of the Constitution of India which is mandated to investigate and advise on disputes between states, has been recently reconstituted with Prime Minister as its chairman and six Union ministers and all chief ministers as members.

### Body

- The Inter-State Council's mandate is to inquire and advise on interstate disputes and to provide recommendations for better policy coordination. However, it is a recommendatory body to investigate and also discuss subjects, in which some or all of the states or the Central government have a common interest.
- In fact, it is set up on the basis of provisions in Article 263 of the Constitution of India by the Presidential Order, 1990 based on the recommendation of Sarkaria Commissions.
- The Inter-state council is not a permanent constitutional body for coordination between the states and Central government. Rather, President can establish it at any time if it appears to him that the public interests would be served by the establishment of such a council.

- Article 263 provides explicit provisions with respect to an inter-State Council i.e. If at any time it appears to the President that the public interests would be served by the establishment of a Council charged with the duty of –
- Inquiring into and advising upon disputes which may have arisen between States;
- Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
- Making recommendations upon any such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.
- Article 263 further states that it shall be lawful for the President by order to establish such a Council, and to define the nature of the duties to be performed by it and its organization and procedure.

In terms of potential to transform the dynamics of centre-state and interstate cooperation, the Interstate Council can be considered as a proven concept, evident from the following points –

- Based on the Sarkaria Commission's recommendations, it was constituted under Article 263 of the Constitution in 1990. It proved to be crucial in the implementation of many of the commission's recommendations, such as altering the states' share of central taxes. This clearly shows its future potential to transform federal relations.
- Further, the council helped bridge the trust deficit between the centre and the states. If not always a problem solver, it at least acted as a safety valve.
- As opposed to NITI Aayog, the ISC is more political in nature with constituent members being Chief Ministers of states and Chief Ministers/Administrators of Union Territories with the Prime Minister as the Chairman.
- Functionally, it was visualised as having functions separate from a National Development Council which would deal with matters of socio-economic planning. The ISC was structured in a manner that eschewed voting by majority and instead focused on arriving at a consensus "in a spirit of mutual accommodation, comity and compromise".
- Punchhi Commission (2007) stated, "Federalism is a living faith to manage diversities and it needs to be supported by institutional mechanisms to facilitate cooperation and coordination among the Units and between the Units and the Union. Cooperative federalism is easily endorsed but difficult to practise without adequate means of consultation at all levels of government." This is adequately provided by the ISC, which enhances its role.
- The body was handmade for use in situations such as the COVID wherein an issue of national importance was at play and inter-governmental relations were at stake. The role of the Centre as a facilitator in
  - (i) Ensuring that the best practices being followed in states such as Kerala are implemented across other states;
  - (ii) The issues such as transportation of migrant labours are dealt with expediently using coordinated planning and opening up of borders in parts to ensure that safety norms were followed, was sorely missed.

- (iii) Even with respect to inter-state travel, accusations kept flaring about restrictions regarding entry at the border. For example, in May, the Uttar Pradesh Government stopped buses from Rajasthan and Haryana from entering its borders, Karnataka restricted entry of people from Gujarat, Maharashtra and Tamil Nadu.
- The Inter-State Council is seen as an extremely useful mechanism for consensus building and voluntary settlement of disputes, in case, given the autonomy required for functioning as a Constitutional body, independent of the Union and the States.
  - The very rationale of having a constitutional body like the Inter-State Council is to have an extremely wide perspective which would be all encompassing, besides having an integrated approach towards building a consensus on policies of national importance. In the present context, we may have lost an opportunity but it may still not be too late.

### Conclusion

The challenges of maintaining a federation are many, but the solution is healthy debate and discussion. In past decades, the centralized nature of the Indian economy—even after liberalization—made papering over the cracks possible. But present federalist vision is different, one with an emphasis on decentralizing decision making and encouraging state competition. If that vision is to succeed, the ISC must be a core component of the new cooperative federalism.

### 22. Examine the challenges of fiscal federalism in India.

#### Approach

Students are expected to write about the fiscal federalism and examine the challenges of the fiscal federalism.

#### Introduction

The Government of India Act 1919 and 1935 formalised the tenets of fiscal federalism and revenue sharing between the Centre and the states. Fiscal federalism refers to the financial relations between the country's federal government system and other units of government. It is the study of how expenditure and revenue are allocated across different vertical layers of the government administration.

#### Body

In recent years, fiscal relations between the union and state governments have undergone significant changes.

- The abolition of the Planning Commission in January 2015 and the subsequent creation of the NITI Aayog;

- Fundamental changes in the system of revenue transfers from the centre to the states through the provision of higher tax devolution to the states based on the recommendations of the Fourteenth Finance Commission (henceforth, “14th FC”); and
- The Constitutional amendment to introduce the Goods and Services Tax (henceforth, GST) and the establishment of the GST Council for the central and state governments to deliberate and jointly take decisions.

Challenges of fiscal federalism in India:

- State’s dwindling resources: The findings suggest that recent changes in India’s fiscal architecture, including the Goods and Services Tax (GST) regime, and increase in state shares for the Centrally Sponsored Schemes (CSSs) had placed
- Shortfall in devolution: Adding to state woes is the significant divergence in past periods between the amount of GST compensation owed and the actual payments made, including for states such as Uttar Pradesh, Bihar and Jharkhand that need greater fiscal support. Even before Covid-19 hit, 11 states estimated a revenue growth rate below the estimated 14% level, implying higher amounts will be owed as GST compensation.
- Fiscal woes: The economic slowdown prior to the Covid-19 outbreak resulted in lower revenues for both the Union and state governments, as evident from their budgets. The Union government’s revised estimates of tax collections (net of devolution to states) for 2019-’20 were about 8.8% lower than its 2019-’20 budget estimates.
- The Case of Horizontal Imbalances: The horizontal imbalances arise because of differing levels of attainment by the states due to differential growth rates and their developmental status in terms of the state of social or infrastructure capital. Traditionally, Finance Commissions have dealt with these imbalances in a stellar manner, and they should continue to be the first pillar of the new fiscal federal structure of India.
- Vertical Imbalances: The creation of vertical imbalances is a result of the fiscal asymmetry in powers of taxation vested with the different levels of government in relation to their expenditure responsibilities prescribed by the Indian Constitution. The central government is given a much greater domain of taxation, with a collection of 60% of the total taxes, despite their expenditure responsibility only amounting to 40% of the total public expenditure.
- Such vertical imbalances are even sharper in the case of the third tier consisting of elected local bodies and panchayats. Vertical imbalances can adversely affect India’s urbanization, the quality of local public goods and thus further aggravating the negative externalities for the environment and climate change.

In this regard multiple criteria steps will be helpful in promoting fiscal federalism in the following manner:

- Efforts made by the States in expansion and deepening of tax net under GST will help in realisation of a competitive tax environment where fiscal position of states will improve in turn improving the fiscal federalism.

- ‘Progress made in increasing capital expenditure, eliminating losses of power sector, and improving the quality of such expenditure in generating future income streams’ criteria can help tackle the stress of NPAs in power sector and improve the fiscal situation of states.
- State Finance Commissions should be accorded the same status as the Union Finance Commission and the 3Fs of democratic decentralisation (funds, functions, and functionaries) should be implemented properly.
- Single Rate GST with suitable surcharges on “sin goods,” (goods that are harmful to society and individuals, for example, alcohol and tobacco, drugs, etc), zero ratings of exports and reforming the Integrated Goods and Services Tax (IGST) and the e-way bill.
- This ‘one-size fits all’ approach to fiscal consolidation has constrained fiscally strong States to raise more resources. Therefore, State-specific targets of fiscal deficit in the FRBM legislation of States. The fiscal correction path may factor in the variations in the initial fiscal situation across States and be made State-specific.

### Conclusion

Redefining the fiscal architecture of India can strengthen the fiscal federalism. Independent Finance commission, effective NITI Aayog, creating the new fiscal federal architecture based on the effective decentralisation and transparent GST regime can strengthen India’s unique cooperative federalism.