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POLITY PART-3

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Student Notes:

ISSUES AND CHALLENGES PERTAINING TO THE FEDERAL STRUCTURE, DEVOLUTION OF POWERS AND FINANCES UP TO LOCAL LEVELS AND CHALLENGES THEREIN

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1. Concept of Federalism

Federalism is a system of polity in which power is divided between Union and its constituent units i.e. states. In this system, the Central Government usually oversees the issues that are of importance for the entire country, whereas the government at the lower level looks after issues of local concern. The purpose of this Division of Power between the two tiers of government is twofold: i) Preventing concentration of power in the hand of one tier of government ii) Generating strength of the nation through the Union.

So what exactly are the **characteristics of federalism**?

i. There should be two levels of governments, with each having its own independent sphere of administrative and legislative competence.
ii. Each level of the government should have an independent tax base.
iii. A Written Constitution from which respective governments derive power.
iv. Existence of rigid constitution
v. An independent judiciary to adjudicate if conflict arises between the two tiers of government.

1.1. Federalism in India

While India is a federation, the nature of the India's federalism is often discussed. Some have argued that it is a quasi-federal arrangement. Others consider it as having a unitary character, with many federal features.

Moreover, though India has a federal form of government, the world federalism/federation has not been used in the Indian Constitution (the Constitution does not expressly declare India as a federation). Article 1 of the Constitution says that India is a **Union of States**.

But explanation for the same can be found in Dr. Ambedkar's speech to the Constituent Assembly: *"The use of word 'union' is deliberate. I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the federation was not the result of an agreement by the states to join in a federation, and that the federation not being the result of an agreement, no state has the right to secede from it."*

India's position, thus, is significantly different from that of USA, where states bargained and a federation was created. The overriding concern at the time of drafting the Constitution was the "unity and integrity of India". This led to a number of factors that gave the Indian Constitution a decidedly unitary tilt, with several provisions in favour of the Union. Some of them have been mentioned below:

Unitary Features:

- Residuary powers are with the Union Government
- States can be created or diminished without their consent
- Concept of single citizenship, unlike that of USA
- All India Services officers head important positions in States
- The role of Governor in States is very important and he is appointed by the Central Government
- The system of audit is headed by the CAG, who is appointed by the Central Government
- The judges of High Courts are appointed by the President.
- Emergency Provisions

The framers of the Indian Constitution went in for a mix of strong Central government, with substantial autonomy to the States. In spite of the centrist bias of the Constitution, largely instituted for preserving unity and integrity of the country, the Supreme Court had to concede

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in S.R. Bommai vs. Union of India that **federalism, like secularism, is a basic feature of the Constitution**. With increasing emphasis on decentralization of powers to better address local needs and aspirations, the federal aspects are likely to be strengthened in future, greater nuances of which have been discussed in subsequent sections.

2. Federal Structure

Being federal in nature, our Constitution divides legislative, executive and financial powers between the Centre and States. But, judicial powers are exercised by an integrated judicial system, which enforces both the central and state laws, unlike other federations like USA, where judicial powers are also divided.

2.1. Union State Legislative Relations (Arts. 245 to255)

As per the Indian Constitution, legislative or law making powers are not vested in a single tier of government, rather they have been distributed between the Centre and the States with respect to territory and subject matter.

(A) Territorial Jurisdiction

The Constitution defines the territorial limits of legislative powers. Parliament can make laws for whole or any part of the territory of India. It has extra territorial legislative powers as well, which means that laws of Parliament are also applicable to the Indian citizens and their property in any part of the world. Whereas a State can legislate only for their State and its laws are not applicable outside the State, except when there is a sufficient nexus between the State and the population or area (like some strong relation in past, which is still continued).

However, there are certain limitations to territorial jurisdiction of Parliament in certain situations. For example - The Governor is empowered to direct that an act of Parliament does not apply to a Scheduled Area in the State or applies with specified modifications and exceptions.

(B) Subject Matter

As regards the subjects of legislation, the constitution adopts three list system from the Government of India Act, 1935. These three lists are the **Union, State and Concurrent List** as mentioned in the VIIth Schedule of the Constitution.

The **Union List** contains subjects of national relevance (mentioned in the table below) over which the Parliament has an exclusive authority to formulate laws. This list at present has 100 subjects (originally 97 subjects).

The **State List** includes subjects of importance to the States (mentioned in the table below), over which the State legislature has an exclusive authority to formulate laws. This list at present has 61 subjects (originally 66 subjects).

The **Concurrent List** containing subjects of mutual relevance over which both the Parliament and State Legislatures can legislate, but in case of conflict the Union law will prevail. This list at present has 52 subjects (originally 47 subjects).

Level	Competences	Enabling Provision
Centre	Defence, Atomic Energy, Foreign Affairs, Citizenship, Transport, Infrastructure, Postal Service, Banking, Natural Resources	Article 246 + VIIth Schedule (List I)
State	Public Order/Police, Public Health, Agriculture, Water, Land, State Public Services	Article 246 + VIIth Schedule (List II)
Centre + States (Concurrently)	Criminal Law, Economic/Social/Family Planning, Marriage Law etc.	Article 246 + VIIth Schedule (List III)

Fig. Important Legislative Competence

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The powers which are not "enumerated" in any of the lists in the 7th Schedule (**Residuary Powers**) are vested in the Centre (Article 248) like in Canada and unlike the USA, Australia and Switzerland.

The Constitution also provides that in case of overlapping, the Union List prevails over the other two and Concurrent List prevails over the State List.

Further, under special conditions, the **Parliament can legislate on subjects included in the State List, under some specific circumstances**, which are as follows:

(i) In the National Interest (Art.249) - If the Council of States (Rajya Sabha) declares that it is necessary for the Centre to legislate upon a subject in the State list, in national interest, and passes a resolution to this effect, with a majority of at least 2/3rd of members present and voting**.** This resolution remains in force for a year and can be renewed any number of times, but for not more than one year at a time. The laws so made do not have any effect six months after the resolution has ceased to be in force. At the same time, the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail. This particular feature makes the entire legislative process federal in nature.

(ii) By Agreement between States (Art. 252) - When two or more State Legislatures pass a resolution, requesting the Parliament to legislate upon a subject in the State List. The law passed by Union Parliament shall be applicable only to the States, which demanded such legislation. Any other State may later adopt it by passing a resolution to that effect. In this case, States cease to have power to legislate upon that subject and only the Parliament can amend or repeal such a law. In past, laws have been made using this provision, some of them are: Wildlife (Protection) Act 1972, Urban Land (Ceiling and Regulation) Act.

(iii) To Implement International Treaties and Agreements (Art. 253) - This provision enables the central government to fulfil its international obligations**.** The Lokpal and the Lokayuktas Bill, 2011 was introduced in the Parliament through the provisions of this particular article.

(iv) Under Proclamation of National Emergency (Article 352) - During national emergency, the Parliament can legislate upon any subject in the State List. Such a law becomes inoperative on expiration of six months after the emergency has ceased to operate. However, at the same time the State can also legislate upon the same subject, but in case of any inconsistency, laws of the Centre prevail.

(v) Under Proclamation of President's Rule (Art.356) - During President's rule in a State, the Parliament can make laws with respect to any subject in the State list, in relation to that state. Such a law continues to be operative even after the President's rule. But it can be repealed, altered or re-enacted later by the State Legislature**.**

Some **other provisions provide for Centre's control over State legislation**:

(i) The Constitution empowers the Governor to reserve certain types of bills passed by the State Legislature for consideration of the President (Art. 200).

This provision has led to a considerable degree of resentment among the State governments, especially due to excessive delays in communicating the Centre's decision to the State, on the bills so reserved.

(ii) Bills on certain matters in the State list can be introduced in the State legislature only with the prior approval of the President(Art. 304), i.e. bills imposing restriction on the freedom of trade and commerce.

(iii) The President can direct the States to reserve Money Bills as well as other financial bills passed by the State Legislature for his consideration, during a Financial Emergency (Art. 360).

Apart from this, Art. 169 empowers the Union Parliament to provide by law, for the abolition of the Legislative Council (Vidhan Parishad) of a State having such a Council.

The **Concurrent List** gives power to the two legislatures, Union as well as State, to legislate on the same subject. In case of conflict or inconsistency, the **rule of repugnancy**, as contained in Article 254 comes into play to uphold the principle of Union's supremacy. Under this rule, if there is any discrepancy between the State and the Centre over a subject in the Concurrent List, the Union law takes precedence over the State's law, and the State's law to the extent of such repugnancy, be void.

But, as an exception, if the State law has been reserved for consideration of the President and has received his assent, then the State law prevails in that State. But, the Parliament remains competent to override such a law by subsequently making a law on the same matter.

So what is the underlying need for the Concurrent List in the Constitution?

There is no doubt that uniform laws are needed in national interest and therefore Parliament has been given legislative power over these subjects. But at the same time, issues/problems on ground can vary from state to state and this requires varied approach on a case-by-case basis. Given such a situation state laws are more relevant, even though the Central government can provide broad directions/guidelines. Thus, arises the need to have a Concurrent List in the Constitution to ensure good governance for the citizens. Recommendations of Sarkaria Commission have been discussed ahead with regards to the Concurrent List.

2.2. Administrative Relations (Arts. 256 to263)

The executive power of the centre extends primarily to matters with respect to which Parliament has exclusive authority to make laws. Similarly the executive powers of the states extend to all those matters which are within their legislative domain. But with regard to the matters which are in the concurrent list there are three courses of action with the parliament in reference to the enforcement of legislation. It can leave it entirely to the states or may take over the task of 'enforcing it or it may take upon the enforcement of a part of the law, leaving the rest of it to the states for enforcement.

The framers of Indian Constitution made detailed provisions in the Constitution in regard to administrative relations between the Centre and State to ensure minimization of conflict between the two. They have been elaborated below:

a) **Directives by the Union to the State governments**: **Article 256** mentions that the executive power of every state shall be so exercised as to ensure compliance with laws made by Parliament and any existing laws, which apply in that state, and the executive power of the Union shall extend to the giving of such directions to a state as may appear to the Government of India to be necessary for that purpose.

   This power of the Union extends to the limit of directing a State in a manner it feels essential for the purpose. For instance, the Union can give directives to the State pertaining to
   - the construction and maintenance of means of communication declared to be of national or military importance;
   - protection of railways within the State;
   - the provisions of adequate facilities for instructions in mother tongue at the primary stage of education to children belonging to linguistic minority groups in the State;
   - drawing up and execution of the specified schemes for the welfare of the Schedule Tribe in the State.

   This is essential to ensure the implementation of Parliamentary laws throughout the

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country. Non-compliance of the directives might lead to a situation mentioned under Art.365 and it shall be lawful for the President to hold that a situation has arisen in which the government of the State cannot be carried on in accordance with the provisions of the Constitution. Thus, the Union can invoke **Article 356**, for imposition of President's rule in the State and take over the administration of the State.

b) **Delegation of Union functions to the States**: Usually executive powers are divided on the basis of subjects in the lists, but under the constitutional provision of **Article 258(1)** the President may, with the consent of the State government, entrust (either conditionally or unconditionally) to that government any of the executive functions of the Centre. Under Art 258(2), the Parliament is also entitled to use the state machinery for enforcement of the Union laws, and confer powers and entrust duties to the State. Under Art 258A, the State can also, with the consent of the Union government, confer administrative functions to the Union. In respect of matters in the Concurrent list, executive powers rest with the State, except when a constitutional provision or a Parliamentary law specifically confers it to the Centre.

c) **All India Services**: Besides the Central and State services, the Constitution under Article 312 provides for the creation of an additional "All-India Services", common to both the Union and States. The State has the authority to suspend the officials of All India Services, but the power of appointment and taking disciplinary action against them vests only with the President of India. The idea of having an integrated well-knit All India Services to manage important and crucial sectors of administration in the country was incorporated in our Constitution. Their recruitment, training, promotion, disciplinary matters are determined by the Central government. A member of the Indian Administrative Service (IAS), on entry into the service is allotted a State, where he/she serves under a State government. Though, it can be argued that the All India Services violate the principle of federalism, but such an arrangement, wherein a person belonging to the All India Service being responsible for administration of affairs, both at the Centre and States, brings cooperation in administration and helps to ensure uniformity of the administrative system throughout the country. Currently, there are three All India Services, namely IAS, IPS and IFoS (the Indian Forest Service was created as the third All India Service in 1966 by Art.312).

d) **Constitution of Joint Public Service Commission for two or more States**: When two or more states, through a resolution to that effect, in their respective legislatures agree to have one such Commission, the Parliament may by law, provide for a Joint Commission. There is also a provision in the Constitution, wherein on request by two or more States, the UPSC can assist those states in framing and operating schemes of joint recruitment to any service for which candidates with special qualifications are required.

e) **Inter-State Council**: India is a Union of States, wherein the Centre plays a prominent role, but at the same time is dependent on the States for the execution of its policies. The Constitution has provided for devices to bring about inter-governmental cooperation, effective consultations between the Centre and States so that all important national policies are arrived at through dialogue, discussion and consensus. One such device is the setting up of the Inter-State Council. The President is given powers under Article 263 of the Constitution to define the nature of duties of the Council. The Council is to inquire into and advise upon disputes, which may have arisen between the States. In addition, it may investigate and discuss subjects of common interest between the Union and the States or between two or more States, in order to facilitate co-ordination of policy and action. The inter-state council was set up under **Article 263** of the Constitution in 1990. The ISC has held 10 meetings so far and has taken several important decisions. Some of them are:

i. Time bound clearance of bills referred for the President's consideration
ii. Approved the Alternative Scheme of Devolution of Share in Central Taxes to States
iii. Indiscrete use of Article 356 in the country

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f) Inter-State river water dispute: Art.262 states that the Parliament may, by law, provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-state river or river valley and it may by law provide that neither the Supreme Court, nor any other court shall exercise jurisdiction in respect of any such dispute.

Inter-State River Water Disputes (Amendment) Bill, 2019

Brief background

Under Article 262, two acts were enacted – (i) River Boards Act 1956 which states that centre should take control of regulation and development of Inter-state rivers and river valleys in public interest. However, not a single river board has been constituted so far. (ii) The Interstate River Water Disputes Act, 1956 (IRWD Act) which confers a power upon union government to constitute tribunals to resolve such disputes. It also excludes jurisdiction of Supreme Court over such disputes.

Under the Interstate River Water Disputes Act, a state government may request the central government to refer an inter-state river dispute to a Tribunal for adjudication. If the central government is of the opinion that the dispute cannot be settled through negotiations, it is required to set up a Water Disputes Tribunal for adjudication of the dispute, within a year of receiving such a complaint. Over the years, there have been many Water Dispute Tribunals hearing the cases between states on river water sharing. But they have not been able to effectively resolve the disputes.

There are various issues with the Act. A separate Tribunal has to be established for each Inter State River Water Dispute. There is inordinate delay in constituting the tribunal and also securing settlement of such disputes owing to no time limit for adjudication. Tribunals like Cauvery and Ravi Beas have been in existence for over 26 and 30 years respectively without any award. Further, there is no provision for an adequate machinery to enforce the award of the Tribunal. Also the losing Party is quick to seek redressal in the Supreme Court. Only three out of eight Tribunals have given awards accepted by the States.

About the bill

Recently, the Lok Sabha cleared the Inter-State River Water Disputes (Amendment) Bill, 2019, which seeks to amend the IRWD Act 1956. Some key provisions of the bill are:

- **Dispute Resolution Committee** needs to be established by the Central Government before referring dispute to the tribunal, to resolve the dispute amicably by negotiations within one year (extendable by six months), and submit its report to the central government.
- Establishment of a **Single Inter-State River Water Disputes Tribunal** by the Central Government, which can have multiple benches. It must give its decision on the dispute **within two years**, which may be extended by another year.
- **Composition of Tribunal** will include a Chairperson, Vice-Chairperson, three judicial members, and three expert members.
- The **decision of the Tribunal** shall be final and binding. The bill also removes the requirement of publication of decision in the official gazette in the original Act.
- It also makes mandatory for the Central Government to **make a scheme to give effect to the decision** of the Tribunal.
- **Data Collection and maintenance of a databank** at national level would be done for each river basin by an agency to be appointed and authorized by central government.

Apart from these, **Art.355** imposes duties on the Centre to protect every State against external aggression and internal disturbances and to ensure that the Government of every State is carried on, in accordance with the provisions of the Constitution.

In case of National Emergency (Art. 352), the Centre becomes entitled to give executive directions to a State on any matter. Similarly, during President Rule (Art.356), the President can assume to himself the functions of State government and the power vested in Governor or any other executive authority in the State. During operation of Financial Emergency (Art.360), the Centre can direct the States over certain financial matters and the President can give other

necessary directions, including reduction in salary of persons serving in the State and the Judges of the High Court.

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2.3. Financial Relations (Art.268 to Art.293)

The Indian Constitution has elaborate provisions regarding the distribution of revenues between the Union and the States. Article 268 to 293 in Part XII deal with the financial relations. The financial relations between the Union and the States can be studied under the following heads:

1. **Taxes and duties levied by the Union, but collected and appropriated by the States:** Stamp duties are levied by the Government of India, but collected and appropriated by the States, within which such duties are leviable, except in the Union Territories, where they are collected by the Union Government**(Art. 268).**The proceeds of these duties levied within any State are assigned to that State only and do not form a part of Consolidated Fund of India.
2. Service tax levied by the Centre, but collected and appropriated by the Centre and the States (Article 268A): This has been **omitted after adoption of GST** through 101st constitutional amendment act.
3. **Taxes levied and collected by the Union, but assigned to the States within which they are leviable (Art.269):**
   - **a)** Succession duty in respect of property, other than agricultural land.
   - **b)** Estate duty in respect of property, other than agricultural land.
   - **c)** Terminal taxes on goods or passengers carried by railways, sea or air.
   - **d)** Taxes on railway fares and freights taxes on transactions in Stock Exchanges.
4. **Article 269A** states that Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council. The amount apportioned to a State under this shall not form part of the Consolidated Fund of India.
5. **Taxes levied and collected by the Union and distributed between the Union and the States(Art.270):** Certain taxes are levied as well as collected by the Union, but their proceeds are divided between the Union and the States in a certain proportion in order to effect an equitable distribution of the financial resources. This category includes all the taxes and duties referred to in the Union List, except the three categories mentioned above (Article 268, 269, 269A), any surcharge and any cess levied for specific purposes.
   The manner of distribution of net proceeds of these taxes is prescribed by the President, on the recommendation of the Finance Commission.
6. **Surcharge on certain taxes (Art.271):** The Parliament is, authorized to levy surcharge on the taxes mentioned in the above two categories (Art.269 and Art.270) and the proceeds of such surcharges go to the Centre exclusively and are not shareable.
7. **Taxes levied and collected and retained by the states:** These are the taxes enumerated in the State List and belong to the States exclusively. This is subject to Article 386 - No law of a State shall impose, or authorise the imposition of, a tax on the supply of goods or of services or both, where such supply takes place— (a) outside the State; or (b) in the course of the import of the goods or services or both into, or export of the goods or services or both out of, the territory of India.
8. **Grants-in-Aid:** The Parliament may make grants-in-aid from the Consolidated Fund of India to such States as are in need of assistance (Art.275), particularly for the promotion of welfare of tribal areas, including special grant to Assam. These are called statutory grants and made on recommendation of the Finance Commission. Apart from this, Art.282 provides for discretionary grants by the Centre and States both, for any public purposes.

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9. **Loans:** The Union Government may provide loan to any State or give guarantees with respect to loans raised by any State.
10. **Previous sanction of the President (Art 274):** No Bill or amendment can be introduced or moved in either House of Parliament without the previous sanction of the President, if:
    a. It imposes or varies any tax in which the States are interested; or
    b. It varies the meaning of the expression "Agricultural Income" as defined in the Indian Income-Tax Act; or
    c. It affects the principles on which money are distributed to the States; or
    d. It imposes a surcharge on the State taxes for the purpose of the Union.
11. **Freedom of Inter-State Trade**: According to Article 301, Freedom of Trade, Commerce and Intercourse throughout the territory of India is guaranteed, but Parliament has the power to impose restrictions in public interest.
12. **Distribution of non tax-revenues:** Non tax revenues from post and telegraph, railways, banking, broadcasting, coinage and currency, central public sector enterprises and escheat(death of a person without heir) and lapse (termination of rights) go to the Centre, while State receives non-tax revenues from irrigation, forests, fisheries, state public sector enterprises and escheat and lapse(if property is situated in that state).
13. Provision has been made for the constitution of a Finance Commission to recommend to the President certain measures for the distribution of financial resources between the Union and the States **(Art.280).**

Under the situation of emergencies, these financial relations also undergo changes according to the situation and the President can modify the constitutional distribution of revenues between the Centre and the States.

2.4. Trends in Centre-State relations

Development of India's federalism since Independence

The first phase of India's federalism extended from the **time of independence** to the Mid-1960. Prime Minister Jawahar Lal Nehru took great efforts to keep the Chief Ministers of all the states apprised of the activities at the Centre. He wrote to each of them to keep them informed of the state of nation and to build a consensus on national issues. This smooth phase of Indian federalism was helped by the reason that a single party ruled in almost all the states and at the Centre.

But after the **1967 election**, the Congress Party was defeated in nine states and its position at the Centre became weak. Thus, a new era in Centre-State relations started. The non-Congress governments in the States opposed the increasing centralization and intervention of the Central government. They raised the issue of State autonomy and demanded more powers and financial resources for the States. This caused tensions and conflicts in Centre-State relations over various issues e.g. mode of appointment and dismissal of Governor, discriminatory and partisan role of Governors, impositions of President's rule for partisan interests, deployment of central forces in the States to maintain law and order, reservation of State bills for consideration of the President, sharing of finances (between Centre and States), encroachment by the Centre on the State list and so on.

With the prolonged period of coalition governments at the Centre, the third phase in federalization of Indian politics started in the **late 1980's**. Regional parties such as the DMK or the RJD have asserted their interests more openly over last one and a half decade of Indian polity. Such assertiveness has resulted in the national parties giving more importance to the role of regional parties in country's functioning. Despite the increasing stature of regional parties there have been several issues and flashpoints between the Centre and the State. These issues have been under consideration and following developments can be seen in this direction:

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2.4.1. Administrative Reform Commission (First)

The Central government appointed a six member Administrative Reforms Commission (ARC) in 1966 under the Chairmanship of Morarji Desai. Its terms of references included, among others, the examination of Centre-State relations. In 1969, ARC submitted 22 recommendations in its report on Centre-State relationship. The important recommendations are:

a) Establishment of Inter-State Council under Article 263 of the Constitution.
b) Appointment of people having long experience in public life and administration and non-partisan attitude as Governors.
c) Delegation of powers to the maximum extent to the States.
d) Transferring of more financial resources to the States to reduce their dependency upon the Centre.
e) Deployment of Central armed forces in States, either on their request or otherwise.

But, no action was taken by the Central Government on the recommendations of ARC.

Next, important development in this direction was appointment of Sarkaria Commission.

2.4.2. Sarkaria Commission

The Central government appointed a three-member Commission in 1983 on Centre-State relationship under the Chairmanship of R S Sarkaria, a retired Judge of the Supreme Court. The Commission submitted its report in October 1987 with 247 recommendations. It did not favour structural changes and regarded the existing constitutional arrangements and principles relating to the institutions basically sound. But, it emphasised need for the change in functional or operational aspect. It outrightly rejected the demand for curtailing the powers of centre and stated that a strong centre is essential to safeguard the national unity and integrity. However, it observed the over-centralisation as an avoidable phenomenon. Its important recommendations were:

1. A permanent Inter-State Council called the Inter-Governmental Council should be set up under Article 263.
2. Article 356 (President's rule) should be used very sparingly, in extreme cases as a last resort when all the available alternatives fail.
3. The institution of All-India Services should be further strengthened and some more such services should be created.
4. The residuary power of taxation should continue to remain with the parliament, while the other residuary powers should be placed in the concurrent list.
5. When the President withholds his assent to the state bills, the reason should be communicated to state government.
6. The Zonal Councils should be constituted afresh and reactivated to promote the spirit of federalism.
7. The Centre should have powers to deploy its armed forces, even without the consent of states. However, it is desirable that the states should be consulted.
8. The Centre should consult the states before making a law on a subject of the Concurrent List.
9. The procedure of consulting the Chief Minister in the appointment of State Governor should be prescribed in the Constitution itself.
10. The Governor's term of five years in a state should not be disrupted except for extremely compelling reasons.
11. Steps should be taken to uniformly implement the three language formula in its true spirit.
12. No autonomy in for radio and television but decentralization in their operations.
13. The Commissioner for Linguistic Minorities should be activated.

Till December 2007, The Central Government has implemented 179 (out of 247) recommendations of the Sarkaria commission. **The most Important is the establishment of Inter-State Council in 1990.**

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2.4.3. MM Punchhi Commission

In April 2007 a 'Commission on Centre-State Relations' was formed under the chairmanship of Madan Mohan Punchhi, former Chief justice of India. The Commission presented its seven volume report to the government on March 30, 2010. Volume II goes into the constitutional schemes of Centre-State relation and some of its recommendations are as follows:

(Being the latest committee on Centre-State relations, its recommendations are given in detail)

On Consultation with States while legislating on matters in Concurrent List

List III (concurrent list) includes subjects on which the Union and the States can both legislate. For cultivating better Centre-State relations and to facilitate effective implementation of the laws on List III subjects, it is necessary that **some broad agreement is reached** between the Union and States before introducing legislation in Parliament on matters in the Concurrent List. The existing arrangements in this regard require institutionalization through the Inter-State Council. The Council, if found necessary, may use an independent mechanism like a Committee of State Ministers to thrash out contentious issues in the Bill. It would help ensure a measure of support among the States for the administrative and fiscal arrangements the Bill ultimately proposes to Parliament. It is important that the records of proceedings in the Council/Committee including views of States are made available to Parliament while introducing the Bill on Concurrent List subjects.

On Transfer of Entries in the Lists, from List II to List III

Article 368(2) empowers Parliament to amend any provision of the Constitution in accordance with the procedure laid down therein. Should Parliament deplete or limit the legislative powers of the States through this process unilaterally or otherwise? **Greater flexibility to States in relation to subjects in the State List and "transferred items" in the Concurrent List** is the key for better Centre-State relations.

In this context, it is worthwhile to examine through a joint institutional mechanism whether the administration of the relevant subject under the Central law (on the transferred subject) has achieved the objects and whether it is desirable to continue the arrangement as an occupied field limiting thereby the exclusive jurisdiction of the States. If the findings are not positive it may be worthwhile to consider restoration of the item to its original position in State List in the interest of better Centre-State relations. Such a step hopefully will encourage the States to devolve the powers and functions on that subject to the Panchayats and Municipalities as stipulated in Parts IX and IX-A of the Constitution.

On Management of matters in concurrent jurisdiction

Given the joint responsibility of the Centre and the States it is imperative that legislation on matters of concurrent jurisdiction generally and transferred items from the State List in particular, should be managed through **consultative processes on a continuing basis**. The Commission recommended a continuing auditing role for the Inter-State Council in the management of matters in Concurrent or overlapping jurisdiction.

On Bills reserved for consideration of the President

Article 201 empowers the President to assent or withhold assent to a Bill reserved by a Governor for the President's consideration. If the President returns the Bill with any message, the State Legislature shall reconsider the Bill accordingly within a period of six months for presentation again to the President for his consideration.

States have expressed concern that Bills so submitted sometimes are indefinitely retained at the Central level even beyond the life of the State Legislature. Allowing the democratic will of the State Legislature to be restricted by centre is questionable in the context of 'basic features'

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of the Constitution (federal character of the constitution). Therefore the President should **decide consenting or withholding consent in reasonable time to be communicated to the State**. A period of six months prescribed in Article 201 for State Legislature to act when the Bill is returned by the President can be made applicable for the President also to decide on assenting or withholding assent to a Bill reserved for consideration of the President.

On Treaty making powers of the Union Executive and Centre-State Relations

Entering into treaties and agreements with foreign countries and implementation of treaties, agreements and conventions with foreign countries are items left to the Union Government (Entry 14 of List I). Article 253 confers exclusive power on Parliament to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. In view of the vastness of the treaty making powers with the Union Government, the Commission recommends that Parliament should make a law on the subject of Entry 14 of List I (treaty making and implementing it through Parliamentary legislation) to streamline the procedures involved. The exercise of the power obviously cannot be absolute or unchartered in view of the federal structure of legislative and executive powers. Several states have expressed concern and wanted the Commission to recommend appropriate measures to protect States' interests in this regard. The Commission recommends that the following aspects may be incorporated in the Central law proposed on the subject of Entry 14 of List I:

a) In view of the fact that treaties, conventions or agreements may relate to all types of issues within or outside the States' concern, there cannot be a uniform procedure for exercise of the power. Furthermore, since treaty making involves complex, prolonged, multi-level negotiations wherein adjustments, compromises and give and take arrangements constitute the essence, it is not possible to bind down the negotiating team with all the details that should go into it. Nonetheless, the Constitutional mandates on federal governance cannot be ignored; nor the rights of persons living in different regions or involved in different occupations compromised. Therefore there is need for a legislation to regulate the treaty making powers of the Union Executive.

b) Agreements which largely relate to defense, foreign relations etc. which have no bearing on individual rights or rights of States can be put in a separate category on which the Union may act on its own volition independent of prior discussion in Parliament. However, it is prudent to refer such agreements to a Parliamentary Committee concerned with the particular Ministry of the Union Government before it is ratified.

c) Other treaties which affect the rights and obligations of citizens as well as those which directly impinge on subjects in State List should be negotiated with greater involvement of States and representatives in Parliament. For this purpose a note on the subject of the proposed treaty and the national interests involved may be prepared by the concerned Union Ministry and circulated to States for their views and suggestions to brief the negotiating team.

d) There may be treaties or agreements which, when implemented, put obligations on particular States affecting its financial and administrative capacities. In such situations, in principle, the Centre should underwrite the additional liability of concerned States according to an agreed formula between the Centre and States.

e) Financial obligations and its implications on State finances arising out of treaties and agreements should be a permanent term of reference to the Finance Commissions constituted from time to time. The Commission may be asked to recommend compensatory formulae to neutralize the additional financial burden that might arise on States while implementing the treaty/agreement.

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On Appointment and Removal of Governors

Given the status and importance conferred by the Constitution on the office of the Governor and taking into account his key role in maintaining Constitutional governance in the State, it is important that the Constitution lays down explicitly the qualifications or eligibility for being considered for appointment. Presently Article 157 only says that the person should be a citizen of India and has completed 35 years of age. The Sarkaria Commission approvingly quoted the eligibility criteria that Jawaharlal Nehru advocated and recommended its adoption in selecting Governors.

These criteria are:

a. He should be eminent in some walk of life.
b. He should be a person from outside the State.
c. He should be a detached figure and not too intimately connected with the local politics of the States; and
d. He should be a person who has not taken too great a part in politics generally and particularly in the recent past.

The words and phrases like "eminent", "detached figure", "not taken active part in politics" are susceptible to varying interpretations and parties in power at the Centre seem to have given scant attention to such criteria. The result has been **politicization of Governorship** and sometimes people unworthy of holding such high Constitutional positions getting appointed. This has led to some parties demanding the abolition of the office itself and public demonstration against some Governors in some States. This trend not only undermines Constitutional governance but also leads to unhealthy developments in Centre-State relations.

The Central Government should adopt strict guidelines as recommended in the Sarkaria report and follow its mandate in letter and spirit lest appointments to the high Constitutional office would become a constant irritant in Centre-State relations and sometimes embarrassment to the Government itself.

Governors should be given a **fixed tenure** of five years and their removal should not be at the will of the Government at the Centre. The **phrase "during the pleasure of the President" in Article 156(i) should be substituted** by an appropriate procedure under which a Governor who is to be reprimanded or removed for whatever reasons, is given an opportunity to defend his position and the decision is taken in a fair and dignified manner befitting a Constitutional office.

It is necessary to provide for impeachment of the Governor on the same lines as provided for impeachment of the President in Article 61 of the Constitution. The dignity and independence of the office warrants such a procedure. The "pleasure doctrine" coupled with the lack of an appropriate procedure for the removal of Governors is inimical to the idea of Constitutionalism and fairness. Given the politics of the day, the situation can lead to unpleasant situations and arbitrariness in the exercise of power. Of course, such impeachment can only be in relation to the discharge of functions of the office of a Governor or violations of Constitutional values and principles.

On Governors' discretionary powers

Article 163(2) gives an impression that the Governor has a wide, undefined area of discretionary powers even outside situations where the Constitution has expressly provided for it. Such an impression needs to be dispelled. The scope of discretionary powers under Article 163(2) has to be narrowly construed, effectively dispelling the apprehension, if any, that the so-called discretionary powers extends to all the functions that the Governor is empowered under the Constitution. Article 163 does not give the Governor a general discretionary power to act against or without the advice of his Council of Ministers. In fact, the area for the exercise of discretion is limited and even in this limited area, his choice of action should not be nor appear to be arbitrary or fanciful. It must be a choice dictated by reason, activated by good faith and tempered by caution.

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In respect of Bills passed by the Legislative Assembly of a State, the Governor is expected to declare that he assents to the Bill or that he withholds assent there from or that he reserves the Bill for the consideration of the President. He has the discretion also to return the Bill (except Money Bill) for re-consideration of the House together with the message he might convey for the purpose. If on such reconsideration the Bill is passed again, with or without amendments, the Governor is obliged to give his assent. Furthermore, it is necessary to prescribe a time limit within which the Governor should take the decision whether to grant assent or to reserve it for consideration of the President. The time limit of six months prescribed for the State Legislature to act on the President's message on a reserved Bill should be the time limit for the President also to decide on assenting or withholding of assent. The Governor accordingly should make his decision on the Bill within a maximum period of six months after submission to him.

On the question of **Governor's role in appointment of Chief Minister** in the case of a hung assembly there have been judicial opinions and recommendations of expert commissions in the past. Considering all those views in mind it is necessary to lay down certain clear guidelines to be followed as Constitutional conventions in this regard. These guidelines may be as follows:

1) The party or combination of parties which commands the widest support in the Legislative Assembly should be called upon to form the Government.

2) If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.

3) In case no party or pre-poll coalition has a clear majority, the Governor should select the Chief Minister in the order of preference indicated below:
   (a) the group of parties which had pre-poll alliance commanding the largest number.
   (b) the largest single party staking a claim to form the government with the support of others.
   (c) a post-electoral coalition with all partners joining the government
   (d) a post-electoral alliance with some parties joining the government and the remaining including independents supporting the government from outside.

On the question of dismissal of a Chief Minister, the Governor should invariably insist on the Chief Minister proving his majority on the floor of the House for which he should prescribe a time limit.

On Obligation of the Union to protect States from external aggression and internal disturbance

Concern for the unity and integrity of India is the rationale for the obligation put on the Union to protect States even against internal disturbances, which ordinarily is a matter for the states to handle. This obligation is coupled with the power to enforce that duty, if necessary without any request coming from the State. This is consistent with the federal scheme of the Constitution. A whole range of action on the part of the Union is possible under this power depending on the circumstances of the case as well as the nature, timing and the gravity of the internal disturbance. The Union can advise the State on the most appropriate deployment of its resources to contain the problem. In more serious situations, augmentation of the States' own efforts by rendering Union assistance in men, material and finance may become necessary. If it is a violent or prolonged upheaval (not amounting to a grave emergency under Art. 352), deployment of the Union forces in aid of the police and magistracy of the State may be adopted to deal with the problem. Action to be taken may include measures to prevent recurring crisis.

When a situation of public disorder aggravate into an internal disturbance as envisaged in Art. 355, justifying Union intervention is a matter that has been left by the Constitution to the judgement and good sense of the Union Government. Though this is the legal position, in practice, it is advisable for the Union Government to **sound the State Government and seek its co-operation before deploying its Forces in a State.**

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When an external aggression or internal disturbance paralyses the State administration creating a situation of a potential break down of the Constitutional machinery of the State, **all alternative courses available** to the Union for discharging its paramount responsibility under Article 355 should be exhausted to contain the situation and the exercise of the power under Art. 356 should be limited strictly to rectifying a "failure of the Constitutional machinery in the State".

S.R. Bommai V.s. Union of India

- The verdict concluded that the **power of the President to dismiss a State government is not absolute**. The President should exercise the power only after his proclamation (imposing his/her rule) is approved by both Houses of Parliament. Till then, the Court said, the President can only suspend (not dissolve) the Legislative Assembly by suspending the provisions of Constitution relating to the Legislative Assembly.
- It also categorically ruled that **the floor of the Assembly** is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.

On the question of invoking Article 356 in case of failure of Constitutional machinery in States, suitable amendments to incorporate the guidelines should be set forth as per the landmark judgement of the Supreme Court in **S.R. Bommai V. Union of India** (1994). This would remove possible misgivings in this regard on the part of States and help in smoothening the Centre-State relations. Of course, the proper use of Article 356 can ultimately be governed by the inherent decency and honesty of the political process.

On "Local emergency" under Article 355 and 356

Given the strict parameters now set for invoking the emergency provisions under Articles 352 and 356 to be used only as a measure of "last resort", and the duty of the Union to protect States under Article 355, it is necessary to provide a Constitutional or legal framework to deal with situations which require Central intervention but do not warrant invoking the extreme steps under Articles 352 and 356. Providing the framework for "localized emergency" would ensure that the State Government can continue to function and the Assembly would not have to be dissolved while providing a mechanism to let the Central Government respond to the issue specifically and locally. The imposition of local emergency is fully justified under the mandate of Article 355 read with Entry 2A of List I that is deployment of any armed forces of the union in any state in aid of the civil power and Entry 1 of List II that is public order of the Seventh Schedule. It is submitted that Art. 355 not only imposes a duty on the Union but also grants it, by necessary implication, the power of doing all such acts and employing such means as are reasonably necessary for the effective performance of that duty.

It is however necessary that a legal framework for exercising the power of "localized emergency" is provided by an independent Statute borrowing the model of the Disaster Management Act, 2005 and the **Prevention of Communal Violence and Rehabilitation Bill, 2006**. Only exceptional situations which fall within the scope of "external aggression" or "internal disturbance" should be considered for the purposes of separate legislation under the mandate of Article 355. Such situations include (a) separatist and such other violence which threatens the sovereignty and integrity of India, (b) communal or sectarian violence of a nature which threatens the secular fabric of the country, and (c) natural or man-made disasters of such dimensions which are beyond the capacity of the State to cope with. With regard to item (c) a Statute is already in place (Disaster Management Act, 2005) and in respect of situations contemplated in item (b), it is learnt that a revised Bill is being proposed. What is therefore required is a legislation to provide for Centre's role in case of separatist and related violence in a State which is in the nature of "external aggression" or "internal disturbance" contemplated in Article 355. It is important that the legislation provides for appropriate administrative co-ordination between the Union and the State concerned. It may also need consequent amendments to certain sections of the Criminal Procedure Code as well.

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On Power of Union to give directions to State

Though States have raised objections to the power exercisable by the Union under Articles 256 and 257 on the ground that they are destructive of not only the autonomy of States but also inimical to the very foundation of a federal arrangement but this is no case for amendment of these provisions. It must, however, be clarified that favouring the retention of these provisions is entirely different from advocating easy or quick resort to them. Articles 256 and 257 may be viewed as a safety valve, one which may never come into play but which is nevertheless required to be retained.

The above view is substantiated by recent experiences where the Centre had to give directions on containing communal violence or insurgency in certain areas. The question that remains is about the consequence of non-compliance by a State of the Centres' directions in this regard. Though the Constitution has not provided any explicit course of action to such an eventuality, the obvious answer appears to be recourse available under Article 356 which indeed is an extreme step. In the existing scheme of things such a development is unlikely to happen which may explain why the Constitution makers avoided making remedial provision. Healthy conventions respecting the autonomy of states and restrained use of the power on behalf of the Union can go a long way to address the concern expressed by States in this regard. Another related issue is about the term 'existing laws" used in Article 256 which are in addition to laws made by Parliament to which the executive power of State shall ensure compliance. These relate to other laws including Presidential Ordinances and international treaties and customary international law applicable to the State concerned. Rule of Law demands executive compliance of all laws.

A question is raised whether the scope of Article 257 Clause (3) should be widened besides railways to include other vital installations like major dams, space stations, nuclear installations, communication centres etc. The executive power of the Union shall also extend to the giving of directions to a State as to the measures to be taken for the protection of Union property declared by the Union Government to be of national importance thus clause (3) of Art.257 should accordingly be amended to incorporate them.

On Co-ordination between States, Centre-State Relations and Inter-State Council

Federalism is a living faith to manage diversities and it needs to be supported by institutional mechanisms to facilitate co-operation and co-ordination among the Units and between the Units and the Union. Co-operative federalism is easily endorsed but difficult to practice without adequate means of consultation at all levels of government.

The Constitution has provided only limited institutional arrangements for the purpose and regrettably they are not adequately utilized. In this context, the Commission strongly recommends the following for strengthening and mainstreaming of the Inter-State Council to make it a vibrant forum for all the tasks contemplated in Clauses (a) to (c) of Article 263:

Inter State Council

- **Article 263** states that It shall be lawful for the President to establish an ISC for inquiring, discussing and advising upon:
  - disputes which may have arisen between States
  - subjects in which some or all of the States, or the Union and one or more of the States, have a common interest; or
  - such subject and, in particular, recommendations for the better co-ordination of policy and action with respect to that subject.
- The council **consists of** the PM as the Chairman, CMs of all states and UTs, Administrators of UTs not having Legislative Assemblies and six union cabinet minister including Home Minister nominated by PM.
- It is **not a permanent constitutional body** but it can be established 'at any time' if it appears to the President that the public interests would be served by the establishment of such a council.

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- The Inter-State Council must meet at least thrice in a year on an agenda evolved after proper consultation with States.
- The Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services.
- The Council should have functional independence with a professional Secretariat constituted with experts on relevant fields of knowledge supported by Central and State officials on deputation for limited periods.
- After ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the Government may consider the functions for the National Development Council also being transferred to the ISC.
- It should have sufficient resources and authority to carry out its functions effectively and to engage civil society besides governments and other public bodies.
- It must be empowered to follow up the implementation of its decisions for which appropriate statutory provisions should be made.

Towards this end, the Commission would recommend suitable amendments to Article 263 with a view to make the Inter-State Council a credible, powerful and fair mechanism for management of inter-state and Centre-State differences.

On Zonal Councils and Empowered Committees of Ministers

The need for more consensus building bodies involving the Centre and the States has been canvassed before the Commission because of a wide spread perception that governance is getting over-centralised and states are losing their autonomy in their assigned areas. While legislative powers are clearly demarcated and the fiscal relations are subject to periodic review by the Finance Commission, the fear on the part of States is more on administrative relations and it is here the need for more forums for co-ordination is felt.

Under the States Re-organization Act, 1956 five Zonal Councils were created ostensibly for curbing the rising regional and sectarian feelings and to promote co-operation in resolving regional disputes. Later the North Eastern Council was created under the North Eastern Council Act, 1971. In each of these Zonal Councils, Union Home Minister is the Chairman and the Chief Ministers of the States in the Zones concerned are members. The Zonal Councils should meet at least twice a year with an agenda proposed by States concerned to maximize coordination and promote harmonization of policies and action having inter-state ramification. The Secretariat of a strengthened Inter-State Council can function as the Secretariat of the Zonal Councils as well.

The Empowered Committee of Finance Ministers of States proved to be a successful experiment in inter-state co-ordination on fiscal matters. There is need to institutionalize similar models in other sectors as well. A Forum of Chief Ministers, Chaired by one of the Chief Minister by rotation can be similarly thought about particularly to coordinate policies of sectors like energy, food, education, environment and health where there are common interests to advance and differentiated responsibilities to undertake. Implementation of Directive principles can be a standing agenda for the Forum of Chief Ministers. It is pertinent to note that other federations like USA, Australia and Canada do have similar forums to facilitate public policy development and good governance. This Forum of Chief Ministers can also be serviced by the Inter-State Council.

On Adjudication of disputes relating to waters of inter-State rivers

The present state of affairs in adjudication of inter-state water disputes is obviously unsatisfactory as it is dilatory, time consuming and seldom gets settled. Therefore change in the law and procedure is warranted.

On All India Services and Centre-State Co-operation for better Administration

All India Services are unique feature of the Indian Constitution. The broad objectives in setting up All India Services relate to

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- facilitating liaison between the Union and States;
- promoting uniform standards of administration;
- enabling the administrative officers of the Union to be in touch with field realities;
- helping the State administrative machinery to obtain the best available talent with wider outlook and broader perspectives;
- reducing political influence in recruitment and promote discipline and control in administration.

Considering the importance of these objectives, the Commission strongly recommends the constitution of few other All India Services in sectors like Health, Education, Engineering and Judiciary. They existed prior to Independence which contributed significantly to the quality of administration.

There are many issues relating to the administration of All India Services which are appropriately discussed in the report of the Administrative Reforms Commission and are of great relevance. However, the Commission would recommend proper integration of All India Services in the context of the introduction of the third tier of governance. The local bodies are in dire need of building capacities and strengthening the planning process for which the officers of All India Services can play a lead role.

Equally important is the system of encadrement of officers of state Governments and local bodies into the All India Services. Structural integration at all three levels requires clear demarcation of criteria for encadrement of posts, objective performance appraisal system, systematic career development and professionalization plans and a rational system of postings and transfers. There should be constitution of an Advisory Council under the Chairmanship of the Cabinet Secretary with the Secretary Personnel and the concerned Chief Secretaries of States.

On Rajya Sabha to be a Chamber to protect States' rights

The essence of federalism lies in maintaining a proper balance of power in governance and in this respect the Council of States (Rajya Sabha) occupies a significant role. There is no doubt that Rajya Sabha is representative of States of the Union and is supposed to protect States' rights in Central policy making. The Commission is of the considered view that factors inhibiting the composition and functioning of the Second Chamber as a representative forum of States should be removed or modified even if it requires amendment of the Constitutional provisions. This is felt more important now when centralization tendencies are getting stronger and fragmentation of the polity is becoming intense.

Whenever Central policies are formulated in relation to one or more States, it is only proper that Committees of Rajya Sabha involving representatives of concerned States are allowed to discuss and come up with alternate courses of action acceptable to the States and the Union. For example, compensating the mineral rich States or the Hill States can well be negotiated in the Rajya Sabha Committee. Similarly, States adversely affected by the Centre entering into treaties or agreements with other countries can get appropriate remedies if the forum of the Rajya Sabha is utilized for the purpose. In fact, Rajya Sabha offers immense potential to negotiate acceptable solutions to the frictional points which emerge between Centre and States in fiscal, legislative and administrative relations.

On Equal representation of States in Rajya Sabha

The principle of equality and equal representation in institutions of governance is as much relevant to States as to individuals in a multi-party diverse polity. Equally applicable is the idea of preferential discrimination in favour of backward States in the matter of fiscal devolution from Union to States. There are other federations (like USA) which give equal number of seats to the federating units in the Council of States irrespective of the size of their territory and population. The number of seats in the House of People (Lok Sabha) anyway is directly linked to

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the population and there is no need to duplicate the principle. A balance of power between States inter se is desirable and this is possible by equality of representation in the Rajya Sabha. If the Council of States has failed to function as representative of States as originally envisaged, it is because of the asymmetry of coalition politics and the way the party system developed. The functioning of Rajya Sabha can be reformed to achieve the original purpose of federal equilibrium. There should be amendment of the relevant provisions to give equality of seats to States in the Rajya Sabha, irrespective of their population size.

The reasoning of the Supreme Court in Kuldip Nayyar vs. Union of India, (2006) rejecting the status of Rajya Sabha as a Chamber representing the States in the federal Union is faulty and deserves review. Meanwhile, Parliament should act restoring section 3 of the Representation of People Act as it originally stood to redeem the federal balance in shared governance. The territorial link with that state from which a person is contesting for Rajya Sabha membership, which was prescribed by the Representation of People Act (until it was dispensed in 2003) is necessary and desirable to let the States realize that they are equal partners in national policy making and governance.

On Governments' obligation to support court expenditure when laws are made

The Financial Memorandum attached to Bills usually do not provide for adjudication costs involved in enforcement of the new law. This puts the Subordinate Courts with little or no resources to cope up with additional workloads directly resulting from new legislations put on the Statute Book. An expert Committee has recommended to the Government that judicial impact assessment should be made whenever legislations are proposed and the Financial Memorandum should reflect judicial costs as well. This Commission endorses the proposal. In view of Article 247(power of parliament to provide for the establishment of certain additional courts) read with Entry 11A of the Concurrent List (Administration of justice; constitution an organisation of all courts , except the supreme court and high courts), Government of India is constitutionally obliged to make financial provision for implementation of Central laws through State Courts in respect of subjects in Lists I and III of the Seventh Schedule.

On Judicial Councils to advise Centre-State share in judicial budgets

Enabling the justice system to discharge its functions efficiently is the joint responsibility of Central and State Governments. While the administrative expenses of the Supreme Court and High Courts are charged upon the Consolidated Funds of the Centre and States respectively, there is no such financial arrangement guaranteed by the Constitution for subordinate judiciary. Judicial planning and budget making ought to be undertaken jointly by the judiciary and the executive for which some joint forum needs to be established. An expert committee set up by the Union Law Ministry recommended the setting up of "Judicial Councils" at the State and Central levels for the purpose which the Commission endorses. These Councils should not only prepare the judicial budget for approval by the Legislature but also decide on the proportion of sharing the budget expenditure between Centre and States on the basis of the data on the workload of courts under Lists I, II and III.

The idea is not to make the States bear the entire expenditure on Subordinate Courts which devote substantial time and resources to enforce the laws made by Parliament under List I and List III.

Finally, the Commission is of the view that Central Government must make an assessment of the number of courts needed for efficient adjudication of disputes arising out of Central laws and establish the required number of Additional Courts as stipulated under Article 247 of the Constitution.

On Need for continuing emphasis on federal balance of power

On the question whether a fresh balance of power is needed to take governance forward on the

path set by the Constitution, the framers of the Constitution, taking note of the pluralistic identities of the people and the diverse historical traditions of the polity, have correctly come to the conclusion that a federal system alone can take the country forward as a united, democratic republic. The Commission, however, is convinced that the tilt in favour of the Union has increasingly accentuated over the years even outside the security needs of the country. This has led to avoidable over-centralisation even in developmental matters. These emerging contradictions in federal constitutional practice have to be addressed early in the interest of not only better Centre-State relations but also to sustain the very unity and integrity for which the tilt in favour of the Centre was originally conceived.

This balancing of powers and functions which assumed added significance after the introduction of the 73rd and 74th Constitutional Amendments can largely be accomplished through administrative arrangements supported by adequate devolution of finances for which the Finance Commission is a key institution. While security concerns might warrant greater powers to the Union, on the development front (education, health etc.) the Centre should respect the autonomy of the other two levels of government and consciously avoid the tendency to centralize powers and functions. Its role should be limited in laying down policies, devolving funds and facilitating co-ordination leaving implementation entirely to States and Local Bodies.

On Streamlining Administrative Relations

On the more problematic issue of the nature and scope of Centre's directions to the States in matters which are in the domain of States' executive power, the Commission, after having examined the views expressed by the States, has come to the conclusion that the powers under Articles 256 and 257 are necessary to remain with the Centre in order to ensure that the Centre's legislative and executive powers are duly honoured by the States. What directions are to be given by the Centre to the States and when, is for the Central Government to decide, keeping in view the exigencies of the circumstances and administrative necessities.

On Fiscal Relations to be largely decided by the Finance Commission

There is a need to strengthen the Constitutional scheme of fiscal transfers through Finance Commissions and reduce the scope of other forms of devolution which leads to complaints from States.

There is a case to make the Finance Commission to be a permanent body with membership changing every five years and with a regular Secretariat. The Centre should find a methodology to allow State participation in its Constitution and in formulation of terms of reference so that it may not appear to be a creation entirely of the Centre which is an interested party in the division of the kitty (revenue received).

2.5. Miscellaneous Issues

2.5.1. Special Category Status to States

Various Chief Ministers across the nation have been demanding special status for their respective states since last few years. Recently, Andhra Pradesh MPs have been protesting for special category status for the state which centre has refused. The demand is claimed on the basis of Andhra Pradesh Reorganisation Act which provides that “the Central Government may make appropriate grants and also ensure that adequate benefits and incentives in the form of special development package are given to the backward areas of that State”.

The whole idea of a special category state was introduced in 1969 by the Fifth Finance Commission, which as per the Gadgil formula gave special status to the states of Nagaland, Assam and Jammu and Kashmir. Today eleven states in the country enjoy this status including seven north-eastern states, Sikkim, Jammu Kashmir, Uttrakhand and Himachal Pradesh.

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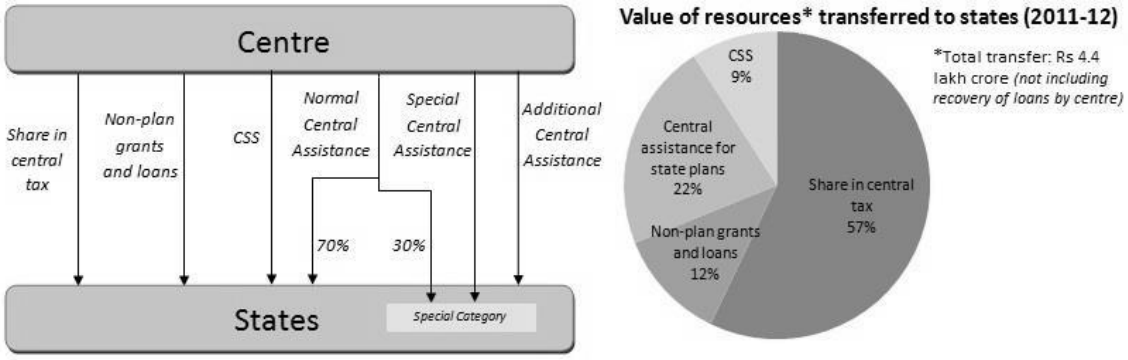
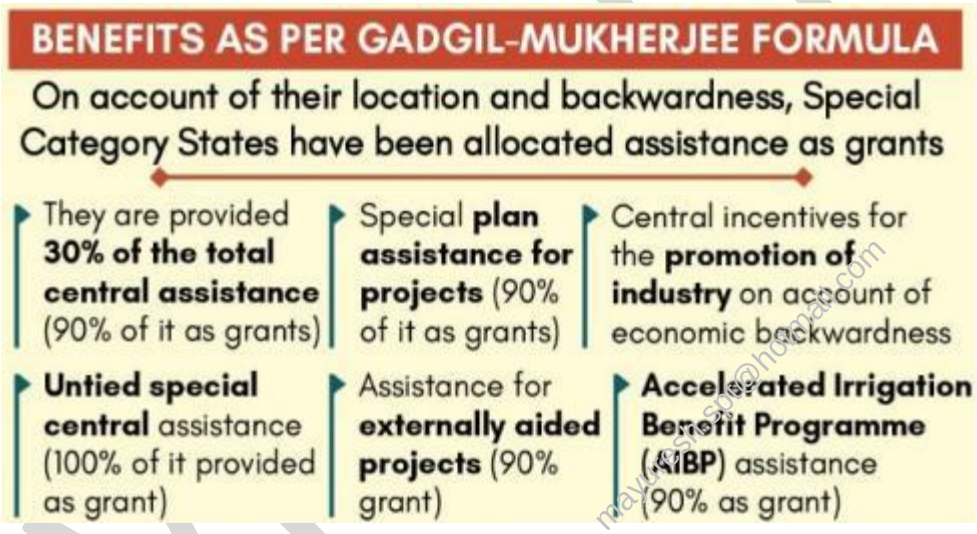
As per the **Gadgil formula** "special status" is to be given to certain states because of certain intrinsic factors which have contributed to their backwardness historically. Some of these factors include:

(i) Hilly and difficult terrain;
(ii) Low population density or sizable share of tribal population;
(iii) Strategic location along borders with neighbouring countries;
(iv) Economic and infrastructural backwardness; and
(v) Non-viable nature of state finances

In India, resources used to be transferred from the centre to states in many ways (see figure below).





However, after the 14th Finance Commission, centre claims that there is no need of Special Category Status to States owing to the increased tax devolution to states from 32% to 42% of divisible pool of central taxes.

Moreover, it seems that since Planning Commission ended, there has been a drastic cut in the allocation to SCS and the difference between funds allotted to SCS and other States have been sizeably reduced and the status has remained more of symbol of Political mileage. Further, the situation of the states having SCS does not show any perceptible improvements in terms of industrialization, aiming which they received tax incentives such as capital investment subsidy, excise duty and income tax exemptions, and transportation cost subsidies.

Further, granting status to more states would lead to intensification of similar demands from states such as Odisha, Bihar, Chhattisgarh and Rajasthan.

One way of moving forward may be abolition of "SCS" and introduction of the "least developed states' category as recommended by Raghuram Rajan committee (2013). It should be based on the 10 equally weighted indicators for monthly per capita consumption expenditure, education,

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health, household amenities, poverty rate, female literacy, percentage of the Scheduled Caste/ Scheduled Tribe population, urbanisation rate, financial inclusion and physical connectivity. It would help in better understanding the development needs of individual states.

2.5.2. Centrally Sponsored Schemes (CSS)

In the areas requiring national effort, it is imperative for the Centre to make interventions. Government of India tries to do this through various programmes and polices including the CSS. Central Government has introduced several schemes in areas that are national priority **like health, education, agriculture, skill development, employment, urban development, rural infrastructure** etc. Several of these sectors fall in the sphere of activity of States.

In fact, CSS is the biggest component of Central Assistance to state plans (CA), where states don't have much flexibility. In the initial years of planning in India, the number of CSS was very large (190 at the end of Fifth Plan which increased to 360 at the end of Ninth Plan). Thus, the CSS have remained a major bone of contention between the Union and State Governments owing to following reasons:

- **Inability to provide matching funds:** To access the funds from center under some CSS, there has to be a definite percentage contribution from the States. The pattern of assistance to States varies. Generally it is Central Government's contribution of 90% for North-East States and 75%–100% in different schemes for other States. The number of States, particularly the North-East States, Bihar and Jharkhand have often represented that they have limitation of resources and are not able to provide State's share to enable them to access the required funds under CSS.
- **Lack of flexibility:** An important area impacting on efficient implementation of CSS has been the need for flexibility in many of the schemes. India with its different geographical regions, varied requirements of States, different levels of infrastructure development, demographics and economic growth, requires flexibility for States to plan their development. It is necessary that CSS take into account the ongoing schemes in the States so as to ensure convergence with the existing schemes. For example, if money is provided under Indira Awaas Yojana for construction of houses and the State Government is also putting its own resources, it may be possible to construct a house with a cement roof, along with a toilet and rooms which have better interior. Another argument to support this is that the cost of project is different in different areas and this needs to be fully taken care of. For example, the cost of buildings in the North-East and in the far-east corners of North-East has great variations.
- **Different accounting procedures:** Accounting process is different in different States for the same CSS scheme. It is, therefore, not possible to have an effective Central monitoring and accounting system.

Various committees have looked into this matter and given recommendations on the same. The government accepted the recommendations of the Sub-Group of Chief Ministers and took various steps towards rationalization of CSS:

- The direct transfers to State implementing agencies have been done away with, and all transfers to States for Centrally sponsored schemes are now being routed through the Consolidated Fund of the State.
- The number of CSS has been from 66 to 28 and they were divided into three categories (see figure below).
- Increased choice has been given to states to select optional schemes they want to implement. Also, while designing the CSS, the Central Ministries shall permit flexibility in the choice of components to the States as available under the Rashtriya Krishi Vikas Yojana (RKVY).
- The flexi-funds available in each CSS has been raised from 10% to 25% for the States and 30% for the UTs of the overall annual allocation under each Scheme.

Student Notes:

- Approval of the schemes is being made co-terminus with the Finance Commission cycle. NITI Aayog is in process of evaluation of all the CSS.

Current Structure of Centrally Sponsored Schemes

Type of CSS	Criteria	Funding Pattern (Centre: States)	Schemes
Core of the Core (6)	Have compulsory participation of states	• General Category states: Existing pattern • Special Category states: Existing pattern	• MGNREGA • National Social Assistance Program (For Senior citizens, widows etc.) • Umbrella Scheme for SC (All schemes for SC in one) • Umbrella Scheme for ST (All schemes for ST in one) • Umbrella Scheme for OBC (All schemes for OBC in one) • Umbrella Scheme for Minorities (All schemes for Minorities in one)
Core (20)	Have compulsory participation of states	• General Category states: 60: 40 • Special Category states: 90: 10	• Rashtriya Krishi Vikas Yojana, Rashtriya Pashudhan Vikas Yojana, Pradhan Mantri Gram Sadak Yojana, National Rural Drinking Water Mission, National Health Mission, Swachh Bharat Abhiyan, Integrated Child Development Scheme, National Education Mission, Forestry and Wild Life, Pradhan Mantri Awas Yojana etc.
Optional (2)	States could choose some or all of them	• General Category states: 50: 50 • Special Category states: 80: 20	• Border Area Development Program • National River Conservation Plan

2.5.3. NITI AYOG

NITI Aayog (National Institution for Transforming India – Aayog) has been constituted to actualize the important goal of cooperative federalism and to enable good governance in India to build a strong nation state. It is envisaged as a platform to inspire cooperative federalism, stressing on the need for effective center-state cooperation to advance development outcomes and achieve double-digit and inclusive growth for India. NITI Aayog is visualised as a think tank through which new and innovative ideas come from all possible sources — industry, academia, civil society or foreign specialists — and flow into the government system for implementation.

It replaces the erstwhile Planning Commission which was facing certain criticisms:

- It seemed that it was not able to capture the new realities of macroeconomic management at the national level.
- It had not been conducive to sound fiscal relations between the Union and the States since it followed "top-down" approach where states participated just as spectators in annual plan meetings.
- The funds it allocated to states were tied to projects it approved and they were imposed on states rather than being consultative.

In this context Niti Ayog seems to have more relevance:

- Due to its composition, NITI Aayog gives better representation of states which facilitates direct interactions with the ministries & helps to address issues in a relatively shorter time. Thus, furthering the idea of **cooperative federalism**.
- It is also taking steps towards **Competitive Federalism**. Various reports of NITI Aayog like Healthy states Progressive India etc. which give performance-based rankings of States across various verticals to foster a spirit of competitive federalism.
  - It helps to identify the best practices in different States in various sectors and then try to replicate them in other States.
  - Moreover, being a common point for similar issues faced by different sectors, states etc., it acts as a convergence point and platform to discuss these issues.
- NITI Aayog has also established a Development Monitoring and Evaluation Office which collects data on the **performance of various Ministries** on a real-time basis. The data is

Student Notes:

then used at the highest policymaking levels to **establish accountability** and improve performance. Earlier, India had 12 Five-Year Plans, but they were mostly evaluated long after the plan period had ended. Hence, there was no real accountability.

However, there are certain concerns as well with NITI Aayog:

- While generating new ideas, NITI Aayog needs to **maintain a respectable intellectual distance from the government** of the day rather than resorting to uncritical praise of government's projects.
- It has **no powers in granting discretionary funds** to states, which renders it toothless to undertake a "transformational" intervention.
- Further, It acts as advisory body only which advices the government on various issues **without ensuring enforceability** of its ideas.

The body has also missed some opportunities to make qualitative difference. For instance, CSS had to be reformed in the light of the recommendations of the 14th Finance Commission. Instead of reforms in design and implementation of the Schemes that was promised when the Planning Commission was wound up, changes were made only to shift greater responsibility onto States in terms of financing. A second opportunity arose when the distinction between Plan and non-Plan was removed. At that point, the organization had an opportunity to insist on taking a sector-wise comprehensive view of capital and revenue expenditures. However, that has not been done.

In this context, steps need to be taken to either convert the Finance Commission into a permanent body that can oversee fiscal transfer mechanisms rather than just give a tax sharing formula every five years or give a funding role to the NITI ayog. Towards the task of cooperative federalism, NITI Aayog should receive significant resources (say 1% to 2% of the GDP) to promote accelerated growth in States that are lagging, and overcome their historically conditioned infrastructure deficit, thus reducing the developmental imbalance. Here It should be noted that it should have the powers for allocating development or transformational capital or revenue grants to the states, but not the power to approve the annual expenditure programmes of individual states, unlike the Planning Commission.

2.5.4. NCTC

Background of NCTC

NCTC or National Counter Terrorism Centre is India's federal anti-terror organization, which gained importance after the 26/11 attacks, as it was felt that India did not have a central agency with real time intelligence input with regards to terrorism. Most of the blame of 26/11 attacks was put on the inability of the States to co-ordinate among themselves and the Centre to share intelligence inputs. The NCTC would focus on drawing up plans and co-ordinating all actions and integrating all intelligence related to counter-terrorism. The agency has been made under the provisions of UAPA,1967 (Unlawful Activities Prevention Act). It has been given the power to search, seizure and arrests throughout India to prevent terror activities.

Objections raised by States

- **Public Order is a State subject:** States object that policing/public order is a State subject and this is an encroachment over their rights and thus an attack on the federal structure.
- **Control of Intelligence Bureau:** States also object that NCTC is a part of Intelligence Bureau, which is controlled by the Home Ministry. As wide powers are given to the NCTC, the agency could be directed solely at the behest of Home Ministry without taking the consent of the State concerned. So, there will be political mileage to be generated in respect of searches and arrests against opponents.
- **Wide Powers:** States also object to the wide powers given to NCTC and therefore demand trimming down of powers to search, seizure and arrest.

Student Notes:

Way Ahead

Keen to push the National Counter Terrorism Centre in the aftermath of the serial blasts in Hyderabad, the home ministry tweaked the proposal in 2013 saying NCTC will inform the chief of state police before conducting any operation in state's jurisdiction. Besides this introduction of safeguards is necessary so that the NCTC does not get unbridled powers.

The country has to function as one, irrespective of which party is in power. India follows a federal system and this mandates that both the Union and state governments work in tandem. In no way can the Union government impose its will without consulting with the state governments.

For a federal system to succeed there is an urgent need to reach a consensus on matters such as terrorism, which is a national concern.

2.5.5. Issues around GST

The GST or the Goods and Services Tax aims to create a common market throughout India without any taxes on inter-state movement of goods. The 101st Amendment in the constitution and the introduction of GST in the Indian Economy has significantly changed the landscape of financial relations between the centre and states. It is a step towards one nation, one indirect tax regime.

GST is Single tax on supply of goods and services, right from the manufacturer to the consumer. It is a destination based tax unlike the present taxation scheme which is origin based. It would prevent cascading of taxes as final consumer will bear only the GST charged by the last dealer in the supply chain. Both centre and state has relinquished certain taxation powers towards rolling out of GST. For example – Service Tax of the centre and Sale Tax of State is subsumed under GST.

In this existing structure, there are two components of GST – Central GST and State GST. Both CGST and SGST will be simultaneously levied across the value chain, both on goods and services. Some goods are exempted from GST such as real estate, alcohol, electricity, petroleum and its products. Further, IGST comes into picture when there is an inter-state transfer of goods and services.

GST entailed a surrender of significant amount of fiscal autonomy by the Centre and, especially the states, as rates are decided by the GST council rather than individual state or central governments. Further, there were certain concerns raised by the states in terms of loss of revenue by manufacturing states and capacity of states to tax services is not known. But some of the concerns were addressed by various measures:

- GST council which has the final say on decisions regarding GST, has 2/3rd members from the states, thereby showing a accommodative stance with respects to states demands.
- Although it may appear that the goods and services tax (GST) hasn't given a big boost to states governments' tax revenue so far, but there's little reason for them to complain. The constitutionally guaranteed compensation mechanism under GST ensures, in effect, a 14% annual growth in the states' revenue. A cursory look at their past performance will reveal that most states had previously registered growth rates much lower than 14% from the taxes that later collapsed into GST.
- Further, this compensations will be given for five years.

2.5.6. Federalism and Foreign Policy

Even though foreign policy is the prerogative of the Central government and the Constitution does not allow the states to take initiatives in these matters, the West Bengal Government challenged the Central Foreign policy on sharing the waters of river Teesta by stalling the bilateral treaty with Bangladesh. Some of the states have been arguing in favour of a role for the states in the foreign policy of the country, particularly, states with an international border are vocal on issues, which directly or indirectly impact them. Similarly, when the issue of border

Student Notes:

trade with China came up for discussion, Sikkim's views were sought. Tamil Nadu has demanded the intervention on the issue of Tamil killings in Sri Lanka every now and then. The north-eastern States of the country have borders with various countries like Myanmar, Bangladesh, China, Bhutan and Nepal and their proximity of countries east of India demands that their economies should benefit more from the Look East Policy. North Eastern State leaders have been asserting that their views should be sought while conducting negotiations with neighbouring countries on economic and political issues.

There is a case for institutionalising the process of consultation and involvement of States, which are affected by a particular foreign or security policy measure. Barring Haryana, Madhya Pradesh, Jharkhand and Chhattisgarh, all Indian States share borders with other countries, or with the international waters of the sea. In that sense, they have interests or issues that may intersect with the foreign and security policies of the country.

Among the various governmental systems, the U.S. is one in which the interests of its federal constituents are taken into account in the formulation and exercise of foreign and security policies. This was part of the large and small States compromise that resulted in its constitution. This enables its Upper Chamber, the Senate, to be the lead house on foreign policy issues — ratifying international agreements, approving appointments of envoys and so on. The Senate, as is well known, has a membership which is not based on population — each State, large and small, populous or otherwise, has the same number of Senators.

It would be difficult to graft something like the U.S. system on to the Indian system. Yet, clearly the time has come when Mizoram and Nagaland also have a say in India's Myanmar policy, instead of merely having to bear its consequences.

2.5.7. Deployment of central para-military forces in states

The Constitution of India mandates that maintenance of law and order is a state subject which they perform with the help of Police Act of 1861. The Union list of VII Schedule of the constitution of India however, indicates several spheres of police works in which the Centre plays a vital role. Thus, Central Police Organisations (CPO) derive their constitutional validity from these provisions.

The term "aid to civil authorities" (ACA) is a British imperial usage referring to the process by which local authorities can request the Central Government to lend assistance in times of emergency. This is where the role of force like CRPF comes into play to tackle problems beyond the capacity of the state police force.

However, there are certain issues with such deployments:

- Deployment of central forces directly by Centre can occur only in emergency after informing the State concerned or when there is a constitutionally declared emergency. However, centre does not follow such norms.
- In many instances, centre takes the unilateral decision to deploy them even when there has been no such request from the states.
- Although the subject list specifies such deployments can be in the aid of civil authorities, it is seen that they are deployed for mundane tasks as well. For example – protecting CBI officials in Kolkatta.

2.5.8. Article 370

The Centre decided to end the special status given to Jammu and Kashmir (J&K) under Article 370. President of India in "concurrence" with the "Jammu and Kashmir government" promulgated Constitution (Application to Jammu and Kashmir) Order, 2019 which states that provisions of the Indian Constitution are applicable in the State. This effectively means that all the provisions that formed the basis of a separate Constitution for Jammu and Kashmir stand abrogated. With this, Article 35A is scrapped automatically.

Student Notes:

- Along with this, a statutory resolution was approved by the Parliament which – invoking the authority that flows from the effects of Presidential Order – recommended that the President abrogate (much of) Article 370.
- Also, Jammu and Kashmir Reorganization Act, 2019 was passed by the Parliament. Jammu & Kashmir (J&K) was re-organised into two Union Territories - J&K division with a legislative assembly and the UT of Ladakh without having an assembly.

The peculiar position of Jammu and Kashmir was due to the circumstances in which the State acceded to India. The Government of India had declared that it was the people of the state of J&K, acting through their constituent assembly, who were to finally determine the constitution of the state and the jurisdiction of government of India. The applicability of the provisions of the Constitution regarding this State were accordingly, to be in nature of an interim arrangement. This was the substance of the provision embodied in Art. 370 of the Constitution of India.

- Art. 370 had "temporary provisions with respect to the State of Jammu and Kashmir" which gave special powers to the state allowing it to have its own Constitution.
- According to article 370, except for defence, foreign affairs, finance and communications, Parliament needs the state government's concurrence for applying all other laws.
- Article 35A of the Indian Constitution, which stemmed out of Article 370, gave powers to the Jammu and Kashmir Assembly to define permanent residents of the state, their special rights and privileges.

How the Scrapping of Article 370 and 35A became possible?

- President issued a presidential order under Article 370 (1) of the Constitution. This clause enables the President to specify the matters which are applicable to Jammu and Kashmir in concurrence with the Jammu and Kashmir government.
- The order amended Article 367. Article 367 contains guidance on how to read or interpret some provisions. The amended Article declares that "the expression 'Constituent Assembly of the State…' in Article 370 (3) shall be read to mean 'Legislative Assembly of the State'. Article 370(3) provided that the Article 370 was to be amended by the concurrence of the Constituent Assembly. However, because of the amendment, it can now be done away by a recommendation of the state legislature.
- In other words, the government used the power under 370(1) to amend a provision of the Constitution (Article 367) which, then, amends Article 370(3). And this, in turn, becomes the trigger for the statutory resolution - Resolution for Repeal of Article 370 of the Constitution of India. As Jammu and Kashmir is under the president rule, concurrence of governor is considered as "Jammu and Kashmir government".

Scrapping Article 370: Constitutional and legal challenges

Petitions have been filed in the Supreme Court challenging the recent action of the Union Government on Jammu and Kashmir, the following legal issues may receive attention in the course of judicial deliberations.

- Legality of the Presidential order: Article 370 itself cannot be amended by a Presidential Order. Even though the Order amends Article 367, the content of those amendments, however, do amend Article 370. And as the Supreme Court has held on multiple occasions, you cannot do indirectly what you cannot do directly. Therefore, legality of the order – insofar as it amends Article 370 – is questionable.
- Misusing the President Rule and Making Governor as a substitute for the elected assembly: The governor is the representative of the Union Government in the State. In effect, the Union Government has consulted itself. Also, President's Rule is temporary and is meant to be a stand-in until the elected government is restored. Consequently, decisions of a permanent character – such as changing the entire status of a state- taken without the elected legislative assembly, but by the Governor, are inherently problematic.

Student Notes:

- Equating state assembly with constituent assembly: The difference is that the one has to exercise its powers as per the constitution, while the other develops the constitution. This distinction that is at the heart of India's basic structure doctrine that prevents certain constitutional amendments on the ground that Parliament, which exercises representative authority, is limited and cannot create a new constitution and thereby exercise sovereign authority.
- Going against the Jammu and Kashmir's Constitutional position: Presidential order has assumed that legislative assembly has power to scrap Article 370. But Article 147 of the Jammu and Kashmir Constitution prohibits such a move. The Article makes it clear that any changes to the Jammu and Kashmir Constitution needs the approval of two-thirds of the members of the legislative assembly.

3. UPSC Prelims Questions

1. Which one of the following is not a feature to Indian federalism?
(a) There is an independent judiciary in India.
(b) Powers have been clearly divided between the Centre and the States.
(c) The federating units have been given unequal representation in the Rajya Sabha.
(d) It is the result of an agreement among the federating units.

2. Which Article of the Constitution provides that it shall be the endeavour of every state to provide adequate facility for instruction in the mother tongue at the primary state of education?
(a) Article 349
(b) Article 350
(c) Article 350 A
(d) Article 351

3. With reference to the Constitution of India, which one of the following pairs is not correctly matched?
(a) Forests : Concurrent List
(b) Stock Exchanges : Concurrent List
(c) Post Office Savings Bank : Union List
(d) Public Health : State List

4. Which one of the following Articles of the Constitution of India says that the executive power of every State shall be so exercised as not to impede or prejudice the exercise of the executive power of the Union?
(a) Article 257
(b) Article 258
(c) Article 355
(d) Article 356

4. UPSC GS Mains Questions

Federalism/Union State Relations

1. Analyse the causes of controversy in India, in recent years, in regard to Union-State relations. What are the specific areas of discord? Consider the main issues and offer your comments and suggestions. (About 400 words) (81/II/1a/50)
2. India is not a federation; but it has definite federal features. Elucidate. Planning and federalism make uneasy partners; the planning operations in India have led to erosion of federalism. Discuss. (About 250 words) (82/II/1b/45)

Student Notes:

3. What were the objectives in having three separate legislatives lists in the Constitution of India? Can the Parliament make laws in regard to any item in the State list? If so, under what situation? Does any of the issues arising from the above give rise to Union-State controversies? (About 250 words) (83/II/1b/40)
4. Riparian rights are a source of disputes. How are they resolved in a federal system? (About 75 words) (86/I/10a/10)
5. Briefly mention the factors, which have promoted concentration of power in the Centre in India, and discuss the response of the States to the tendency. (About 250 words) (86/II/1a/40)
6. Why is the Indian Constitution called quasi-federal? (87/II/8c(B)/3)
7. "The emphasis in modern federations should not be one division and separation but on Collaboration and on Co-operation." Discuss the statement in the context of Indian Policy. (About 250 words) (90/II/1a/40)
8. 'The planning operations in India have led to erosion of federalism.' Discuss (150 words) (91/II/4d/20)
9. What are the essentials of a true federation? Analyse the nature of the Indian Federation. (About 250 words) (93/II/1a/40)
10. Discuss the major extra-constitutional factors influencing the working of federal polity in India. (150 words) (00/I/8c/15)
11. Discuss the administrative relations between the centre and the states in the light of recent controversies. (in about 250 words) (01/I/6a/30)
12. What are the constitutional restrictions imposed upon the power of borrowing of the state governments? (20 words) (04/I/9b/2)
13. Comment on the financial relations between the Union and the States in India. Has post-1991 liberlization in any way affected it? (250 words) (05/I/6a/30)
14. Discuss the major extra-constitutional factors influencing the federal polity in the India. (250 words) (08/I/5b/30)
15. Examine the demand for greater state autonomy and its impact on the smooth functioning of Indian polity. (150 words) (08/I/6b/15)
16. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss. (2013)
17. Though the federal principal is dominant in our constitution and that principle is one of its basic features, but it is equally true that federalism under the Indian Constitution leans in favour of a strong Center, a feature that militates against the concept of strong federalism. Discuss. (2014)
18. The concept of cooperative federalism has been increasingly emphasized in recent years. Highlight the drawbacks in the existing structure and the extent to which cooperative federalism would answer the shortcomings. (2015)
19. To what extent is Article 370 of the Indian Constitution, bearing marginal note "temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity. (2016)

5. Vision IAS GS Mains Test Series Questions

1. ***"Modern Indian federalism owes its origin to the dual legacies of colonial administration and structure of Indian society." Elaborate.***

Answer:

- Dual legacy –
  - **colonial administration**
    – highly centralized administration
    – this centralized tendency is evident in modern Indian federalism having a unitary bias, for example –

Student Notes:

- use of word 'union' not 'federation'
- Central bias w.r.t. distribution of legislative powers, Governer's veto
- distribution of legislative subjects – 3 list of subjects – Union having upper hand in concurrent list
- Residuary powers to the Union (Art. 248)
- Strong central bias w.r.t. distribution of administrative and financial powers
- Emergency provisions
- States don't have separate constitution (except J&K)
- Union can alter state's boundaries (Art. 4)
- No double citizenship
- No dual court system

- structure of Indian society – highly plural, diverse and decentralised

  The effect of plural character of Indian society is visible in modern Indian federalism, for example-

  - considerable autonomy to states on state subjects
  - provision of representation of states in Rajya Sabha
  - democratic decentralisation through panchayati Raj
  - 22 official languages
  - Rights to minorities
  - *socialist*, *secular*, *democratic republic*

2. What are the provisions of Inter State Council as mentioned in the Constitution. Have such Councils been helpful in maintaining the solidarity among the States?

Answer:

The Inter-State Council was established under Article 263 of the Constitution of India through a Presidential Order. The Council is a recommendatory body with the following duties:

a) Investigating and discussing such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, as may be brought up before it;
b) Making recommendations upon any such subject and in particular recommendations for the better coordination of policy and action with respect to that subject; and
c) Deliberating upon such other matters of general interest to the States as may be referred by the Chairman to the Council.

The president's power to establish an Inter-state Council can be used both for advising upon disputes as well as to investigate and discuss subjects of common interest.

The Tenth Meeting of the Inter-State Council held in2006 discussed the atrocities on Scheduled Castes and Scheduled Tribes and status of implementation of the Scheduled Castes/Scheduled Tribes (Prevention of Atrocities) Act.

In the ten meetings of the Inter-State Council held so far, the Council has taken final view on all the 247 recommendations made by Sarkaria Commission on center-state relations.

It is worth noting that the Punchi Commission recommended that Inter State Councils should have expert advisory bodies/ technical and management experts and should be given more autonomy and sufficient resources which is requried for functioning as constitutional body independent of Centre and State.

Student Notes:

The Council has been helpful but only to a limited extent. For greater cooperation among the States a stronger political will is required from the Centre. Recent cases of Inter State or Centre State disputes like Mullaperiyar or over Lokayukta appointment in Gujarat show that we have a long way to go in inter state comity.

3. Economic and financial reforms have huge bearing on Centre – state relations. Discuss the statement in the light of economic and financial reformative measures initiated in last two decades.

Approach:

Post 1991 India has adopted some landmark **reforms in economic and financial sector**. How have these reforms **modified federation?** Have they brought centre-state together, separated them apart or created new opportunities /challenges?

Answer:

1. Due to liberalization, states are getting relatively higher share of investment from the market. The states which created the necessary infrastructure for investments have outpaced those states which failed to do so. It has led to inter-state inequality regional disparities. Thus, centre, now needs to focus on the development of under-developed states to ensure equitable development and counter interstate migration.
2. Earlier, states had been demanding that more number of taxes be shared with them by the centre, as they used to share only Income tax and Union Excise Duties. After the 80th Amendment Act, 2000, the center shares all the taxes except those provided under Art 268, 269 and the cesses and surcharges under Art 271. Thus, now the states, though much satisfied, demand only a higher proportion rather than more number of taxes.
3. After the passing of 73rd/74th Constitutional Amendment Acts, states are required to share the revenue with the local govt. It has led to a higher demand of financial resources from the centre.
4. The introduction of Value Added Tax (VAT) in 2005 was a landmark development in the history of tax reforms. Entrusting the decision powers in this regards to the Empowered Committee of State Finance Minister was a significant step toward the realization of cooperative federalism without compromising the autonomy of the states.
5. Although GST is expected to be advantageous for both the center and the states,, but states are concerned about losing their power of taxing the goods and on the other hand are already demanding power to tax the services.
6. Implementing the FRBM act, though partially, had led to increased cooperation between the states and the union govt.
7. We can also write about the role of the Planning Commission. It tilts the balance of power towards the Center. There are increasing voices of concern from the States regarding the politicization of Planning Commission. Some have also argued that it may be better to do away altogether with the planning Commission in this age of liberalization and irrelevance of central planning.

The economic reforms that have taken place have brought the centre and the states nearer by strengthening both the governments. In future, the financial and economic spheres are expected to further strengthen federalism.

Student Notes:

4. Assess the effectiveness of the institutional architecture of Indian federalism in settling inter-state disputes.

Approach:

- Briefly discuss the major inter-state disputes with examples.
- Discuss about the existing institutional architecture of India federalism in settling inter-state disputes.
- Discuss the effectiveness of the institutional architecture of India federalism in settling inter-state disputes.
- Conclude with some recent steps in this regard.

Answer:

In a constitutional set-up based on the federal principles, sovereignty is divided between the federation and the units. Division of sovereignty implies the creation of boundaries, and this is bound to raise disputes especially in a country like India, which is characterized by a diversity of culture, language, heritage and customs.

On numerous occasions disputes between two or more states have arisen and led to unwarranted situations. The most long-standing and contentious inter-state issue has been the sharing of river waters. Due to increase in demand for water, a number of inter-state disputes over sharing river waters have surfaced. For example, Cauvery water dispute between upstream state (Karnataka) and downstream state (Tamil Nadu), Krishna water dispute between Andhra Pradesh and Karnataka etc.

Further, many boundary issues have cropped up between the states as well. For example, Karnataka and Maharashtra's claim over Belgaum, tensions between Assam and Meghalaya related to Assam Reorganization Act of 1971 etc. Additionally, there have been violent agitations in some states over migrants and job seekers from other states. This has increased bitterness between the states even further which tends to weaken the roots of healthy federalism.

Existing institutional architecture of India federalism in settling inter-state disputes

- **Article 131** confers upon Supreme Court of India exclusive jurisdiction to deal with disputes between two or more States.
- Using **Article 262**, Parliament enacted the Interstate River Water Disputes Act, 1956 (IRWD Act) for adjudication of any dispute with respect to the use, distribution or control of the waters of, in any inter-State river or river valley.
- Further, under **Article 136 {Special Leave Petition},** Supreme Court, in its discretion, may grant special leave to appeal from any judgment, decree**,** determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India. It has been used to resolve the grievances of the states.
- Other institutional setup in this regard are **Inter-State Council** set up under Article 263, **Zonal Councils** to discuss matters of common concerns to states in each zone and **Finance Commission** providing framework for the distribution of taxes between different states.

The effectiveness of the institutional architecture of India federalism in settling inter-state disputes:

- There are nine separate tribunals to adjudicate water disputes. Four of the tribunals took 10 to 28 years to deliver their awards. Currently, there is no definite timeframe to adjudicate disputes and as a result, most inter-state river water disputes continue to linger on.

Student Notes:

- Inter-State Council has had just 12 meetings since it was set up in 1990. There was a gap of a decade between the 10th meeting in 2006 and the 11th meeting in 2016, and the council met again in November 2017. Further, the Council does not have the power to investigate issues and there is no compulsion on the government of the day to accept the outcomes of the meetings.
- Even the meetings of Zonal Councils have been sporadic which reduces their utility as an action oriented dispute resolution platform.
- Most of the institutional architecture of Indian federalism is focused on relations between the Union government and the states, and there is far less space to settle inter-state frictions.

Recently, the Union Cabinet approved Inter-State River Water Disputes (Amendment) Bill, 2019 wherein timely and expeditious resolution of inter-state river disputes would be ensured by a single tribunal. Even NITI Aayog's Governing Council has been used as a platform to discuss policies as well as address inter-state disputes. Recently, a state's Chief Minister called for greater inter-state cooperation to effectively tackle cross-border crimes.

Further, there is an institutional gap in the Indian union right now, which needs to be filled before inter-state frictions get out of control. The Centre would have to play the role of friend, philosopher and guide to the States in facilitating the growth process. It should take the initiative of re-energizing the Constitutionally-approved institutional mechanisms such as Inter-State Council, so that States get a platform to voice their concerns even more regularly.

5. Inter-state river water disputes have been among the most pressing issues faced by the Indian federal system. In this context, examine the potential of the Inter-State River Water Disputes (Amendment) Bill, 2019 in addressing the issues involved.

Approach:

- Briefly introduce the inter-state river water disputes and reasons for it being a pressing issue faced by the Indian federal system.
- Mention the issues associated with existing Act i.e. inter-state River water dispute Act, 1956
- Highlight potential of the Inter-State River Water Disputes (Amendment) Bill, 2019 in dealing with the issues.
- Conclude by suggesting other suitable measures that can be undertaken.

Answer:

Depleting groundwater, drying rivers, insufficient rainfall and increasing demand for water have led to disputes between states over sharing of river water. It is a pressing issue for the Indian federal system due to:

- Water being a subject in the **state list** leads to conflicting claims, which act as a detrimental factor against cooperative federalism.
- **Politicisation of the issue** due to involvement of local public leading to adoption of hardline approach by political leaders of disputing states and making it an emotive issue.
- **Inordinate delay in securing settlement** of such disputes as there is no time limit for adjudication. For example, tribunals for Cauvery, Ravi and Beas disputes have been in existence for over 26 and 30 years respectively without any award.
- **Non-compliance of tribunal awards** by States is the critical weak link in dispute resolution and leads to further enmity between states.

Student Notes:

The resolution of these disputes is addressed by Article 262 of the Indian Constitution under which the Parliament passed the Inter-State River Water Disputes Act, 1956. **It has the following issues:**

- **Separate tribunal** for each Inter-state river water dispute. This further slows down the process due to work on appointment of judges, assessors and other experts.
- No provision for **an adequate machinery to enforce** the award of the Tribunal.
- **Lack of uniform standards,** which can be applied in resolving such disputes.
- **Lack of adequate resources**, both physical and human, to objectively assess the facts of the case.

The **Inter-State River Water Disputes (Amendment) Bill, 2019** has the potential to streamline the adjudication of inter-state river water disputes and make the present legal and institutional architecture robust through the following provisions:

- **Dispute Resolution Committee (DRC)** to be established by the Central Government before referring to the tribunal, to resolve the dispute **amicably by negotiations within one year**.
- Establishment of a **single Inter-State River Water Dispute Tribunal**, which can have multiple benches.
- **Time limit** on a Tribunal to give its decision on the dispute within two years, which may be extended by another year.
- The decision of the Tribunal shall be **final and binding**. The bill removes the requirement of publication of decision in the official gazette in the original Act.
- It makes mandatory for the Central Government to make a **scheme** to give effect to the decision of the Tribunal.
- Data collection and maintenance of a **databank** at national level for each river basin by an agency to be appointed by the Central government. It will help in continuous evaluation of the river basins.
- **Composition and tenure of members of a tribunal** is clearly defined.

However, there are fears of over-centralisation and Supreme Court hearing appeals against water tribunal rendering the decisions as not final. So, additional measures can be taken such as bringing water in the concurrent list, river-interlinking and use of Inter-State Council (ISC) in facilitating dialogue and discussion towards resolving conflicts.

6. Asymmetry as an important characteristic of the Indian federalism has helped cater to the specific needs and requirements of some sub-units. Explain.

Approach:

- Introduce by defining the term asymmetrical federalism.
- Highlight the asymmetric features in the Indian federalism that cater to specific needs.
- Conclude briefly.

Answer:

Asymmetric federalism is found in a federation when **different constituent units are accorded different powers and autonomy.** Asymmetric federalism in India is accorded through Constitutional provisions as well as differential treatment of the states by the Union government. The differential treatment is for specific units to cater to specific needs and requirements and may be ad-hoc or long term. **These include:**

Student Notes:

Special provisions under the Indian Constitution:

- **Article 371** entrusts the Governor of Maharashtra with a special responsibility to establish **separate development boards** for Vidarbha, Marathwada, etc, while the Governor of Gujarat has a similar responsibility towards Saurashtra, Kutch etc.
- **Article 371A** provides for safeguards to **religious or social practices of the Nagas**, Naga customary law and procedures and restrictions on the ownership and transfer of land in Nagaland. Similar protection is accorded to the Mizos in Mizoram under **Article 371G**.
- **Article 371D** provides for a provision under which the President can pass an order to provide **equitable opportunities and facilities** to people belonging to **Andhra Pradesh in public employment and education.**
- **Article 371F** provides for special provisions for the state of Sikkim to enable the protection of existing laws of the state before its accession to India.
- **The Sixth Schedule** provides for special administrative provisions such as creation of Autonomous District Councils and Regional Councils for tribal areas in Assam, Meghalaya, Tripura and Mizoram.
- Parliament, by law, has created **Legislative Assemblies** for Delhi, Puducherry and Jammu and Kashmir to enable the people belonging to these Union Territories to have direct representation.
- **Special Category status:** The status has been given to various states such as Nagaland, Mizoram etc., which enables them to get additional financial support from the Centre. This status is accorded to states on account of low population density, difficult terrain, strategic location etc.
- **Centrally Sponsored Schemes (CSS)**: There is scope for differentiation among states in the selection of CSS, their design and contribution ratios. For example, Mission for Integrated Development of Horticulture is a CSS wherein the Central government contributes 60% of the total outlay for developmental programmes in all the states except the North-Eastern and Himalayan states where it contributes 90%.

These arrangements have been devised to incorporate the complex differences and identities among federal units. However, while transparent asymmetric arrangements can be justified as they contribute to nation building, the discriminatory policies followed purely on short term political gains can be harmful to the long-term interests and stability of federalism in India.

7. The debates on issues such as replacement of the Planning Commission or the introduction of GST often bring to the fore the issue of 'Fiscal Federalism'. What does the term denote? Discuss with the relevant constitutional provisions in mind.

Approach:

The federal structure has been evolving and the 73rd and 74th amendments have further added new layers to it. Answer requires and understanding of the constitutional mechanism of distribution of financial resources between centre and state. Constitutional provisions contained in part XII (Articles268-293) are important markers in this regard with special emphasis on Finance commission under the article 280.

Answer:

- Fiscal federalism refers to allocation of fiscal rights and responsibilities across different levels of government under the provisions of constitutional arrangement in a federal polity.

Student Notes:

- The fiscal relations between the Centre and the States have been defined under the Constitutional provisions governing generation and distribution of revenues between the Union and the States as envisaged articles 268- 293 in part XII of the constitution.
- The 73rd and 74th constitutional amendment further stipulated a long list of functions and sources of funds for both rural and urban local bodies.
- Constitution clearly delineates scheme of distribution of taxing powers which constitute the major sources of revenue for both the Union and the States.
- In practice Fiscal federalism in India has been marked by vertical and horizontal imbalances and the recent decades have seen rising demands for greater say of states in sharing of resources, revenues, functions and responsibilities. While the resources of the States are limited, they have larger responsibilities for social, educational and economic development of the people. Further there are wide differences in the level of development of the States.
- In order to address the issues of this vertical and horizontal imbalance in the Centre-State and inter-State relations, the Constitution of India has provided for inter-governmental transfers through the mechanism of Finance Commission (Article 280) which is constituted once in five years to recommend transfers of central revenue to the States for a five yearly fiscal cycle.
- Additionally, pursuant to73rd and 74th Amendments each State was mandated to appoint a State Finance Commission for allocation of taxes and fees to local government as well as recommending the State's tax devolution and grants.
- Thus, there are three main channels of Central transfers to States; the finance commission transfers, plan transfers and assistance for central sector and centrally sponsored schemes. Till recently such transfers also took place through the Planning Commission.
- In a major push to Fiscal federalism in the 2014 Budget the government shifted huge outlays to states by transferring large chunks of central plan outlays. Consequently state plans financed by the Centre have moved up from 26 percent of the total plan expenditure to 59 percent.

8. "The extra-ordinary feature of the Indian federalism is that many states get a differential treatment through appropriate constitutional provisions in light of the peculiar social and historical circumstances." Analyse.

Approach:

First discuss the need of extra-ordinary features in the constitution apart from federal structure in India. Refer to each of the provisions along with discussion on the intentions behind their introduction. Assess whether the provision are successful. Discuss opposition to special provisions. Conclude with emphasis on mechanisms apart from special provisions to address the problems.

Answer:

The relationship between union and states is not uniform in India. Though the division of powers adopted by the constitution is common to all states yet the constitution has provided for special provisions to accommodate the wide-ranging social and cultural diversity of Indian states.

Most of the special provisions pertain to North-Eastern (N-E) states and state of Jammu and Kashmir (J&K). Article 371 of the constitution deals with such special provisions not only w.r.t NE states but also Andra Pradesh, Gujarat and Maharashtra. Special provisions under **article 371 A and G treats states of Nagaland, and Mizora**m differently.

Student Notes:

- Special **provisions to Nagaland and Mizoram** states are given to address the problem of law and order. The sizeable indigenous tribal population with distinct history and culture wish to be governed by their own laws, customs and traditions. They were introduced to stem alienation and insurgency in these states. Closer look at the present situation in Nagaland point to otherwise. In case of Nagaland provisions have been able to address insurgency and large scale violence but law and order problem still persists. Naga leaders approached central government in 2012 to seek political means for lasting peace within the state. In case of Mizoram problem of insurgency has been addressed successfully following the Mizoram peace Accord signed between government and Mizo National Front (MNF) in 1986.
- The other State, which has **a special status is Jammu and Kashmir**. Immediately after Independence Pakistan and India fought a war over Kashmir. Under such circumstances the Maharaja of Kashmir acceded to the Indian union. Most of the Muslim majority States joined Pakistan but J&K was an exception. Under these circumstances, it was given much greater autonomy by the Constitution under article 370. However, in practice the autonomy is much lesser than what the article suggests. Though insurgency is substantially addressed in the state, problem of alienation and breach of the trust is potent. There is growing demand in the state for greater autonomy in practice as defined in article.
- Many people believe that a formal and **strictly equal division of powers applicable to all** units (States) of a federation is adequate. Therefore, whenever such special provisions are created, there is some opposition to them. There is also a fear that such special provisions may lead to separatism in those areas. Therefore, there are controversies about such special provisions.

Though there are apprehensions on the special provisions mentioned, yet it has been seen that those special provisions in constitution have contributed to the health of the federation. They ought to portray the fundamental goal of preserving the diversities under broad unity. These provisions should be followed in letter and spirit to strengthen the feeling of oneness in the people.

9. In what way is the Indian constitution federal? Do you consider increasing assertiveness shown by some states as antithetical to national interest or a healthy development for Indian democracy?

Approach:

- This question has 3 parts – first you need to show the federal features of Indian constitution
- Then discuss the ill effects of confrontation between center and states on important issues. Some examples are national security (NCTC), economy (FDI in multi brand retail) and foreign policy (Sri Lanka)
- Show that it's only natural process and healthy for our democracy

Answer:

Part 1

- Article 1 describes India as "union of states". Despite this there are several features in the constitution which make it federal. Such as
  - Written constitution
  - Supremacy of the constitution
  - Division of powers between center and states has been provided (7th schedule)
  - Independent judiciary
  - Bicameralism (Rajya Sabha)

Student Notes:

Part 2

- Unfortunately the word federalism has become an excuse for confrontational politics between center and states. And issues of crucial national importance such as NCTC, FDI in Multi Brand Retail, and important foreign policy decisions are taken on the grounds other than national interest. Seen from this perspective, federalism seems to be antithetical to national interest

Part 3

- However, growing assertiveness by states can also be seen as a sign of maturing federal democratic framework. Center which in the past used to take unilateral decisions on issues which affect the interest of a state is now faced with reality wherein states are demanding that they be taken onboard on decisions which affect them.
- Also states expect that the center respect the constitutional separation of powers and shouldn't encroach on the constitutional space that legitimately belongs to them.
- Hence in a way, center is being encouraged to make its decision making more democratic particularly on issues that directly affect states. This is in keeping with the federal spirit of the constitution and paves the way for more collaborative federalism which is a healthy sign for our democracy.

10. The "centralised planning with pronounced socialist bias" has been responsible for the increasing dominance of centre over state. Discuss.

Approach:

The Indian state has adopted the **socialist** ideology to realize the development goals through **planning** which has become centralised. We have to show that how this entire process has skewed the federal set up in favour of the Union?

Answer:

Socialist bias:

The need to heal the wounds of colonialism marked by abject poverty, wide inequality, huge under development and low level of education inspired constitutional framers to adopt the socialist pattern of development. Further, centrifugal tendencies in the wake of partition and fear of secessionism were a major reasons behind the focus towards increasing centralization. Thus, the union started playing a great role in the spheres of the health, agriculture, education, roads, animal husbandry, land policy forest etc though they are in the state list. The central planning laid down plans even in those areas which are exclusively in the state list. The First FYP stated that development in these areas places special responsibility on the centre. Such views ignore the federal set up and undermine the role of states.

Centralised Planning:

1. Centrally sponsored schemes are devised by the centre but implemented by the state machinery.
2. Planning commission has encroached upon the autonomy of the states as it can accept, modify or reject the states' proposals for development programmes, for which central assistance is sought and which can be granted only on the acceptance of PC.
3. Although states are represented in the NDC but it is a body of non-experts which have no match with a specialised body like the Planning Commission. States

surrendered the sales tax on sugar, tobacco and textiles etc to the centre in a single meeting of the NDC, without proper debate in the states.

4. Centralised planning had led to the creation of parallel organisations in centre as well as the states. For example, community development programme is not mentioned in any list but it covers the areas of state list. Through the parallel machinery for its implementation, the centre is virtually encroaching the state list.
5. With the beginning of direct cash transfer a significant proportion of revenue earlier given to states for passing on to autonomous agencies (including Panchayats) for implementing various Central schemes is now directly given to the latter, bypassing the states. Constitutional experts and scholars of federalism find this intrusion an affront to the states' autonomy and unhealthy for the future of Indian federalism.

Student Notes:

11. In a paradigmatic shift from the command and control approach of the past, NITI Aayog accommodates diverse points of view in a collaborative, rather than confrontationist setting. Comment.

Approach:

- Compare the present and past approach of planning in India
- Discuss NITI Ayog's inclusive approach and criticisms

Answer:

Niti Aayog replaces the Planning Commission which was responsible for assessing national resources and drafting five-year plans for India. There are various reasons which demanded a transition to a new institution of NITI Aayog:

- Political character of the institution- Far from being the think-tank for providing strategic vision for the country, the Commission was reduced to a political tool of the central government for dictating the policy choices of state governments and micro managing implementation.
- By the mid-1960s after a series of plan failure the Planning Commission changed from an investment to a spending body. The phenomenal increase in government plans and schemes, dating to the mid-1980s, took place at the Commission's behest and coincided with India's looming fiscal crisis.
- Huge diversity of the country made centralized planning an incongruity
- State governments have better information about what is required at the local level
- Plethora of Centrally Sponsored Schemes with one size fits all approach
- It also served as a template for other extra-constitutional establishments (for example, the National Advisory Council) that came to lord over elected governments and states.
- The fall of centrally-planned economies across the world. These plans curtailed the free play of market forces, reduced opportunities for private entrepreneurship and eventually inhibited India's growth.
- Direct conflict with the trend in the Finance Commission, a constitutional body unlike the Planning Commission. While each successive Finance Commission has tried to devolve greater revenues to states, the Planning Commission in turn encroached on all funds to implement Plan targets.
- The states had little recourse in terms of resolving the outstanding issues of conflict either with the central government or with other states.

Niti Aayog which consists of a full time organizational structure (PM as chairman and a CEO appointed by PM), also comprise a governing council which includes state chief ministers and lieutenant governors of Union territories. In this way it reflects the

changes required in India's governance structures and provide a more active role for the state governments in achieving national objectives.

Niti Aayog replaces the command and control structure of the planning commission and accommodates diverse view in a collaborative way as follows:

- By acting as a "think-tank" that will provide Governments at the central and state levels with relevant strategic and technical advice across the spectrum of key elements of policy.
- Ending slow and tardy implementation of policy, fostering better Inter-Ministry coordination and better Centre-State coordination. It will help evolve a shared vision of national development priorities, and foster cooperative federalism, recognizing that strong states make a strong nation.
- Provision to convene regional councils to address specific issues and contingencies having an impact on more than one state or a region for a specific tenure.
- By having full-time members and up to two part-time members from leading universities, research organizations and other relevant institutions.
- By fostering cooperative federalism through structured support initiatives and mechanisms with the states on a continuous basis.
- Developing mechanisms to formulate plans at the village level and aggregating these progressively at higher levels of government as well as offering a platform for resolution of inter-sectoral and inter-departmental issues in order to accelerate implementation of the development agenda.
- By creating a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and partners.

Student Notes:

12. Enumerate the objectives of NITI Aayog. Also, discuss the performance of this body since its inception and suggest measures to make it more effective.2018-3-1067

Approach:

- Briefly write down the broad mandate of NITI Aayog and enlist its objectives.
- Discuss the performance of NITI Aayog (Achievements and shortcomings) in the last three years.
- Mentioning lacunae, suggest some measures to make it more effective.

Answer:

NITI Aayog, established in 2015, is a think-tank entrusted with the mandate of re-imagining the development agenda by dismantling old-style central planning.

Objectives

- To evolve a shared vision and foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To pay special attention to the sections of our society that may be at risk of not benefitting adequately from economic progress.
- To design strategic and long term policy frameworks and monitor their progress and their efficacy.
- To create a knowledge, innovation and entrepreneurial support system through a collaborative community of national and international experts, practitioners and other partners.

Student Notes:

Performance of NITI Aayog

Achievements:

- **Cooperative federalism**: State governments have been given prominence in the functioning of NITI Aayog and it has also expedited the resolution of issues between the central ministries and state and UTs.
- **Competitive federalism**: NITI finalized indices to measure incremental annual outcomes in critical social sectors like health, education and water etc.
- **Human development**: It started a special initiative focusing on 115 aspirational districts which need to improve on key indicators like health, nutrition, education, basic infrastructure and poverty has been launched.
- **Evidence based policy making**: It focuses on policy formulation based on adequate data, like it brought out three year action agenda and development of composite water management index, promotion of GIS based planning and revamped India Energy Security Scenarios (IESS), 2047.
- **Reforms in Agriculture**: It brought out policy paper on reforms in APMC Act, rejuvenating fertilizer sector, doubling farmer's income, Model Act on Agricultural Land Leasing etc.
- **Knowledge and Innovation**: It developed the Good Practices Resource Book, launched Atal Innovation Mission and hosted Global Entrepreneurship Summit, 2017.

Shortcomings/Criticism:

- Niti Aayog's three-year action agenda has too wide approach for imminent challenges.
- Limited focus on implementation challenges, bureaucratic reforms and government-citizen interaction, which is core to several good ideas remaining on paper.
- It doesn't focus adequately on the practical aspects of its recommendations. It lacks creation of a feedback loop, fixing accountability of bureaucrats and process reforms are missing.

Measures to make NITI Aayog more effective

- Rather than measuring the performance alone, NITI also needs to emphasize on building the capacity to perform.
- For sectoral specialty, it needs to design customized solutions depending on the impediment by taking help from external experts.
- People's participation should also be provided enough attention in the administrative structure of NITI Aayog.

Implementing these measures, will help NITI Aayog metamorphose into an organization which can transform implementation of policy reforms and play a more meaningful role in shaping the country's future.

13. Mention the structure and functions of NITI Aayog. Also, comment on its contemporary relevance.

Approach:

- Give a brief introduction about establishment of NITI Aayog.
- Describing the structure of NITI Aayog, bring out its functions.
- Then discuss its contemporary relevance.
- Conclude with few issues that can hamper relevance of NITI Aayog.

Answer:

Student Notes:

The National Institute for Transforming India (NITI) Aayog, established in 2015, is the premier policy 'Think Tank' of the Government of India, providing both directional and policy inputs. While designing strategic and long term policies and programmes for the Government of India, NITI Aayog also provides relevant technical advice to the Centre and States. An important evolutionary change from the past, NITI Aayog acts as the quintessential platform of the Government of India to bring States to act together in national interest, and thereby fosters Cooperative Federalism.

Structure of NITI Aayog:

- The Governing Council of NITI Aayog with the Prime Minister as its Chairperson, comprises of Chief Ministers of all states and Lt. Governors of UTs without legislature.
- Regional Councils are constituted to address specific issues which can affect more than one state in a region. They can be headed by the Prime Minister or his nominee and include the Chief Ministers and Lieutenant Governors/Administrators of States/UTs in the region.
- Apart from that, NITI Aayog has a Vice Chairperson, full time members, ex officio members and a CEO appointed by the Prime Minister.
- Experts, specialists and practitioners with relevant domain knowledge as special invitees nominated by the Prime Minister.

Functions of NITI Aayog:

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States in the light of national objectives.
- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognizing that strong States make a strong nation.
- To develop mechanisms to formulate credible plans at the village level and aggregate these progressively at higher levels of government.
- To design strategic and long term policy and programme frameworks and initiatives, and monitor their progress and their efficacy.
- To maintain a state-of-the-art Resource Centre, be a repository of research on good governance and best practices in sustainable and equitable development as well as help their dissemination to stake-holders.

Relevance of NITI Aayog in contemporary time:

- NITI Aayog is acting as a funnel through which new and innovative ideas come from all possible sources like industry, academia, civil society or foreign specialists and flow into the government system for implementation.
- It fosters spirit of cooperative federalism within the States by expediting pending issues and conceptualizing Ek Bharat, Shrestha Bharat to foster inter-state engagements,
- Since it does not have power to allocate funds to states, it has enhanced free and democratic participation of states in the planning and working for development of the country. This has changed the states' approach from competing to get more funds from the centre to competing to get better results.
- It is also encouraging knowledge dissemination and innovation through initiatives like Good Practices Resource Book, Atal Innovation Mission, Global Entrepreneurship Summit etc.
- It collects real time data through its Development Monitoring and Evaluation Office and connects the various ministers, thereby reducing inertia in the system.
- It is promoting evidence based policy making through various tools such as composite water management index, GIS based planning etc.

Student Notes:

With states getting much more untied funds from the center after the recommendations of 14th FC, it has become pertinent that state's capacity to utilise those funds effectively also be developed. NITI Aayog fosters this development through coordination, competition, advice and dissemination of best practices. Further, it has the potential to metamorphose into an organization, which can transform implementation of policy through reforms and play a more meaningful role in shaping the country's future.

14. For inclusive and sustainable growth, India needs both cooperative as well as competitive federalism. Discuss.

Approach:

Recent government decision has led to the discussion on whether federalism should be cooperative or competitive. This question is based on it and the answer should consist of the following:

- Introduce the concept of inclusive and sustainable growth.
- Briefly explain cooperative and competitive federalism. Also cite examples.
- Discuss the need to maintain a balance on the two approaches .

Answer:

In a country as diverse as India, the States play an important role in achieving the objectives of inclusive and sustainable growth, which call for equitable growth opportunities to all stakeholders.

The essence of Co-operative federalism in this regard is that the Centre and the State Governments should be guided by the broader national concerns. It 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. A case in point could be GST where manufacturing states are giving up their tax earnings for equal sharing with consuming states for the sake of uniform tax laws.

While a harmonious relationship and co-operative spirit between the Centre and the states and among the States themselves is welcome, a healthy competition among the States for evolving efficient and socially inclined policies and programmes is also desirable. This calls for the need to have competitive federalism. Under the concept of Competitive federalism, States would vie with each other to attract investments and also hopefully provide better public goods and services.

It requires States to reform their programmes and provide goods and services that they can self-fund. States compete with each other to attract funds and investment, which facilitates efficiency in administration and enhances developmental activities. Recent initiatives like Vibrant Gujrat and Resurgent Rajasthan are some of the examples of competitive federalism. Healthy competition strives to improve physical and social infrastructure within the state. Recent 14th Finance Commission recommendation also followed competitive federalism idea. Now States should be allowed to chalk out their programmes and schemes with greater financial strength and autonomy, while observing financial prudence and discipline.

Even as it is important for states to compete at a certain level, there is greater need to take the disparity among the States into consideration. Some States may have specialized factor conditions such as skilled labour, capital and infrastructure which others may not be endowed with.

Therefore, to expect all States to catch up uniformly in the process of growth and development would be a fallacy. Many States still need the help of the Centre and

require extra funding before they can imagine competing. Hence purely relying on the spirit of competitive federalism may not work in our country as some traditionally disadvantaged states like north-eastern states may not be able to compete on their own. Therefore both the systems of Competitive and Cooperative Federalism are not mutually exclusive and a balance between the two is needed for inclusive and sustainable growth.

Student Notes:

15. It is contended that GST regime will significantly curb the financial autonomy of states by taking away substantial taxation powers. In this regard, examine the impact of the GST regime on federal structure of our polity. What are the proposed mechanisms in the bill which seek to address this issue?

***Approach**:*

- Highlight impact of GST on federalism – eroding states' autonomy and cooperative & competitive federalism.
- Proposed mechanisms within the GST Act for dealing with such provisions.
- Critique and way forward.

***Answer**:*

GST, by subsuming an array of indirect taxes seeks to simplify tax administration, improve compliance and eliminate economic distortions in production trade and consumption.

However, it is argued that it erodes states' autonomy in matters of taxation:

- According to constitution states have complete autonomy to levy sales tax, which broadly formed 80% of their revenue. This will be replaced by a uniform GST rate.
- GST Council:
  - A constitutional body (not the states) will decide a single rate of CGST and SGST
  - The centre wields veto -1/3rd representation in the GST Council where any decision has to have 3/4th consensus
  - all states have exactly one vote –no distinction between manufacturing and consuming states
- Elected states' govt laid emphasis on social spending (welfare expenditure), which was financed by new levies. GST will take away this power.
- Panchayat and city finances have not been discussed in GST

On the other hand, GST seeks to enrich the cooperative and competitive federalism:

- It makes states significant partners in decision making national level macroeconomic management.
- GST brings plentiful revenues and significantly higher GSDP with lower inflation. This is done by increasing compliance, enhancing tax base.
- It eliminates 'cascading' of taxes which in turn lead to cutting production costs and making exports more competitive.
- It will ensure check on tax evasion.
- GST seeks to increase aggregate revenues that will create a new type of autonomy (through largely untied fiscal devolution).

Owing to the diverse advantages of introduction of GST on the lines of international best practices, various mechanisms have been built within the bill to address such issues arising out of it:

Student Notes:

- **GST Compensation:** the Centre is committed to compensate for loss of revenue due to shift from origin based to consumption based taxation structure, for 5 years on the recommendations of GST Council.
- **GST Council:** a joint forum of Centre and States, which would function under the chairmanship of Union Finance Minister. It will make recommendations on important issues like tax rates, exemption limit, threshold limits etc.
- In case of alcoholic liquor for human consumption, States would continue to levy the taxes presently being levied, i.e., State Excise Duty and Sales Tax/VAT.

16. Can we say that cooperative federalism in India has strengthened in the post-liberalisation era? Give reasons in support of your answer.

Approach:

- Give a brief introduction about federalism and cooperative federalism.
- Then highlight the factors that have led to strengthening of cooperative federalism in the post-liberalisation era.
- Give a brief conclusion regarding need of cooperation in the wake of liberalisation.

Answer:

Federalism implies division of administrative, financial and legislative powers between union and states while cooperative federalism implies that they share a horizontal relationship where they cooperate with each other in larger public interest.

Our polity started on a cooperative model after independence but successive governments with strong prime ministers at the center and regional political parties in some state led to confrontational type of relationship. However, post-1990 or post-liberalisation era, various factors led to strengthening of cooperative federalism.

- **End of single party rule** at Centre has diluted the Prime-ministerial form of government. Thus, union governments are not as powerful as they were earlier.
- **Emergence of coalition government** at Centre has made it difficult to misuse constitutional provisions such as 356 etc. for selfish political reasons.
- **Dependence of Union government on support of regional political parties** has helped regional leaders to think from all India perspective and union to think from point of view of regional parties. Thus, less confrontation and more cooperation.
- **Presidential activism** - since 1990 onwards successive presidents have become proactive in ensuring constitutionalism and unafraid of using discretionary power in case council of minister misuses constitutional provisions for selfish political reasons
- **Judicial activism** - since 1990 (for ex- S R Bommai case) has ensured that union government don't misuse constitutional provisions. This has provided a sense of security to state governments.
- **Implementation of 73th and 74th constitutional amendment** – has also focused on union, state and local relations unlike union-state relation only earlier. Earlier states were demanding more powers from union without doing same for local government but now states are more accommodative to the complex dynamics of union-state relations
- **Active media** - with explosion of electronic media after liberalization and spread of social media in recent times, it has become very difficult for any government to adopt anti- democratic measures like dismissing State governments.
- **Changed political culture** – People, with increasing awareness about their rights, are unwilling to accept governments which adopt confrontational approach

towards centre for political reasons forcing states to behave in a more responsible manner.

In fact, recent government initiatives affirm the move toward cooperative federalism.

  - Replacement of planning commission with Niti Ayog symbolizes strengthening of cooperation between centre and states.
  - Implementation of GST is significant movement towards cooperative federalism in taxation. GST council provides the institutional framework in this context

- The recommendations of Fourteenth Finance Commission and its implications also augur well for Cooperative Federalism by providing more fiscal space and agency to the states.
- The restructuring of Centrally Sponsored Schemes (CSS) is also a move in consonance with the broader developments in this context.

Both union and states have been forced to come together to make economic reforms and social schemes successful. Further, the forces of liberalization along with Information technology revolution and knowledge revolution are making the diverse and pluricultural society of India even more complex and interdependent.

In fact, we are moving towards competitive federalism where states not only cooperate with centre but also compete with each other for investments and budgetary support based on their performance. Thus, the success of reforms depends on political stability, policy certainty as well as adaptive approach of the governments. It also needs uniform policies between different tiers of governance. This makes the concept of cooperation not optional but necessary.

17. Even though Indian federalism has matured quite a bit, with states having far greater control of their economic and political management, serious structural problems still remain. Discuss.

Approach:

- In the introduction, elaborate on how Indian federalism has matured over the years.
- Then highlight greater control of states on their economic and political management.
- Then the mention the persisting structural problems.
- To conclude mention initiatives taken to strengthen federalism and issues that needs to be addressed.

Answer:

Indian federalism has come a long way from single party, overly centralized union government towards the era of cooperative and competitive federalism. Indian states have much greater control over their economic and political management. This is illustrated as under:

Economic decentralization

- 14th Finance Commission recommendations to increase tax receipt devolution to state from 32% to 42% gave a massive boost to financial autonomy to the states.
- Union Government had also raised the non-statutory share from 21% to 26% and about 57.6% of the gross tax receipts were to be transferred to the states.

Student Notes:

Student Notes:

- States are encouraged to participate in economic diplomacy. For eg- Tripura & Punjab were allowed to sell surplus electricity to Bangladesh & Pakistan respectively.
- Implementation of Goods and Services tax, as a universal code for indirect taxes, has also boosted fiscal federalism.

Control over political management

- Under Niti Aayog, inclusion of the CMs of states and their regular interactions with the centre for policy formulation aim towards Union-State Policy coordination and coherence in formulation and design of schemes.
- Inter-State Council, Zonal Council, Governors' Conference, Chief Ministers' Conference are established mechanism to promote the idea of cooperative federalism and they are being institutionalised by convening them regularly.

Structural Issues

- **Responsibility v/s resources**: The state government is responsible and accountable for basic services like health, education, sanitation, police, electricity etc. However, they have constrained access to resources.
- **Lack of expertise**: The members of All-India services protected by Article 311 are generalist and all-purpose but lack specialized skills required to manage various services while enjoying a monopoly over all key public offices.
- **Failure of third tier of federalism**: Part IX of the Constitution created a scheme of local government. However, this tier remains constrained due to lack of funds, functions and functionaries.
- **Rigidity at centre**: There exists rigidity in Union legislation on subjects like education with resultant failure to improve outcomes despite vast expenditure.
- **Interference by centre**: Nominated governors still viewed as controlled by the centre.

Thus, these structural issues need to be addressed. Apart from these there are some low hanging fruits which may be considered such as streamlining of central schemes with administrate control given to the states, making Inter-state council functional that largely remains unutilized hitherto and participative policymaking by involving both rural and urban local government.

Student Notes:

SEPARATION OF POWERS BETWEEN VARIOUS ORGANS

Contents

Student Notes:

1. Introduction

"The accumulation of all power, legislative, executive and judiciary in the same hands, whether of one, or few, or many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny.

James Madison

The separation of powers is an organizational structure in which responsibilities, authorities, and powers are divided between groups rather than being centrally held. The doctrine is rooted in a political philosophy that too much power concentrated in the hands of few, without adequate checks and balances, increases the likelihood of misuse of that power. The intent of this doctrine is to prevent abuses of power and avoid autocracy which is a system of government by one person/group with absolute power.

Separation of powers, therefore, refers to the division of government responsibilities into distinct branches to limit any one branch from exercising the core functions of another.

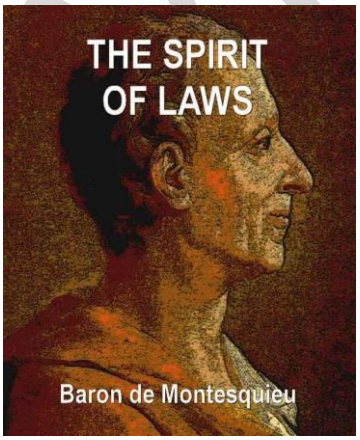
As stated by Madison- "The accumulation of all powers, legislative, executive and judicial, in the same hands whether of one, a few, or many and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny." And for the prevention of this tyranny, the doctrine of separation of power holds its greatest importance.

2. Origin

The theory of separation of powers may be traced back in the writings of classical and medieval thinkers such as Aristotle (384–322 BC). Aristotle understood the divergence between making law and implementing law, and articulated a crude separation between the legislative and executive branches of the government. For instance, Aristotle in his book ("The Politics") proclaimed that:

"There are three elements in each constitution in respect of which every serious lawgiver must look for what is advantageous to it; if these are well arranged, the constitution is bound to be well arranged, and the differences in constitutions are bound to correspond to the differences between each of these elements. The three are, first, the deliberative, which discusses everything of common importance; second, the officials; and third, the judicial element."

Further, **Aristotle** believed that any single form of government was unstable leading to a permanent cycle of disasters. Apart from Aristotle, **Jean Bodin** one of the earliest thinkers of the modern period highlighted the importance of separating the executive and judicial powers. But actually it acquired greater significance in eighteenth century when **John Locke** emphasized that the executive and legislative powers should be separate for the sake of liberty. As liberty is likely to suffer when the same human being makes the law and execute them.



Of the various theorists who wrote of the need to divide governmental powers among different institutions, Montesquieu work has been the most influential. **Montesquieu** was an 18th century French social and political philosopher who coined the term "trias politica" or "separation of powers" in his his book, "**De l'Esprit des Lois**" (*i.e.* **the Spirit of Laws**), 1748.It is considered as one of the great works in the history of political theory and jurisprudence, and it inspired the Declaration of the Rights of Man and the Constitution of the United States.

Between 16-18th Centuries, the doctrine of separation of powers occupied an upper hand in the **struggle of the bourgeoisie against absolutism** and the arbitrary rule of kings (i.e. feudal monarchy). Again, the doctrine was used in a number of countries to justify a compromise

between the bourgeoisie, which had won control over the legislature and judiciary, and the feudal-monarchical circles that had retained executive power. With the establishment of the capitalist system the principle of separation of powers was proclaimed as one of the fundamental principles of bourgeois constitutionalism.

Student Notes:

"Bourgeoisie" is a social class oriented to economic materialism and hedonism, and to upholding the extreme political and economic interests of the capitalist ruling-class.

"Absolutism" is a political doctrine and practice of unlimited centralized authority and absolute sovereignty, as vested especially in a monarch or dictator.

3. Definitions

The phrase '*separation of powers*' is 'one of the most confusing in the vocabulary of political and constitutional thought'. The approach towards understanding "separation of powers" has varied across time and space. In understanding the concept of 'separation of powers' one has to take on board the approaches *i.e.* **traditional** (classical) and **modern** (contemporary) approaches.

3.1. Traditional (Classical) Approach

The traditional views are presented by **Montesquieu** who vigorously advocated for a "*strict or pure or total or complete or absolute"* separation of powers and personnel between three organs of the state *i.e.* the Executive, Legislature and Judiciary. Power being diffused between three separate bodies exercising separate functions with no overlaps in function or personnel.

3.1.1. Montesquieu's Strict Doctrine (Tripartite System)

- Montesquieu popularized the trinity between the executive, legislative, and judicial branches of government.
- Montesquieu's three branches of government represent three distinct sources of legal authority. In advocating tripartite government, Montesquieu urged that governmental institutions conform to this **natural division between the functions of creating law, enforcing law, and adjudicating disputes arising under the law.**
- Montesquieu saw **three distinct forms of law**, each corresponding to a separate governmental function.
  - The **law of nations** consists of the power to promote public security, conduct foreign relations, and declare war rests with the executive.
  - The **political law** consists of the power to make temporary or permanent laws and rests with the legislature.
  - Finally, the **civil law** consists of the power to adjudicate civil and criminal matters and rests with the judiciary.
- In addition to advocating the separation of governmental powers, Montesquieu recognized that only through a **system of "checks"** can this separation be maintained.
- Montesquieu favored an **absolute check upon the legislature** through an executive veto. However, under his theory, the **legislature enjoys no commensurate check** over the executive, it merely maintains the right to force the' executive to disgorge information on the manner in which its laws are executed. To him, the state will perish when the legislature power become more corrupted than the executive.
- According to his model, Legislature should not appoint members of the Executive [i.e. Parliament should not elect the President or the Prime Minister]; and for the same reason the Executive should not have a role in electing members of the Legislature. Neither the Executive nor the Legislature should appoint members of the Judiciary, for if they do the Judiciary will lose its independence. Again, judges should not appoint members of the Executive.

- Thus, it is the people who should elect members of executive, legislature and judiciary..
- State officials should not form part of or belong to two or more organs.

3.1.2. Summary of Doctrine

The Doctrine of Separation of powers includes the following distinct but overlapping aspects;

- **Institutional separation of powers:** (*a tripartite separation of powers)* – the need to have three major institutions or organs in a state *i.e.* Legislature, Executive and Judiciary.
- **Functional separation of powers:** state power/functions must be vested and exercised by three separate institutions or organs *i.e.* law making, enforcement and interpretation.
- **Separation of personnel:** (*each organ with own personnel)* – no person should be a member of more than one organ.
- **Limitation of appointing powers:** state organs should not appoint or elect members for each other.

3.2. Modern (Contemporary) Approach

The doctrine of separation of powers has become an integral part of the governmental structure. Though in theory, the doctrine is supposed to have a threefold classification of functions and corresponding organs. But, because of the diverse and complex nature of a modern state, where the process of law making, administration and adjudication cannot be clearly demarcated or assigned to separate institutions, the practical application of this doctrine in strict sense is very difficult.

This approach somehow departs or otherwise tries to refine Montesquieu's strict doctrine of separation of powers and thus advocates for a '***mixed government***' or '***weak separation of powers***' **with '*checks and balances*'** to prevent abuses.

> ***'Mixed government'*** as a concept insists that the primary functions of the state should be allocated clearly and that there should be checks to ensure that no institution encroaches significantly upon the function of the other.

Montesquieu's strict doctrine presents the following problems:

- A complete separation of the three organs is neither possible nor desirable because it may lead to **constitutional deadlock** (disunity of powers).
- To achieve a **mixed and balanced constitutional structure,** partial separation of powers is required.
- It would be impractical to expect each branch of government to **raise its own finances**.
- The theory is based on the **assumption** that all the three organs of the government are equality important, but in reality it is not so. In most cases, the executive is more powerful of the three branches of government.

Some scholars claim rightly that even Montesquieu's motherland *i.e.* France has failed to adhere to the doctrine strictly.

4. Separation of Power in Other Countries

4.1. Separation of Power in USA

The United States Constitution has a more rigid separation of powers than the Constitutions of other democracies. The United States Constitution provides a list of permissible and prohibited actions for Congress. The Executive Power shall be vested in a President of the United States of America." And as per the vesting clause no limits on the Executive branch has been placed. The Supreme Court also holds the power of judicial review. Checks and balances allow for a system based regulation that allows one branch to limit another, such as the power of Congress to alter the composition and jurisdiction of the federal courts.

Student Notes:

The following are illustrations where there are **checks and balances**:

1. The lawmaking power of the Congress is checked by the President through its veto power, which in turn maybe overturn by the legislature
2. The Congress may refuse to give its concurrence to an amnesty proclaimed by the President and the Senate to a treaty he has concluded
3. The President may nullify a conviction in a criminal case by pardoning the offender
4. The Congress may limit the jurisdiction of the Supreme Court and that of inferior courts and even abolish the latter tribunals
5. The Judiciary in general has the power to declare invalid an act done by the Congress, the President and his subordinates, or the Constitutional Commissions.

4.2. Separation of Power in England

The United Kingdom (UK) constitution is often described as having "a weak separation of powers" doctrine.

In the UK:

- The executive forms a subset of the legislature. The judiciary also formed its part until the establishment of the Supreme Court (SC) of the UK.
- The Prime Minister (PM), the Chief Executive, sits as a member of the Parliament, either in the House of Lords or as an elected member of the House of Commons (by convention, and as a result of the supremacy of the Lower House, the PM now sits in the House of Commons) and can effectively be removed from office by a simple majority vote.
- The UK follows the principle of Parliamentary sovereignty which limits the scope for judicial review by the courts.
- Furthermore, while the courts in the UK are undoubtedly amongst the most independent in the world, the Law Lords, who were the final arbiters of judicial disputes in the UK sat simultaneously in the House of Lords, the upper house of the legislature, although this arrangement ceased in 2009 when the SC of the UK came into existence.
- Until 2005, the Lord Chancellor fused the Legislature, Executive and Judiciary, as he was the ex officio Speaker of the House of Lords, a Government Minister who sat in Cabinet and was head of the Lord Chancellor's Department which administered the courts, the justice system and appointed judges, and was the head of the Judiciary in England and Wales and sat as a judge on the Judicial Committee of the House of Lords, the highest domestic court in the entire UK, and the Judicial Committee of the Privy Council, the senior tribunal court for parts of the Commonwealth. The Lord Chancellor also had certain other judicial positions, including being a judge in the Court of Appeal and President of the Chancery Division. The Lord Chancellor combines other aspects of the Constitution, including having certain priestly functions of the established state church, making certain church appointments, nominations and sitting as one of the thirty-three Church Commissioners. These functions remain intact and unaffected by the Constitutional Reform Act.
- In 2005, the Constitutional Reform Act separated the powers with Legislative functions going to an elected Lord Speaker and the Judicial functions going to the Lord Chief Justice. The Lord Chancellor's Department was replaced with a Ministry of Justice and the Lord Chancellor currently serves in the position of Secretary of State for Justice.

5. Doctrine of Separation of Powers in India

India departs from the two conventional models of separation of power commonly followed i.e. the rigid system followed by the USA and the weak system of separation of powers or Westminster Model. Our model represents a **contemporary approach in constitutionalising the doctrine of separation of powers**. Essentially, there is **no strict separation of powers** under the Indian Constitution, both in principle and practice:

Student Notes:

- **Implied division of power/functions:** While the Indian Constitution recognizes legislative, executive and judicial bodies, **neither does it expressly vest different kinds of power in different organs** of the state, nor does it provide for exclusivity in the nature of functions to be performed by these organs.
- **Supremacy of the Constitution:** Unlike the British model, Parliament in India is not supreme. It does not possess a sovereign character like the Westminster and is limited by a written constitution. In India, the **Constitution is supreme** and any legislation contrary to constitutional provisions is void.
- **No real separation of power:** Like the Westminster model, there is **no 'real' separation** per se, between the legislature and the executive authorities under our Constitution.
- **Functional overlap:** In fact, the Indian Constitution goes far as to provide for a **functional overlap between the legislative, executive and the judicial wings** of the government. For instance, Judiciary often discharges quasi-legislative or executive functions.

Thus, even when acting in ambit of their own power, overlapping functions tend to appear amongst these organs. The question which is important here is that what should be the relation among these three organs of the state, i.e. whether there should be complete separation of powers or there should be co-ordination among them.

In the words of Dr. Durgas Das Basu,

"So far as the courts are concerned, the application of the doctrine (the theory of separation of powers) may involve two propositions: namely,

a) that none of the three organs of Government, Legislative Executive and Judicial, can exercise any power which **properly** belongs to either of the other two;
b) that the legislature cannot delegate its powers."

What is significant is the word "**properly**" and therefore conceives of a **broad division of powers** where the **core function** is one which is exclusively conferred on that particular organ of the State, though there may be some overlap in regard to the fringe areas of the topics so entrusted. The pronouncement on this aspect of law by the courts is that **under the Indian Constitution, there is a broad separation of powers.**

5.1. Constitutional position

5.1.1. Separation of powers

Despite there being no express provision recognizing the doctrine of separation of powers in its absolute form, the Constitution does make the provisions for a reasonable separation of functions and powers between the three organs of government.

The Constitution of India lays down a functional separation of the organs of the State in the following manner:

- **Article 50** lays down that State shall take steps to separate the judiciary from the executive. This is for the purpose of ensuring the independence of judiciary.
- **Article 122 and 212** provides validity of proceedings in Parliament and the State Legislatures cannot be called into question in any court. This ensures the separation and immunity of the legislatures from judicial intervention on the allegation of procedural irregularity.
- Judicial conduct of a judge of the Supreme Court and the High Courts' cannot be discussed in the Parliament and the State Legislatures, according to **Article 121 and 211** of the Constitution.
- **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** declared that the President or the Governor shall not be answerable to any court for the exercise and performance of the powers and duties of his office.

5.1.2 Some of the examples of Functional Overlap in India:

- **Functional overlap between Legislature and Judiciary:**
  - The **legislature** besides exercising law-making powers **exercises judicial powers** in cases of breach of its privilege, impeachment of the President and the removal of the judges.
  - Legislature exercising judicial powers in the case of amending a law declared *ultra vires* by the Court and revalidating it.
  - While discharging the function of disqualifying its members and impeachment of the judges, the legislature discharges the functions of the judiciary.
  - Legislature can impose punishment for exceeding freedom of speech in the Parliament; this comes under the powers and privileges of the parliament. But while exercising such power it is always necessary that it should be in conformity with due process.
  - The Constitution permits, through **Article 118 and Article 208,** the Legislature at the Centre and in the States respectively, the authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution.
  - Judiciary also acts as a legislature while making laws regulating its conduct and rules regarding disposal of cases.
- **Functional overlap between Executive and Legislature:**
  - If the President or the Governor, when the legislature or is not in session and is satisfied that circumstances exist that necessitate immediate action may promulgate ordinance which has the same force of the Act made by the Parliament or the State legislature.
  - The heads of each governmental ministry is a member of the legislature, thus making the executive an integral part of the legislature.
  - The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.
  - The executive also exercises law making power under delegated legislation.
- **Functional overlap between Executive and Judiciary:**
  - The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions. Administrative tribunals which are a part of the executive also discharge judicial functions.
  - The **executive** may further **affect the functioning of the judiciary** by making appointments to the office of Chief Justice and other judges.
  - Higher administrative tribunals always have a member of the judiciary.

Besides the functional overlapping, the Indian system also lacks the separation of personnel amongst the three departments.

Further, the Constitution of India expressly provides for a system of checks and balances in order to prevent the arbitrary or capricious use of power. Though such a system appears dilatory of the doctrine of separation of powers, it is essential in order to enable the just and equitable functioning of such a constitutional system. By giving such powers, a mechanism for the control over the exercise of constitutional powers by the respective organs is established.

This clearly indicates that the Indian Constitution does not provide for absolute separation of powers. Instead, it creates a system consisting of the three organs of Government and confers upon them both exclusive and overlapping powers and functions.

5.2. Judicial Pronouncements on the Doctrine in India

The debate about the doctrine of separation of powers, and exactly what it involves in regard to Indian governance, is as old as the Constitution itself. Apart from the directive principles of state policy (DPSP) laid down in Part-IV of the Constitution which provides for separation of

judiciary from the executive, the constitutional scheme does not provide any formalistic division of powers. It appeared in various judgments handed down by the Supreme Court after the Constitution was adopted. It is through these judicial pronouncements, passed from time to time, that the boundaries of applicability of the doctrine have been determined.

Student Notes:

5.2.1. re Delhi Laws Act Case, 1951

In the ***re Delhi Laws Act case***, 1951 it was for the first time observed by the Supreme Court that except where the Constitution has vested power in a body, the principle that one organ should not perform functions which essentially belong to others is followed in India.

Court's Ruling: By a majority of 5:2, the Court held that the theory of separation of powers though not part and parcel of our Constitution, in exceptional circumstances is evident in the provisions of the Constitution itself. As observed by Kania, C.J.:

"Although in the Constitution of India there is no express separation of powers, it is clear that a legislature is created by the constitution and detailed provisions are made for making that legislature pass laws. Does it not imply that unless it can be gathered from other provisions of the constitution, other bodies-executive or judicial-are not intended to discharge legislative functions?"

This judgment implied that all the three organs of the State, i.e., the Legislature, the Judiciary, and the Executive are bound by and subject to the provisions of the Constitution. It is the Constitution which demarcates their respective powers, jurisdictions, responsibilities and relationship with one another. Also, it can be assumed that none of the organs of the State, including the judiciary, would exceed its powers as laid down in the Constitution.

5.2.2. Kesavananda Bharti case, 1973

Disputes continued to arise from time to time as organs of the State exceeded their assigned boundaries under the Constitution. This question of what amounts to an excess, was the basis for action in the landmark ***Kesavananda Bharti* case** of 1973.

The question before the Supreme Court in this case was in regard to the extent of the power of the legislature to amend the Constitution as provided for under the Constitution itself. It was argued that Parliament was "supreme" and represented the sovereign will of the people. As such, if the people's representatives in Parliament decided to change a particular law to curb individual freedom or limit the scope of judicial scrutiny, the judiciary had no right to question whether it was constitutional or not.

Court's Ruling: The Court did not allow this argument and instead found in favour of the appellant on the grounds that the doctrine of separation of powers was a part of the "basic structure" of our Constitution.

Thus, the doctrine of "separation of powers" is acknowledged as an integral part of the basic features of our Constitution. It is also expected that in the overall interest of the country, even though their jurisdictions of organs of state are separated and demarcated, all the institutions would work in harmony and co-operation to maximize the public good.

As per this ruling, there was no longer any need for ambiguity as the doctrine was expressly recognized as a part of the Indian Constitution, unalterable even by an Act of Parliament. Thus, the doctrine of separation of powers has been incorporated, in its essence, into the Indian laws.

5.2.3. Indira Nehru Gandhi v. Raj Narain, 1975

However, it was after the landmark case of ***Indira Nehru Gandhi v. Raj Narain***, **1975** that the place of this doctrine in the Indian context was made clearer. It was observed: "That in the Indian Constitution, there is **separation of powers in a broad sense only**. A rigid separation of powers as under the American Constitution or under the Australian Constitution does not apply to India." Chandrachud J. also observed that the political usefulness of the doctrine of

Separation of Power is not widely recognized. No Constitution can survive without a conscious adherence to its fine check and balance.

Student Notes:

5.2.4. Other cases

The doctrine of separation of powers was further expressly recognized to be a part of the Constitution in the case of ***Ram Jawaya Kapur v. State of Punjab***, **1955** where the Court held that though the doctrine of separation of powers is not expressly mentioned in the Constitution it stands to be violated when the functions of one organ of the government are performed by another. This means the Indian constitution had not indeed recognized the absolute separation of powers but the functions of different organs of the government have been sufficiently differentiated.

In ***I.C. Golak Nath v. State of Punjab***, **1967** Supreme Court took the help of doctrine of basic structure as propounded in Kesvananda Bharati case and said that Ninth Schedule is violative of this doctrine and hence the Ninth Schedule was made amenable to judicial review which also forms part of the basic structure theory. It was observed: "The Constitution brings into existence different constitutional entities, namely, the Union, the States and the Union Territories. It creates three major instruments of power, namely, the Legislature, the Executive and the Judiciary. It demarcates their jurisdiction minutely and expects them to exercise their respective powers without overstepping their limits. They should function within the spheres allotted to them."

5.3. Checks and balances

What is it?

It is a system that allows each branch of a government to amend or veto acts of another branch so as to prevent any one branch from exerting too much power. It arose as an outgrowth of the classical theory of separation of powers. The origin of checks and balances doctrine, like separation of powers itself, is also credited to Montesquieu.

Why it is required?

The purpose of this, and of the later development of checks and balances, was to ensure that governmental power would not be used in an abusive manner. It is to prevent one branch from becoming supreme, protect the "opulent minority" from the majority, and to induce the branches to cooperate etc.

Under the system of checks and balances, one department is given certain powers by which it may definitely restrain the others from exceeding constitutional authority. It may object or resist any encroachment upon its authority, or it may question, if necessary any act or acts which unlawfully interferes with its sphere of jurisdiction and authority.

The Indian Constitution provides for a scheme of checks and balances between the three organs of government, against any potential abuse of power. For example,

- **Checks on Judiciary:** The judges of the Supreme Court and the High Courts in the States are appointed by the executive i.e. the President acting on the advice of the Prime Minister and the Chief Justice of the Supreme Court. But they may be removed from office only if they are impeached by Parliament. This measure helps the judiciary to function without any fear of the executive.
- **Checks on Executive:** The executive is responsible to Parliament in its day to day functioning. While the President appoints the leader of the majority party or a person who s/he believes commands a majority in the Lok Sabha a government is duty bound to lay down power if the House adopts a motion expressing no confidence in the government.
- **Checks by Judiciary on Legislature and Executive:** The judiciary keeps a check on the laws made by Parliament and actions taken by Executives, whether they conform to the Constitution or not, using the tool of Judicial Review.

5.4. Judicial Review

Student Notes:

Judicial Review refers to the power of the judiciary to interpret the constitution and to declare any such law or order of the legislature and executive void, if it finds them in conflict the Constitution of India.

Judicial Review is the power of the Judiciary by which:

- The court reviews the laws and rules of the legislature and executive in cases that come before them; in litigation cases.
- The court determines the constitutional validity of the laws and rules of the government; and
- The court rejects that law or any of its part which is found to be unconstitutional or against the Constitution.

Judicial Review is an essential and very useful system for Indian liberal democratic and federal system. It has been playing an important and desired role in the protection and development of the Constitution as follows:

- **Maintain supremacy of the Constitution**: Judicial Review is essential for **maintaining the supremacy of the Constitution** as any law if is in contradiction with the provisions of the Constitution, is declared void.
- **Check misuse of power by legislature and executive:** It is essential for checking the possible misuse of power by the legislature and executive.
- **Protect rights and maintain federal balance:** Judicial Review is a device for protecting the rights of the people. It is also important for judiciary as an arbiter between the centre and states for maintaining the federal balance.
- **Strengthen judiciary:** The grant of Judicial Review power to the judiciary is also essential for strengthening the position of judiciary. It is also essential for securing the independence of judiciary.
- **Fulfill constitutional duties:** The power of Judicial Review has helped the Supreme Court of India in exercising its constitutional duties.

Judicial review system has been criticized as follows:

- **Undemocratic:** The critics describe Judicial Review as an undemocratic system as it empowers the courts to decide the fate of the laws passed by the legislature, which represent the sovereign, will of the people.
- **Lack of Clarity:** The Constitution of India does not clearly describe the system of Judicial Review. It rests upon the basis of several articles (like Articles 32 and 136 for Supreme courts and Articles 226 and 227 for High courts) of the Constitution.
- **Source of Administrative Problems:** If a law is struck down by the Supreme Court as unconstitutional, the decision becomes effective from the date the judgement is declared. Now, the same law can face Judicial Review only when the question of its constitutionality arises which may happen after any amount of time say 5-10 years. Thus, change in constitutionality of the law with time may lead to various administrative problems.
- **Reactionary:** Judicial Review system has been criticized as a reactionary system because while determining the constitutional validity of a law, the Courts often adopts a legalistic and conservative approach. It can thus reject progressive laws enacted by the legislature.
- **Delaying System:** Judicial Review can be a source of delay and inefficiency.
- **Tends to make the Parliament less responsible:** The critics further argue that the Judicial Review can make the Parliament irresponsible as it can decide to depend upon the Courts for determining the constitutionality/ reasonableness of a law passed by it.
- **Fear of Judicial Tyranny:** It is not reasonable to allow a single judge's reasoning to determine the fate of a law which had been passed by a majority of the elected representatives of the sovereign people.

- **Reversal of its own decisions**: Reversals of earlier decisions by the courts reflect the element of subjectivity in the judgments. For instance: The judgment in the Golaknath case reversed the earlier judgments and the judgment in the Keshwananda Bharati case reversed the judgment in the Golaknath case. The same enactment was held valid, then invalid and then again valid.

Some of the important cases:

- In ***Suman Gupta v. State of Jammu and Kashmir,*** the respective State Government reserved certain seats in medical colleges for the students residing in the particular state on reciprocal basis, this policy of state was challenged on the ground that it discriminate among the students on the ground of place of birth.
  Court's ruling: The Supreme Court rejected the policy on the ground of discrimination but meanwhile the students who are the beneficiaries of this policy had completed their substantial education, and now it is not in the interests of justice to cancel their admission, therefore here supreme court applied the doctrine of prospective overruling and held that the government must not apply the impugned policy from next academic year.Therefore, by using the doctrine of prospective overruling in the above to cases, the Supreme Court maintained the balance between judiciary and other organs of the government. It can also be maintained by using the self-restraint by the judges.
- In ***Divisional Manager, Aravali Golf club v. Chander Hass and Another***, the Supreme Court warned the High court for it's over activism.
  Court's ruling: The Supreme Court held that since there was no sanctioned post of tractor driver against which the respondents could be regularized as tractor driver, the direction of the first appellate court and the single judge to create the post of tractor driver and regularizing he services was completely beyond their jurisdiction. The court cannot direct the creation of post. Creation and sanction of post is a prerogative of the executive or legislative authorities and the court cannot arrogate to itself this purely executive or legislative function, and direct creation of posts in any organization. The court further said that the creation of a post is an executive or legislative function and it involves economic factors. Hence, the courts cannot take upon themselves the power of creation of post.
- Similarly, in ***Madhu Holmagi v. Union of India***, wherein one Advocate filed a public interest litigation challenging the "Agreement 123" i.e. Indo-US nuclear treaty proposed to be entered by the Indian government, petitioner contended that court must have to scrutinize the all documents relating to the agreement 123 and must have to prevent the Indian government from entering in to the nuclear deal.
  Court's ruling: In this court dismissed the petition and also imposed a cost of Rs. 5000 on the petitioner stating that it is an abuse of court proceeding. Because the question raised by the petitioner is a question of policy decision, which is to be decided by the parliament and not by the judiciary.

6. Conclusion

The Doctrine of Separation of Powers in its true sense is very rigid and this is one of the reasons of why it is not accepted by a large number of countries in the world. The main object as per Montesquieu in the Doctrine of Separation of Power is that there should be **government of law** rather than having will and whims of the official. Also, another most important feature of the the doctrine is that there should be **independence of judiciary**. Hence, the Doctrine of Separation of Powers does play a vital role in the creation of a just government and fair and proper justice is dispensed by the judiciary due to its independence.

The Doctrine of Separation of Powers has come a long way from its theoretical inception. Today, the doctrine in its absolute form is only recognized in letter as it is entirely unfeasible and impractical for usage in the operational practices of a government. With the passage of time, States have evolved from being minimal and non-interventionist to being welfare oriented by

playing the multifarious roles of protector, arbiter, controller and provider to the people. In its omnipresent role, the functions of the State have become diverse and its problems interdependent hence, any serious attempt to define and separate the functions would only cause inefficiency in the government.

The modern day interpretation of the doctrine provides for establishment of a system of checks and balances. Therefore, a system of checks and balances is a practical necessity in order to achieve the desired ends of the doctrine of separation of powers. Such a system is not dilatory to the doctrine but necessary in order to strengthen its actual usage.

India relies heavily upon the doctrine in order to regulate, check and control the exercise of power by the three organs of government. Whether it is in theory or in practical usage, the Doctrine of Separation of Powers is essential for the effective functioning of a democracy like India.

7. UPSC Previous years' Questions

1. Do you think that Constitution of India does not accept principle of strict separation of powers rather it is based on the principle of 'checks and balance'? Explain. 10 marks (2019)
2. Resorting to ordinances has always raised concern on violation of the spirit of separation of power doctrine. While noting the rationales justifying the power to promulgate, analyse whether the decision of the Supreme Court on the issue have further facilitated to resorting to this power. Should the power to promulgate the ordinances be repealed? 12.5 marks (2015)

8. Vision IAS Previous Years Questions

1. Explain the meaning and significance of Doctrine of Separation of Powers. Also compare the constitutional status of Separation of Powers in India and USA.

Approach:

- It is important to mention that separation of powers can't be 'water-tight' and the doctrine of 'checks and balances' applies as well.

Answer:

- Montesquieu, a French scholar, found that concentration of power in one person or a group of persons results in tyranny. And therefore he advocated separation of power to check arbitrariness and the need for vesting the State's power in three different organs, the legislature, the executive, and the judiciary.
- The doctrine of Separation of Powers implies that each organ should be independent of the other and that no organ should perform functions that belong to the other.
- Understanding that a government's role is to protect individual rights, but acknowledging that governments have historically been the major violators of these rights, a number of measures have been derived to reduce this likelihood. The concept of Separation of Powers is one such measure.
- In USA, The doctrine of Separation of Powers forms the foundation on which the whole structure of the constitution is based. Art I, vests all legislative powers in the Congress. Art II, vest all executive powers in the President and Art III, vests all judicial powers in the Supreme Court.
- However incorporation of this theory is subject to two factors –
  - The separation of power is not 'water-tight'
  - It is subject to the doctrine of 'checks and balance'
- For example - the President interferes with the exercise of powers by the Congress through his veto power. He also exercises the law-making power in exercise of his

Student Notes:

treaty-making power. He also interferes in the functioning of the Supreme Court by appointing judges. The judiciary interferes with the powers of the Congress and the President through the exercise of its power of judicial review. Congress may terminate Presidents' appointments, by impeachment, and restrict the president.

- Under the Indian Constitution, executive powers are with the President, legislative powers with Parliament and judicial powers with the Judiciary.
- The President's function and powers are enumerated in the Constitution itself. Parliament is competent to make any law subject to the provisions of the Constitution and there is no other limitation on it legislative power. The Judiciary is independent in its field and there can be no interference with its judicial functions either by the Executive or by the Legislature.
- The Supreme Court and High Courts are given the power of judicial review and they can declare any law passed by the Parliament or the Legislature unconstitutional.
- However the doctrine of Separation of Powers has not been adopted in India as strictly as in USA.
- In India, not only is there functional overlapping but there is personnel overlapping as well. For instance a member of legislature can also become a part of the political executive.
- The three organs in some or the other way perform multifarious functions. For e.g. the legislature can delegate some powers to executive, thus executive can perform the function of the law making as well., In the same way the Parliament other than making laws also have judicial powers which it can exercise in the case of its contempt.

2. The Constitution of India embraces the idea of separation of powers in an implied manner. Elucidate.

Approach:

Theme- Constitution of India does not provide the idea of separation powers in absolute form, but have the provisions for a reasonable separation of powers between the three organs of Government.

- Very briefly write about separation of power
- Explain that, there are no specific provisions (articles) to demarcate the powers between three organs of state.
- Yet there are few provisions (articles) which reasonably provide idea of separation of powers.
- Briefly discuss that here there are overlapping functions between organs and therefore doctrine of checks and balances is applied.

Answer:

- In Indian constitution, there are no express provisions recognizing the doctrine of separation of powers in its absolute form. As observed by H.J. Kania (1st CJI) - "Although in the constitution of India there is no express separation of powers, it is clear that a legislature is created by the constitution and detailed provisions are made for making that legislature pass laws. Does it not imply that unless it can be gathered from other provisions of the constitution, other bodies-executive or judicial-are not intended to discharge legislative functions?" There are few provisions (articles) which reasonably provide the idea of separation of powers which are discussed below:
- Constitution vested the executive power in the President and Governor by Articles 53(1) and 154(1) respectively. Similarly, through provisions like Articles 123, 213

and 357, the Constitution intends that the powers of legislation shall be exercised by the legislature. Similarly, the judicial powers can be said to be vested with the judiciary.

- Article 50 lays down that the state shall take steps to separate the judiciary from the executive.
- Though Indian constitution has reasonable provisions of separation of powers, but there exists functional overlapping between the organs. E.g. The President being the head of the Union exercises his powers constitutionally on the aid and advice of the Council of Ministers. On the other hand, he is given exclusive legislative powers for the making and promulgation of ordinances even during the course of recess of Parliament.
- Besides the functional overlapping, the Indian system also lacks the separation of personnel amongst the three departments. An inevitable part of a Parliamentary system of government, this can be seen under Article 75(5) of the Constitution which states that a person in order to be a member of the Council of Ministers must necessarily be a member of either House of Parliament.
- Further, the Constitution of India expressly provides for a system of checks and balances in order to prevent the arbitrary or capricious use of power
- The above mentioned provisions clearly indicate that the Indian Constitution in its plan does not provide for a strict separation of powers. Instead, it creates a system consisting of the three organs of Government and confers upon them both exclusive and overlapping powers and functions combined with checks and balances.

Student Notes:

3. The government shutdown in USA showed the dangers of strict separation of powers in Presidential form of democracies. Explain how separation of powers between the legislature and executive is maintained in USA. How does India avoid such shutdown?

Approach:

- In short explain the government shutdown in the USA and the reasons behind it
- Then explain in detail the separation of powers among the three organs. Note that answer will be incomplete without the mention of doctrine of checks and balances
- Explain the harmony between legislative and executive in parliamentary form of democracy such as India due to which such shutdowns are avoided.

Answer:

Part 1

- Government in the USA underwent a partial shutdown in early October 2013, because the Congress (federal legislature of the USA) failed to pass the budget due to disagreements between Republican controlled House of Representatives and Senate which is controlled by Democrats. The republicans caused the delay as they didn't support the policy initiative of the executive namely Affordable Care Act (also known as Obama Care).

Part 2

- Under separation of powers, the executive (President) is completely separated from the legislature as:
  - President and his secretaries are not members of Congress
  - President and his secretaries are not answerable to Congress
  - President enjoys a full term which is not effected by majority/minority of his party in either house

Student Notes:

- At the same time, legislature is independent of executive because:
  - President doesn't prorogue, summon or address it
  - President doesn't have the power to dissolve it
  - The veto of President can be overridden by Congress
- It's notable however that the two organs are only separated, they are not severed. Each maintains checks and balances over the other. For instance Senate approves the appointments made by the President and ratifies the treaty signed by him. Similarly President needs to sign bill passed by the Congress before it can be enacted into a law and he enjoys veto powers over it.

Part 3

- India, being a parliamentary democracy doesn't follow strict separation of powers. The (political) executive is invariably part of legislature also. And hence there is harmony between the two.
- Also because the executive enjoys majority in the Lok Sabha; almost all policy and legislative initiatives of the executive are passed.
- If the executive fails to get its legislative initiative particularly budget passed by the Lok Sabha, it shows lack of confidence by the Lok Sabha in the council of ministers (CoM)and fresh CoM may come into power or fresh elections may be called for.
- That's why shutdowns like the one in USA don't occur in India as there is little possibility of faceoff between executive and legislature.

4. What are the major changes that have taken place in global governance structures, which have led to a dilution in the principle of separation of powers?

Approach:

- Question is focussed on changes that have taken place and is also for only 5 marks. So there is no need to discuss the background of separation of powers or how it is practised in different countries.
- The question clearly mentions the word global. So the discussion should not be restricted to India and a world-wide perspective should be taken.

Answer:

Some of the issues which have arisen in connection with the distribution of powers and their effect on the organization and administration of modern governments can be discussed as under:

- The development of modern governments has resulted in an increase in the executive powers and executive discretion in the administering of law has been enlarged. Consequently the powers of legislature and judiciary have been limited and restricted.
- The passing upon the budget was once regarded as the very essence of the power of legislative assemblies and the fundamental basis of representative government. But recent changes in governance structures in many countries have resulted in the turning over of this function to the executive and the placing of the responsibility for the making of the budget upon the ministry.
- The complexity of governmental operations and the many technical and intricate issues concerned have made it indispensable to secure for the operation of government a large number of specialists or professional officers. The advice and assistance of such experts can be secured to the best advantage when the processes of legislation and administration are combined.

Student Notes:

- Also the distrust and dissatisfaction with present legislative bodies is one of the noteworthy characteristics of modern political thinking. These problems have brought about a re-examination of the general organization and functions of government and hence a dilution of principle of separation of powers.

5. Judicial Activism has hurt the separation of power principle in India and is not healthy for Indian polity. With the help of few judgments given by the Supreme Court of India, critically analyse this statement.

Approach:

- Describe Separation of Power and Judicial activism in brief.
- Argue both in favour and against Judicial Activism
- Take few notable examples of Judicial Activism, and establish their necessity. DO NOT go against Supreme Court's judgments.

Answer:

- Separation of Powers (SoP) is a basic feature of the Indian Constitution. It aims at creating a system of checks and balances between the Executive, Judiciary and Legislature.
- According to SoP, the Judiciary cannot formulate policies, which are prerogative of the Executive and it cannot question the intent of the law made by the Legislature. The function of Judiciary is to ensure that the laws and executive actions do not violate the Constitution and follow principles of natural justice, due procedure established by law and the rule of law.
- Judicial Activism is the phenomena wherein the Judiciary, through its judgements, tries to shift the balance of power in its favour by entering the domain reserved for the other two organs of the State.

Arguments against Judicial Activism:

- Judicial Activism is wrong, when Judges evolve policies, because they are not accountable to people.
- It can hurt the Federal Structure, when Judges do not adhere to Constitutional Principles while adjudicating complex issues e.g. "if State has a reservation policy, can the Centre override it?" "What is the implication if Centres tries to override the State on a subject listed in State List?"

Arguments in favour of Judicial Activism:

- By inventing the instrument of PIL, under Article 32, the Judiciary sought to act not just as a guardian of the Constitution, but also as protector of marginalized to promote social justice.
- It becomes a constitutional duty when Executive fails to adhere to principles enshrined in the Constitution.

Judgments of the Supreme Court:

- In case of CBI's autonomy, the SC only stepped in where the executive had failed. It asked the Govt. to inform it about the steps it was going to take to enact a law for ensuring CBI's autonomy. The Right to Life under Article 21 is not merely right to physical existence, but to a life of some quality and dignity. An expectation of good governance & fair trial, which is only possible through a fair and impartial investigation, falls within the right to life. Also, when corruption undermines the Rule of Law, the Right to Equality under Article 14 is affected. And since Article 32

guarantees the right to move SC for enforcement of fundamental rights, Judicial Activism does not violate Constitutional Principles.

- **In *Vishaka*** (1997) case, SC was dealing with a Writ Petition for enforcement of fundamental rights of working women under Articles 14, 19(1)(g) (the right to practice one's profession etc) and Article 21. There was no national legislation, so SC laid down norms and guidelines, giving them binding force. It was only in 2013 that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act was enacted and for last 16 years, the only protection which working women have had is SC's directions.
- ***In Vineet Narain 1997*** SC gave directions with regard to CVC and CBI, which had significant impact against corruption. According to the SC, this had a direct bearing on Human Rights.
- **In *Prakash Singh* (2007),** the Court felt compelled to give seven directions with regard to Police Reforms, which were suggested by many commissions formed by the Government itself but no steps had been taken.

Student Notes:

6. The recent judgment of the Supreme Court on the National Tax Tribunal Act aims to restore the balance in separation of powers. However, the judgment would go against the idea of Tribunals under the constitution. Examine.

Approach:

The question says 'examine'. So look in detail and establish key facts and important issues surrounding the topic.

- Briefly introduce the constitutional provisions for Tribunals and the National Tax Tribunal Act.
- Elaborate the judgment of SC and the reasons behind.
- Then come to the impact of judgment and the need for Tribunals.
- Conclude with suggestions.

Answer:

- Article 323-B of the constitution empowers the state and central legislature to provide for tribunals to adjudicate disputes pertaining to certain matters, including those relating to tax, rent and foreign exchange.
- The National Tax Tribunal Act, 2005 envisaged setting up a National Tax Tribunal (NTT) to take up tax-related matters of high courts in order to expedite the decisions on tax disputes. The tribunal was to hear appeals against orders of the ITAT and CESTAT.
- The Supreme Court recently struck down the act, on the grounds that it encroached upon the power of the judiciary and the principle of separation of powers.
- The SC held the law as unconstitutional with respect to the qualification of the chairman and members, their terms of office, jurisdiction of the tribunal and the eligibility to appear before the tribunal. Company secretaries could not be appointed as tribunal members.
- The court said that the tribunal didn't have the salient characteristics of courts, which it sought to replace. It ruled that tribunals couldn't decide "questions of law", adding these could only be decided by constitutional courts.
- Some other issues related to the working of Tribunals are:
  - ✓ parliament's power to abrogate or divest the core judicial appellate functions of courts
  - ✓ administrative and financial control of the executive
  - ✓ the tribunals were exempted from review by high court

Student Notes:

- ✓ the executive, especially retired bureaucrats, has predominant positions in all tribunals and judicial members are not given a sufficient role
- However the SC's judgment in the present case will have repercussion on speedier disposal of appeals before high courts. An estimated Rs 4 lakh crore of tax revenue is locked up in litigation in various stages from commissioner appeal to courts.
- Tribunals in India are setup for administrative convenience. The need for Tribunals can be justified by:
  - ✓ Setting up of Tribunals helps in reducing the pendency of winding-up cases, shortening the winding-up process, and avoiding multiplicity and levels of litigation before courts.
  - ✓ The role of non-judicial members is justified on the basis that the tribunals needed experts in various fields in view of the technical and complex subjects that came up before these bodies.
- In the Minerva Mills case, the Supreme Court said "effective alternative institutional mechanisms or arrangements for judicial review" could be made by Parliament. Even in the present NTT case, the court has not invalidated the Article 323B of the constitution. It said though Parliament could create tribunals, these should have the trappings of a court.
- The tribunal should be a real substitute for a high court. The alternative arrangement has to be effective and efficient, as well as capable of upholding constitutional limitations. The Tribunals should be tasked with deciding factual issues. The matters related to question of law should be dealt exclusively by High courts and Supreme Courts.

7. In comparison with the American constitutional arrangement, where there is strict separation of executive and legislature, the Indian Constitution provides for a fused structure. Do you think this system has worked for India?

Approach:

The answer should contain the following parts –

- Explain briefly the arrangement in India vis-à-vis USA
- The reasons for going with this arrangement
- Explain what are the benefits of this system
- Way forward – How to make this system more efficient and effective

Answer:

- The American constitution envisages a strict separation of powers where the executive and the legislature have no overlap. The President in USA, appoints his own staff/council of ministers and does not have anything to do with the legislature unlike India and is not responsible to the legislature like India. But in Indian system, the executive comes from the party, which has the majority in the Lok Sabha. Therefore meaning that the Council of ministers draws members from the legislature thereby diluting the strict watertight compartments between the executive and the legislature.
- The reason why our founding fathers did not adopt a strict separation of legislature and executive is because it could cause unnecessary conflict between the two organs of the government, which our infant democracy could ill-afford.
- This system has served our country well since independence. Firstly, there is no scope for deadlocks between the executive and the legislature as can be the case with the American system. If the President belongs to a party, which doesn't holds majority in the Congress than there is a possibility of a deadlock if the President

Student Notes:

and the Congress don't agree on that issue. But in Indian system the executive comes from the party, which has the majority in Lok Sabha. Hence, for important bills like money bills there is no scope for deadlock.

- Secondly, a majority in the Lok Sabha doesn't give a free hand to the executive. The Rajya Sabha also functions as another check on the power of the executive. Hence, in our system there is cooperation between legislature and the executive as well as checks and balances on both the organs.
- Going forward, we must strengthen our parliamentary processes. Most bills must be passed through debates and discussion rather than the ruling party forcing them through the Parliament.
- The executive should be held accountable for its actions through various motions, question hour etc. The spirit of cooperation between the two organs must be recognized and embraced.

8. Independence of judiciary and separation of powers, both are part of the basic structure of the constitution. In this context, discuss the recent Supreme Court judgment on the constitutional validity of the National Judicial Appointments Commission.

Approach:

- Briefly explain doctrine of separation of power.
- List the constitutional provisions ensuring judicial independence. Point out the lack of checks and balances for judiciary.
- Discuss the case for judicial independence and maintaining separation of power as sacrosanct principles of constitution in context of NJAC judgement.
- Conclude by acknowledging the need for reforms even in the collegium system.

Answer:

The 'separation of powers' doctrine, aims at separating power among legislature, executive and judiciary such that tyranny by the government may be prevented entirely as equal power vests in three separate organs which act as a check and balance for each other.

The role of the judiciary is to protect the rule of law and ensure supremacy of law. Thus judiciary must be independent from other organs of the government and must be able to perform their functions without fear or favor. Thus both separation of power and independence of judiciary are part of the basic structure.

Recently, the Supreme court struck down the NJAC act on the grounds of it being ultra vires of the constitution.

The Judges struck down the NJAC for judicial appointments on the grounds:

- Judges held that the concept of judicial independence included judicial appointments, and that the primacy of the judiciary in the appointments process was an integral part of maintaining judicial independence.
- By allowing for a situation in which the opinion of the judiciary could be vetoed by a combination of the law minister and the eminent members, this primacy was destroyed.

However, the annulment of NJAC raises various issues. For example:

- Many committees and parliamentary proceedings pointed towards irregular and malafide process of judicial appointments in hitherto collegium system on the

grounds of it being unaccountable, opaque, and problems of favouritism and nepotism
- It can be argued that to legislate is the function of the legislature and judiciary itself is infringing the doctrine of separation of power by annulling the legislation.
- In countries such as Britain, there is an independent body that appoint judges, while in the USA, federal judges are appointed by the president with the advice and consent of the senate.

In this context, the Supreme Court should undertake reforms in the collegium system and also involve executive in the selection committee in way that it remains independent from political interference at the same time being accountable to the democratic traditions. Most importantly the process of selection itself should be transparent which is not in collegium and NJAC also didn't try to solve this issue.

9. Separation of powers in case of India has acquired its own uniqueness under the constitutional arrangement. Explain.

Approach:

- Briefly explain the concept of separation of powers.
- Mention the Constitutional provisions that reflect separation of powers.
- Explain if complete separation is practiced in the Indian context.
- State judicial pronouncements regarding separation of powers.

Answer:

Generally, there are two commonly followed models of separation of powers between organs of state. One follows Montesquieu's dictum providing for rigid separation of powers. Other is Westminster model providing for looser separation and is based on the principle of the supremacy of Parliament.

Indian constitution, however, has provided for a unique separation of power. Thus, it provides for a third model of separation of power.

In India, separation of powers has been laid in the Constitution under the following provisions:

- Article 50, which states that the state shall take steps to separate judiciary from the executive, to ensure independence of the judiciary.
- As per Articles 122 and 212, validity of proceedings of the Parliament and State Legislatures respectively cannot be called into question in any court, thus, ensuring immunity of the members from judicial intervention.
- According to Articles 121 and 211, judicial conduct of the judges of the Supreme Court and High Courts respectively cannot be discussed in the Parliament and State Legislatures.
- As per Article 361, the President or Governors are not answerable to any court for the exercise and performance of their official duties.

Here, the constitution recognizes three organs of state but it does not expressly vest the different kinds of power in different organs. There is functional overlap in India which is reflected through the following:

- Under the Indian Parliamentary system, members of political Executive are part of the Legislature too.
- The Legislature exercises judicial powers in case of breach of its privilege, impeachment of the President and removal of judges.

Student Notes:

- The Executive exercises Legislature's law-making power under delegated legislation and also while passing ordinances.
- Tribunals and other quasi-judicial bodies that are a part of the Executive discharge judicial functions and mostly have a member of the judiciary.
- The power of deciding the number of judges as well as appointing them is given to the president.
- Under the power of judicial review, judiciary can give directions to executive in constitutional and statutory measures

Thus, a system of checks and balances is also prevalent to prevent arbitrary use of power by one organ. Further, the Supreme Court has reiterated the importance of separation of powers in several judicial pronouncements. In the Kesavananda Bharati case (1973), it stated that the doctrine of separation of powers is an integral part of the basic features of our Constitution. The Supreme Court also rejected the National Judicial Appointments Commission Bill(2014) terming it unconstitutional and deemed it a threat to the independence of judiciary.

Thus, in India, system of separation of powers has acquired its own uniqueness with sufficient checks and balances to ensure that no organ of the government exercises arbitrary power.

10. The Constitution of India mentions the Doctrine of Separation of Powers only in passing, yet it holds a unique status in the structural framework of the Indian polity. Discuss.

Approach:

- Briefly explain the concept of separation of powers.
- Mention the Constitutional provisions that reflect separation of powers.
- Discuss how it holds a unique status in the structural framework of Indian polity.

Answer:

Doctrine of separation of powers implies that legislative, executive, and judicial powers of government are vested in separate bodies. It ensures a system of checks and balances as different organs of the state keep a check on each other and if anyone gets too strong, it is balanced by others.

Indian constitution unlike that of USA does not provide for a strict separation of powers but a passing mention through following provisions:

- Article 50, which states that state shall take steps to separate judiciary from executive, to ensure independence of the judiciary.
- According to Articles 121 and 211, judicial conduct of judges of Supreme Court (SC) and High Courts (HCs) cannot be discussed in legislature except during their impeachment.
- As per Articles 122 and 212, validity of proceedings of Parliament and State Legislatures respectively cannot be called into question in any court, thus, ensuring immunity of the members from judicial intervention.
- As per Article 361, the President or Governors are not answerable to any court for the exercise and performance of their official duties.

Hence, constitution recognizes three organs of state but it does not expressly vest different kinds of power in different organs. There is a functional overlap reflected through following provisions:

- Members of political Executive are part of Legislature too.
- Legislature exercises judicial powers in case of breach of its privilege, impeachment of President and removal of judges.

Student Notes:

- Executive exercises Legislature's law-making power under delegated legislation and while passing ordinances.
- Tribunals and other quasi-judicial bodies that are a part of Executive discharge judicial functions and mostly have a member of judiciary.
- Power of deciding the number of judges in SC and HCs is with Parliament and President respectively. Judges are appointed by executive.
- Under the power of judicial review, judiciary can give directions to executive in constitutional and statutory measures

Further, SC has reiterated the importance of doctrine in several judicial pronouncements. In the Kesavananda Bharati case (1973), it stated it as the basic feature of our Constitution. It also rejected National Judicial Appointments Commission Bill (2014) terming it unconstitutional and deemed it a threat to independence of judiciary.

While most features of constitution are explicitly expressed, doctrine of separation of powers is subtle though highlighted as an integral part of constitution through judicial pronouncements. Also, the doctrine stands diluted through functional overlap. But, at the same time it has provided a system of check and balance between three branches. Thus, its existence with contradictions yet succeeding in its purpose lends this doctrine a unique status in the structural framework of Indian polity.

11. Explain why the doctrine of separation of powers is considered as an indispensable part of a democratic setup. Also, discussing this doctrine in the context of India, explain the principle of 'checks and balances'.

Approach:

- Briefly discuss the concept and rationale of doctrine of separation of powers.
- Explain how India does not follow a strict separation of power.
- Highlight some instances which depict the principle of checks and balances.

Answer:

The principle of separation of powers deals with the mutual relations among the three organs of the government, namely legislature, executive and judiciary. It implies that each organ should be independent of the other and that no organ should perform functions that belong to the other. Thus, legislature cannot exercise executive or judicial power; the executive cannot exercise legislative or judicial roles and the judiciary cannot exercise legislative or executive power of the government.

According to **Montesquieu**, the main objective of the doctrine of separation of power is that 'there should be government of law rather than having will and whims of the official'. It is based on the premise that concentration of power in one person or a group of persons generally results in tyranny and arbitrariness in decision making. Thus, it is considered as an indispensable part of a democratic polity.

In India, however, strict separation of powers is not followed. For instance:

- The executive (President) has the power to appoint Prime Minister, Council of Ministers judges etc. Further, he also exercises legislative powers by giving his assent to a bill.
- The judiciary also can hold any law as invalid if the law ultra-vires the Constitutional provisions. Moreover, judiciary sometimes ventures into the domain of law-making and implementation. For e.g.: Banning diesel vehicles older than 10 years plying in Delhi-NCR region, banning the sale of liquor at retail outlets along highways etc.

Student Notes:

- The executive forms a part of legislature in the parliamentary system. It can exercise the power of subordinate legislation when delegated to it by legislature. It also performs judicial functions in the proceedings of tribunals.

Although, there are amorphous boundaries between the three organs of state, there is a significant differentiation which exists in the discharge of their functions. But still it cannot be said that the doctrine of separation of power does not exist. It exists in the form of the principle of checks and balances such as:

- Executive is accountable to the lower house. For e.g. executive needs the approval of legislature for the budget to be passed and payments to be authorized out of the consolidated fund by the legislature.
- Judiciary acts as the interpreter of the Constitution and custodian of the rights of people. It can hold the executive and legislature accountable through judicial review.
- Even judiciary is not supreme as Parliament can hold the judges accountable through the process of impeachment for such behaviour unworthy of their position.

The principle of 'checks and balances' got more prominent after Minerva Mills case where judiciary held that judicial review is a basic feature of the Constitution. Overall, it ensures that no organ of the state becomes too powerful which cannot be contained by other organs in the constitutional framework.

12. Explain the significance of the concept of 'separation of powers' in a democracy. What can be the reasons for India not following the doctrine in the strict sense?

Approach:

- Briefly explain the doctrine of separation of powers.
- Explain how it has not been adopted in strict sense in India
- Discuss some of the important judgments of SC in context with separation of power.

Answer:

The doctrine of separation of powers is traceable to Aristotle, but the writings of Locke and Montesquieu gave it a base on which the modern attempt to distinguish between legislative, executive and judicial power is grounded.

According to this doctrine there should be a clear-cut division of power between the three organs of the state i.e. Executive, Legislative and the Judiciary in such a manner that:

- The same person should not form part of more than one of the three organs of the government. For e.g., ministers should not be a part of the Parliament.
- One organ of the government should not interfere with any other organ of the government. For e.g. the Judiciary should be independent of the Executive.
- One organ of the government should not exercise the functions assigned to any other organ. For e.g. the Ministers should not be assigned any legislative powers.

Its significance in a democracy:

- It ensures that power is not concentrated in a single person's hand or a group of people.
- It ensures government of law rather than wills and whims of the officials.
- It ensures an independent judiciary and hence a fair government and proper justice to the people.

Student Notes:

- It ensures checks and balances in the system.

In India, separation of powers has been considered as one of the basic features of Indian Constitution. Article 50 also puts an obligation over the state to separate judiciary from executive. However, functional and personnel overlap can be observed, such as:

- Executive is part of the Legislature and are responsible to its lower house.
- Judiciary can declare a legislation and an executive action as void or unconstitutional.
- Executive has a role to play in appointment of judges.
- Legislature may also perform judicial functions, for example if the President is to be impeached both houses of Parliament are to take an active participatory role.

This shows that instead of adopting a rigid separation of power like that in USA, India opted for a unique separation of power with sufficient checks and balances. The reason behind this are:

- Indian Constitution is pro-responsibility rather than having stability at the centre. A non-parliamentary executive tends to be less responsible to the legislature. Thus, current scheme ensures a more responsible government.
- Functions of various organs of the government have been meticulously differentiated in the constitution and no organs can usurp the power of the other.

The doctrine of separation of powers in its true sense is very rigid and therefore, Indian constitution makers have made it more fluid by ensuring sufficient number of checks and balances on the powers of various organs of the government.

13. There is no strict separation of powers under the Indian Constitution, with the executive, legislature and judiciary empowered to carry out functions which may be considered within the purview of the other. Discuss.

Approach:

- Briefly explain the concept of separation of powers and its Constitutional provisions.
- Discuss whether there is strict separation of powers in India with regard to the three organs of the government and state their functional overlaps.
- Conclude on the basis of the above points.

Answer:

Separation of powers is the foundational basis of a democratic, limited state. It is the principle that all sovereign powers of the state should not reside in one individual or institution in order to prevent abuse of exercise of those powers. Investing all powers in one institution will lead to violation of natural justice as, for example, the executive cannot be made to judge whether its actions are violative of a law that it itself created.

In India, the **separation of powers** has been laid down in the Constitution under the following provisions:

- Article 50 states that the state shall take steps to separate Judiciary from the Executive, to ensure the independence of the Judiciary.
- As per Articles 122 and 212, validity of proceedings of the Parliament and State Legislatures cannot be called into question in any court.
- According to Articles 121 and 211, judicial conduct of the judges of the Supreme Court and High Courts cannot be discussed in the Parliament and State Legislatures respectively.

Student Notes:

- As per Article 361, the President or Governors are not answerable to any court for the exercise and performance of their official duties.

However, strict separation of powers does not exist in India. The three organs of the state carry out various functions, which would generally be considered within the purview of the other due to functional overlap. However, this also institutes a **system of checks and balances** to prevent arbitrary use of power by one organ. This is reflected through the following:

- Under the Indian Parliamentary system, members of the political executive are also a part of the Legislature as well as responsible to it.
- The Judiciary exercises legislative power as there are number of judge made laws and rules. For e.g. Vishakha guidelines.
- The Legislature exercises judicial powers in case of breaches of its privilege, impeachment of the President and removal of the judges.
- The Executive exercises Legislature's law-making power under delegated legislation and also while passing ordinances under Articles 123 and 213 of the Constitution.
- Tribunals and other quasi-judicial bodies that are a part of the Executive discharge judicial functions and mostly have a member of the Judiciary. Further, the Supreme Court under Article 136 of the Constitution, can grant special leave to appeal against any judgement or order passed by any court or tribunal in India.
- Judiciary exercises some executive powers in form of court monitored probes or in the form of writ of continuing mandamus.
- The power of deciding the number of judges as well as appointing them is given to the President.
- The Judiciary uses the tool of judicial review under Articles 13, 32, 226 etc. of the Constitution to ensure that the laws made by the Parliament and actions taken by the Executive are constitutional.

Also, in India, the Supreme Court (SC) has discussed separation of powers in several judicial pronouncements. In the Kesavananda Bharati case (1973), it stated that the doctrine of separation of powers is an integral part of the basic feature of the Constitution. In Indira Gandhi v. Raj Narain (1975), the SC observed that separation of powers was limited in India. Further, the SC rejected the National Judicial Appointments Commission Bill, 2014, as it threatened the independence of the Judiciary.

Thus, in India, separation of powers has acquired its own uniqueness with sufficient checks and balances to ensure that no organ of the state exercises arbitrary power.

Student Notes:

DISPUTE REDRESSAL MECHANISMS AND INSTITUTIONS

Contents

Student Notes:

1. Introduction

Dispute redressal Mechanisms and institutions are indispensable for making social life peaceful. They try to resolve and check conflicts, which enables persons and group to maintain co-operation. It can thus be alleged that it is the Sine qua non of social life and security of the social order, without which it may be difficult for the individuals to carry on the life together. Effective dispute redressal also helps in sustainable functioning of the different institutions in polity and provide people a venue for redressing their politico-economic grievances as well.

There are two ways to resolve the dispute which may arise in day to day life of the modern society. Either to approach Court of Law (Refer: document of Judiciary; document of Quasi-Judicial Bodies for Administrative Tribunals) or to resort to Alternative dispute resolution (ADR) mechanism which consists of variety of approaches.

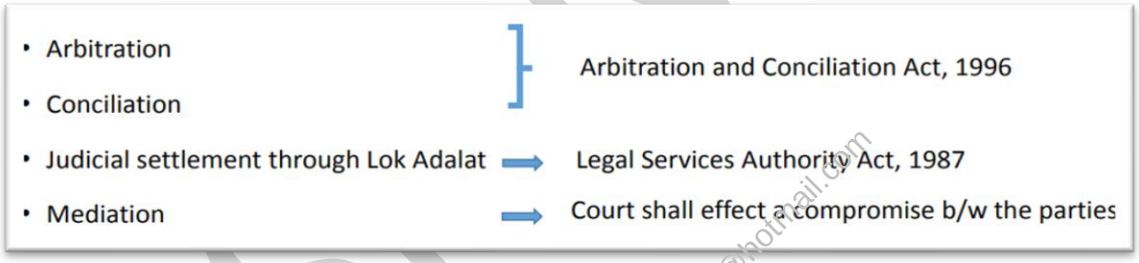
2. Alternative Dispute Redressal Mechanisms

ADR mechanism of settling any dispute includes Arbitration, Conciliation, Mediation, settlement through Lok Adalat and with the intervention of Family Court, Judicial Settlement, Plea Bargaining, and Collective Bargaining etc.

Under constitution, ADR can find its basis in the

- **Article 14 (Equality before Law)**
- **Article 21 (Right to life and personal liberty)**
- **Article 32 (Right to Constitutional remedies) which provides for the right of people to seek justice.**
- **Article 39A of DPSP which provides for Equal Justice and Free legal Aid.**

Further, Section 89 of the Civil Procedure Code provides for Settlement of disputes outside the court through the following methods:



The ADR processes conform only to civil disputes, as explicitly provided by law. ADR process may be binding or non-binding, voluntary or mandatory depending upon various circumstances and contractual relation between the parties. In India this mechanism is not new but what is new is its proliferation in the modern days.

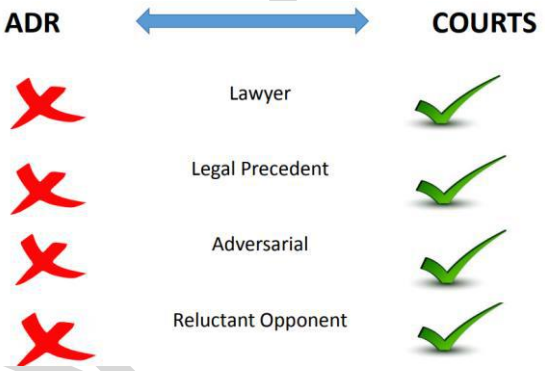
In general, the entire globe of ADR can be divided under two major sub-heads: arbitration and mediation. **Arbitration** is consent based adjudication processes outside the traditional judicial system of the court by an independent person or institution, whereas **mediation** is a process of settlement between the parties with the help of independent person/intuition. In ADR active roles are envisaged to be played by the parties to dispute, lawyers representing them, the court/forum before which dispute is brought or pending and the person/ intuitions facilitating the settlement of dispute.

2.1. Rationale for alternative dispute resolution

- **Speedy and expeditious resolution of disputes**: One of the main aims of arbitration, mediation and conciliation is the speedy resolution of disputes with an emphasis on conciliatory moves. Given the huge backlog and pendency in our courts at present, quick settlement is the need of the hour and also serves wider interests of the society.
- **Cost effective**: Apart from being time consuming, traditional judicial process is expensive and has been known to have consumed people's savings. While litigation is unavoidable in a

number of circumstances, wherever possible there should be an attempt at settlement of the dispute. The greatest drawback of litigation is that one would have to keep paying huge sums of money to lawyers to keep fighting the case, which in case of most people is not viable.

- **Reduces the burden on public finances in a country where resources are already strained**: As observed above, there is huge pendency and backlog in our courts. There is huge public expenditure to keep the clock ticking. Given the fact that we have limited public resources in this country, a slightly concerted effort at reducing the backlog in the courts by opting to settle disputes through mediation and conciliation, might pave the way towards a certain proportion of resources being put to better use.
- **Amiable settlement for people involved**: A legal dispute involves acrimony and bad feelings which does take a toll on people, emotionally, physically and mentally. Mediation and conciliation and even arbitration to a degree aims at reducing such acrimony and aims to help parties to sit down and deal with their disputes, identify issues and try to work out an amicable settlement with benefits to either side.
- **Confidentiality**: Another important aspect of the three main alternative dispute resolution procedures is confidentiality, unlike court proceedings. Matters of business or family interest, which is meant to be discussed in a discretionary manner, can be kept private helping in conserving delicate human relationships.



- **Harmonious resolution of disputes and interest to society at large**: There is a certain greater interest to be considered in the facilitation of the harmonious resolution of disputes by ADR mechanisms. With increased economic activity and the changing of the social fabric as well as the attitudes and perceptions of people, the numbers of disputes are bound to increase. Given the contemporary drawbacks of the litigation systems in India, mechanisms which seek to resolve differences in an amicable way and with a balanced solution are beneficial to the socio economic structure in the long run, even if one does not realize the immediate benefits.

Thus, ADR seems to be advantageous over conventional judicial system in terms of being less formal, flexible, cost-effective and expeditious as well as in giving more autonomy to parties involved.

2.2. Various Types of ADR mechanisms

2.2.1. Mediation

Mediation involves an unbiased and impartial third party mediator. The mediator tries to help the parties to reach a mutually agreeable settlement to the conflict.

- The agreement will not be imposed by the mediator, but will be determined by the disputing parties themselves.
- The mediator may assist the parties to prioritize their objectives and thus help them reach a win- win situation
- The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication
- Cases are conducive for mediation if there exist communication problem or emotional barriers between parties, resolution is more important than vindicating legal principles and parties have incentive to save time, cost, drain on productivity due to litigation.

Advantages of Mediation	Disadvantages of Mediation
• Active participation of parties. • Prompt resolution of disputes • Cost effective method • Helps maintain and conserve human relationships. • Smaller but important issues can be settled through mediation, even though there is pending litigation. • Bargaining of parties is based on their needs and the formulation of a solution is easier • Informal procedure and therefore flexible • Private and confidential	• If one of the parties is aggressive, the settlement of conflict becomes difficult. • Cultural differences and communication gaps may make settlement of the dispute difficult. • Since the decision of the mediator is not binding, the parties can yet resort to litigation.

The Commercial Courts Amendment Act of 2018 has provided great impetus to mediation. It entails that where a suit does not contemplate urgent interim relief, the plaintiff has to undergo pre-institution mediation. The Commercial Courts Amendment Act 2018 introduces the "Commercial Courts (Pre-institution Mediation and Settlement) Rules, 2018". These rules lay down the procedure for mediation which must be followed. The rules, read with the Act state that:

- The Central Government may authorize the Authorities constituted under the Legal Services Authorities Act, 1987. This authority would regulate the mediation process by initiating the proceedings once an application is received by a party.
- It also assigns the dispute to a mediator and decides the venue of proceedings.
- The mediation process must be completed within a period of three months from the date of receipt of application for pre-institution mediation. This period can be extended for two months with the consent of the parties.
- Further, the rules provide that the parties are obligated to act in good faith and they, along with the mediator are obligated to maintain confidentiality of proceedings.
- It also lays down the ethics to be followed by the mediator.
- It further entails that the settlement arrived at by such mediation shall have the status and effect of an arbitral award under Arbitration and Conciliation Act, 1996.

2.2.2. Arbitration

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

Advantages of Arbitration	Disadvantages of Arbitration
• Fast, flexible and confidential • Choice of arbitrator with expertise • Limited rights of review and appeal of arbitration awards	• Parties waive rights to access courts if arbitration in contracts is mandatory • Pressure from powerful parties may lead to biased procedures owing to their influence • High fees charged by arbitrators • Limited avenues of appeal to overturn erroneous decision

Arbitration and Conciliation Act, 2019

Recently the government has passed **Arbitration and Conciliation (Amendment) Act, 2019** which amends the Arbitration and Conciliation Act, 1996. The 2019 Act aims to make India a hub of institutional arbitration for both domestic and international arbitration.

Features of Arbitration and Conciliation (Amendment) Act, 2019

- It seeks to establish an independent body called the **Arbitration Council of India (ACI)** which would exercise powers such as grading arbitral institutions, recognising professional institutes that provide accreditation to arbitrators, issuing recommendations and guidelines for arbitral institutions, and taking steps to make India a centre of domestic and international arbitrations.

- **Appointment of arbitrators** will now be done by the Supreme Court and High Court designated arbitral institutions, which was earlier used to be done by parties themselves.
- It has removed **time restriction for international commercial arbitrations** and incase the arbitration award goes for an appeal to the tribunal, it shall dispose the appeal within 12 months.
- It introduces **express provisions on confidentiality** of arbitration proceedings and **immunity of arbitrators**.
- It **prescribes minimum qualifications** for a person to be accredited/act as an arbitrator
- The statement of claim and defence to be completed **within six months** from the date the arbitrator receives the notice of appointment.
- The Court while extending the period may also order **reduction of fees of arbitrator**(s) not exceeding five percent for each month of **delay** and it also provides for additional fees if arbitration procedure is completed within six months if both parties agree.

Past developments

- The **Arbitration and Conciliation Act, 1996** was enacted to consolidate and amend the law relating to domestic arbitration, international commercial arbitration and enforcement of foreign arbitral awards, and to define the law relating to conciliation and for matters connected therewith or incidental thereto.
- The Arbitration and Conciliation Act, 1996, was amended by the **Arbitration and Conciliation (Amendment) Act, 2015** in order to make arbitration process user friendly, cost effective and ensure speedy disposal and neutrality of arbitrators. It envisages various ways to encourage foreign investment by projecting India as an investor friendly country having a sound legal framework and ease of doing business in India.
- However, to give a boost to institutional arbitration vis-a-vis ad hoc arbitration and to remove some practical difficulties in applicability of the Arbitration and Conciliation (Amendment) Act, 2015, a **High Level Committee (HLC) under the Chairmanship of Justice B.N. Srikrishna**, was constituted by the Government.
- The recent amendment Act is as per the recommendations of the High Level Committee.

Benefits of the Arbitration Act

- **Putting India on the world map in arbitration proceedings** - It aims to make India an international arbitration hub by providing facilities for settlement of commercial disputes. It aims to make the arbitration of excellent quality, bestowing responsibility on the ACI to hold trainings, workshops, courses, frame policies, guidelines and update norms to ensure satisfactory level of arbitrations, arbitral institutions and the arbitrators.
- **Protect foreign reserves:** It would encourage investors in India to resolve their disputes in India instead of the currently preferred arbitration centers in London, Singapore and Hong Kong. This would protect India's foreign exchange reserves as Indian companies lose significant amount of foreign Exchange on arbitration that usually happen in these foreign countries.
- **To reduce burden on courts**- Presently, in case of any dispute with respect to appointment of Arbitrators, parties have to approach the Supreme Court or the High Court for appointment of Arbitrators or to resolve their dispute. With the huge backlog of cases, the courts are already overburdened. An effective ACI will share this burden of the court and even facilitate speedy appointment of arbitrators. This would further aid quick resolution of disputes outside the court.
- **To provide exhaustive list to choose an arbitrator-** The parties to an arbitration agreement can choose their own arbitrator, this choice is sacrosanct to arbitration process. The essence of choosing an arbitrator of choice is not circumscribed by the nine broad qualification criteria as provided in the provisions of the earlier bill. The list is broadly phrased and includes the choice of arbitrators from advocates, chartered accountant, cost accountant, company secretary, person with technical knowledge and experience etc.

Student Notes:

- **To speed up arbitration process**- It provides for statement of claim and defence to be completed within six months from the date the arbitrator receives the notice of appointment. This will fasten the entire process of arbitration. Earlier, parties would take a lot of time to submit their pleas. Now the time can be efficiently used for arbitration proceedings.
- **Ensures accountability of arbitrators**- The reduction of fees of arbitration on delay would act as incentive for the arbiters to dispose the case on time as much as possible.

Issues with the act

- The majority of the ACI is comprised of members of bureaucracy which mirrors similar problems like red-tape, inordinate delays, rule-based mindset rather than output orientation etc. in the arbitration process. This goes against the very nature of arbitration and the objectives sought to be achieved by the 2019 amendment.
- The next concern with the 2019 Amendment is **the grading and accreditation of Arbitral Institutions** (AI) by the ACI. India currently has over 35 Arbitral Institutions with varying quality and the ACI is responsible for grading based on infrastructure, quality of arbitrators, performance, compliance with time limits, and resolution rate. While this was done with the intent of creating a more efficient system of arbitration, the Amendment fails to provide a precise scale of grading and an exhaustive list of factors to be considered in the process of accreditation and grading. Without a system for grading, this provision creates an undesirable atmosphere for parties considering arbitration in India as they will not be able to make an informed decision.
- Another provision that has invited criticism is the **exclusion of international commercial arbitration from the 12-month limit** for the resolution of the dispute and pronouncement of the award. It seems like a huge mistake for an Act with the objective of making India more appealing for international commercial arbitration as this doesn't emphasize speedy resolution which is the main attraction of arbitration.
- As per the principle of **party autonomy** in the process of arbitration, parties have the freedom to choose their arbitrators but the 2019 Amendment introduces a provision disqualifying Foreign lawyers, Foreign Charted Accountants and Foreign Cost Accounts from the category of persons who are eligible to be appointed as Arbitrators for arbitrations seated in India. This is another move by the Government which will hinder the perception of India as a suitable place for international arbitration as it restricts party autonomy and creates a huge problem for international arbitrations seated in India.

2.2.3. Conciliation

This is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator.

- Conciliators resolve disputes by providing technical assistance, improving communication between parties and proposing possible solutions taking into account parties' position and interests.
- Conciliator is not bound by rules of procedure and evidence and any views expressed, admissions or proposals made in conciliatory proceedings cannot be produce as an evidence in arbitral proceedings. Further, conciliator cannot be produced as witness in judicial proceedings.

The process of conciliation has been given **statutory recognition** by Arbitration and Conciliation Act, 1996.

2.2.4. Negotiation

Negotiation is self counseling between the parties to resolve their dispute. Negotiation is a process that has no fixed rules but follows a predictable pattern. It is the simplest means for redressal of disputes. In this mode the parties begin their talk without interference of any third person. The aim of negotiation is the settlement of disputes by exchange of views and issues concerning the parties. If there is understanding and element of patience between the parties this mode of redressal of dispute is the simplest and most economical. However, in India, Negotiation doesn't have any statutory recognition i.e through way of legislation.

2.3. Shortcomings of ADR Mechanisms

- **Wastage of Time/ Money if the Case is Not Resolved:** The cases referred for a settlement through ADR go unresolved, the parties to the unresolved cases have no choice but to approach court of law for adjudication of the disputes on merits leading to wasting time and money spent in ADR mechanism. For example – Ayodhaya mediation had always failed to reach a solution.
- **The Possibility of Bias:** The possibility of bias, though negligible, or a conflict of interest or at least the appearance of impropriety, may arise if even a neutral person in ADR gets a good deal of repeat business from the same institution.
- **Compromising Confidentiality:** Confidentiality is one of the most talked after phenomenon of the ADR mechanism. However, in practice, it might prove to be a double edged weapon, as it may lead to certain difficulties and obstructions.
    - It may be difficult for the parties to use the award or any other part of the arbitration in later proceedings.
    - In many a cases, it is necessary to disclose the time/ date and place of the said arbitration proceedings to the third parties and or concerned officers and thereby compromising the confidentiality of the system.
- **Limited Judicial Review** Another everlasting problem faced by parties taking recourse to the ADR system is the power of limited or negligible Judicial Review. An arbitral award is final and binding on the parties and excluded from appeal to the courts in connection with it. The court review of arbitral awards is quite limited. All the Statutes dealing with ADR mechanism states that the settlement reached through ADR mechanism is final and binding and can be enforced by a court as decree.
- **Informal, more Opportunity of Abuse of Power:** The statutes governing the ADR mechanisms do not cast a duty upon the arbitrator, mediator or conciliator to follow any written procedural system to bring the parties at dispute to a settlement. They are free to follow their own procedure which may sometime leads to, though very uncommon, abuse of power.
- **Lack of Power to Establish Legal Precedents:** The remedies established, or afforded to the parties in dispute, in ADR, cannot be binding on future cases, i.e. the remedy of one case cannot be taken as the guiding stone for another and cannot be taken as a legal precedent.
- **Unfamiliarity with the Procedure and Lack of Awareness:** Last but not the least, one of the most glaring difficulties faced by the alternative methods of dispute resolution is that most of the people are unfamiliar with the processes since this is a fairly novel concept. It is the lack of knowledge and awareness with respect to the various methods for dispute resolution that more often than not discourage parties from considering this option seriously.

Thus, certain steps can be taken in this regard:

- People especially the weaker-poor sections need to be made aware of availability of such mechanisms.
- Mediation should be popularized as a profession and reforms should be undertaken to establish ethical standards, quality control and accountability of mediator.

- Expanding the role of ADRs in pre-litigation stages as at present, most of them come into picture once the parties enter into litigation.

Student Notes:

2.4. Some informal Dispute Redressal Mechanisms

Finally, there has been a push over many decades to create a more informal justice system through Lok Adalats and alternative dispute resolution, as well as more local justice through Gram Nyayalayas. These alternative dispute forums loosen procedural standards in order to hasten the hearing of more minor matters, and draw on historical ideals of village justice, even if the actual forums have become relatively formalised by the State. Some critics contend that poorer litigants' rights are more vulnerable in these forums, which lack as many procedural safeguards and the rigour of the regular courts

2.4.1. Lok Adalats

Refer to the document on "Quasi- Judicial Bodies" for details of Lok Adalat.

2.4.2. Nyaya Panchayats

Nyaya Panchayats are the judicial components of the panchayat system, which forms the lowest rung of our judiciary. They are created for the administration of justice at the local or rural level. The rationale behind setting up the Nyaya Panchayat was - Democratic decentralization; Easy, speedy and Inexpensive access to justice; Revival of traditional village community life; Combination of judicial system and local self government; and Reduction in pressure on Civil Courts.

- Nyaya Panchayats constitutes a **Sarpanch as its head**. Each member of Nyaya panchayat must be literate and must be of minimum 30 years of age. The appointment is based on nomination and election.
- It has judicial functions both in **civil as well as in criminal fields**. It can deal with several minor offences) like simple hurt, wrongful restraint, theft etc., and punish an accused to pay fine. In civil matters nyaya panchayat have jurisdiction in cases like suits for money and goods etc. The pecuniary limit of such cases is very low.
- The procedure laid down for trial of cases has been so designed as to avoid delays and technical difficulties. Therefore procedure followed in nyaya panchayats is very **simple and informal**.
    - The procedure codes like Code of Civil Procedure, Criminal Procedure Code and Indian Evidence Act apply to the nyaya panchyats. But, they have power to call witnesses and the parties for recording their evidence or producing any relevant document or fact.
    - Unlike courts, they have the power to investigate the facts to find out the truth and at the same time they have the power to punish for its contempt. Lawyers cannot appear before a nyaya panchyat in any of its proceedings.

Advantages of nyaya panchayats over the regular courts

- They provide an inexpensive and expeditious mechanism to settle disputes.
- They provide relief to the ordinary courts as they lift the part of burden of judicial work on their shoulders. In a way, they are emerged on solution to the problem of mounting arrears of cases before the courts.
- They provide justice at the door steps for the village folks.
- They provide protection to the local customs and traditions. Since they are guided by local traditions, culture and behavioural patterns of the village community, they instill confidence in the administration of justice.
- Panchayat System has a great educative value for the villagers.

Student Notes:

Disadvantages of nyaya panchayats

- They are faction ridden institutions manned by laymen. Justice provided by them is based on caste, community, personal or political considerations. Therefore, chances of injustice cannot be ignored.
- It has been seen that panchas are often corrupt, partial and behave improperly or rudely.
- They are laymen, therefore ignorant of law and they often give arbitrary and irrational decisions.
- One cannot ignore that casteism and groupings are major features of rural India and therefore the influence of these shades on the justice cannot be overlooked.

2.4.3. Gram Nyayalayas

The Gram Nyayalaya Act, 2008 aims to improve access to justice in rural India. Gram Nyayalaya is established for every Panchayat or a group of contiguous Panchayats at intermediate level in a district.

- The Gram Nyayalayas are **presided over by a Nyayadhikari,** who will have the same power, enjoy same salary and benefits of a Judicial Magistrate of First Class. Such Nyayadhikari are to be appointed by the State Government in consultation with the respective High Court.
- A Gram Nyayalaya have **jurisdiction over an area specified by a notification by the State Government** in consultation with the respective High Court.
- The Court can function as a **mobile court** at any place within the jurisdiction of such Gram Nyayalaya, after giving wide publicity to that regards.
- They have **both civil and criminal jurisdiction** over the offences.
- The pecuniary jurisdiction of the Nyayalayas are fixed by the respective High Courts.
- Gram Nyayalayas has been given power to accept certain evidences which would otherwise not be acceptable under Indian Evidence Act.
- Appeal in criminal cases shall lie to the Court of Session, which shall be heard and disposed of within a period of six months from the date of filing of such appeal.
- Appeal in civil cases shall lie to the District Court, which shall be heard and disposed of within a period of six months from the date of filing of the appeal.

Gram Nyayalaya has all the mandates for providing inexpensive and speedy justice in rural areas:

- It makes the **judicial process participatory and decentralised** because it allows appointment of local social activists and lawyers as mediators/reconciliators.
- It has provided a **statutory alternative** to the informal/traditional panchayat system (for instance- khap system in North India) plagued with casteism etc.
- It ensures that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities (Article 39A).
- It goes a step further in seeking to **improve physical access of people to courts** by providing for mobile courts by the Nyayadhikari where trials and proceedings can take place even outside traditional headquarters.
- It mandates that the gram nyayalaya should decide cases **within a period of six months from the date of its institution**.
- It directs to conduct proceedings of gram nyayalayas in the official language of the state making it more accessible.

However, actual implementation of the Act has been subpar. Presently only 11 states have taken steps to notify Gram Nyayalayas .Only 208 Gram Nyayalayas are functioning in the country. In some of the States, they are not functioning despite being notified. Very few States have shown eagerness to establish the Gram Nyayalayas and not a single Gram Nyayalaya has become operational in North- Eastern States. Further, they are also grappling with various issues:

Student Notes:

- **Overlapping jurisdiction**: Majority of states have set up regular courts at the taluk level instead of setting up Gram Nyayalayas as per the 2008 Act. Further, there is ambiguity regarding the specific jurisdiction of Gram Nyayalayas, due to the existence of alternative forums such as family courts etc.
- **Shortage of human resources**: The progress is affected by non-availability of judicial officers to function as Gram Nyayadhikaris, notaries, stamp vendors etc. Further, other infrastructure is also grossly inadequate.
- **Funds**: The slow pace of utilisation of funds under the Scheme is mainly due to the lack of proposals from the States for setting up of Gram Nyayalayas. While some states were facing problems like inadequate amount of funds allocation and the acquisition of land for the establishment of Gram Nyayalayas.
- **Functioning**: Gram Nyayalayas have been established on a part-time basis (weekly once or twice) and are not in addition to the existing courts. However, in reality, these courts are held only once or twice a month and in certain cases, the frequency is even worse.
- **Functionaries**: In the absence of a separate cadre of Gram Nyayadhikari, the Gram Nyayalayas are presided over by First Class Judicial Magistrates or Civil Judges or in a few cases Chief Judicial Magistrates who are already over-burdened with their regular judicial work.
- **Lack of awareness**: Many of the stakeholders including the litigants, lawyers, police officers and others are not even aware about the existence of Gram Nyayalayas in the district court premises and no substantial efforts regarding awareness have been taken.
- **Low case disposal rate**: One of the objectives of the Act was to reduce pendency and burden on lower courts in the district but the study revealed that even this has not been fulfilled. The number of cases disposed by Gram Nyayalayas is negligible and that they do not make any substantial difference in the overall pendency in the subordinate courts.
- **Security issues**: There has been lack of cooperation from lawyers and Public Prosecutors due to the lack of economic viability or incentives/allowance, security issues, unsafe location of a Gram Nyayalaya (sometimes being close to a forest, where crime rates are high), etc.

Some Measures that can be taken to improve the efficiency and functioning of Gram Nyayalaya are:

- **Training of Gram Nyayadhikari** The infrastructure and security are grossly inadequate.to increase awareness regarding legal and procedural requirements of Gram Nyayalayas. It may also include the local language of the community amongst whom they are posted.
- **Building infrastructure** by establishing separate building for the functioning of the Gram Nyayalaya as well as for the accommodation of the Gram Nyayadhikaris and other staff.
- Suitable steps including conferences, seminars etc. needs be taken for **creating awareness** among various stakeholders including the revenue and police officers.
- Appointment as Gram Nyayadhikaris could be made a **compulsory service for a certain period for a newly recruited judicial officer** to the regular cadre of first class judicial magistrates or civil judges, to ensure adequate personnel in Gram Nyayalaya.
- The **Jurisdiction of the Gram Nyayalayas may be redefined** in order to remove the ambiguities regarding the jurisdiction of Gram Nyayalayas.

2.4.4. Family courts

The Family Courts Act, 1984 provides for establishment of Family Courts by the State Governments in consultation with the High Courts with a view to promote conciliation and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. Under Section 3 (1)(a) of the Family Courts Act, it is mandatory for the State Government to set up a Family Court for every area in the State comprising a city or a town whose population exceeds one million. In other areas of the States, the Family Courts may be set up if the State Governments deems it necessary.

Student Notes:

The main objectives and reasons for setting up of Family Courts are:

- To create a Specialized Court which will exclusively deal with family matters so that such a court may have the necessary expertise to deal with these cases expeditiously. Thus expertise and expedition are two main factors for establishing such a court
- To institute a mechanism for conciliation of the disputes relating to family
- To provide an inexpensive remedy
- To have flexibility and an informal atmosphere in the conduct of proceedings

The Family Courts are **free to evolve their own rules of procedure**, and once a Family Court does so, the rules so framed override the rules of procedure contemplated under the Code of Civil Procedure. In fact, the Code of Civil Procedure was amended in order to fulfil the purpose behind setting up of the Family Courts.

Special emphasis is put on **settling the disputes by mediation and conciliation**. This ensures that the matter is solved by an agreement between both the parties and reduces the chances of any further conflict. The aim is to give priority to mutual agreement over the usual process of adjudication. In short, the aim of these courts is to form a congenial atmosphere where family disputes are resolved amicably. The cases are kept away from the trappings of a formal legal system.

Issues with Family Courts functioning

The Family Courts' main purpose is to assist the smooth and effective disposal of cases relating to family matters. However, like any other system there are certain issues which become a matter of concern when it comes to the working of these courts.

- One such issue is that of **lack of continuity.** For example, in the family courts at Tamil Nadu, the counsellors are changed every three months. Thus, when cases stretch for a period of time which is longer than this, the woman or the aggrieved person has to adjust with new counsellors and their story has to be retold several times.
- Since the Family Court has restrictive jurisdiction and does not have the power to decide issues of contempt, people do **not seem to take the court as seriously** as they would a magistrate or a city civil court.
- Further, it was laid down in the Family Courts Act that the **majority of judges should be women**. However, this provision has not been complied with.
- Government is empowered to make rules prescribing some more qualifications. Apart from prescribing the qualification of the Judges of Family Courts, the Central Government has no role to play in the administration of this Act. Different High Courts have laid down **different rules of the procedure**. However, this lack of uniformity could also be one of the reasons behind the fact that family disputes are still being heard by civil courts.
- Further, the **substantive aspect of the law** cannot be ignored because it is what cases are made of. A practical example of a problem with the substantive law is that many times, the husband in a divorce cases resorts to reconciliation mainly because he wants to escape the responsibility of giving maintenance to his wife.

It is evident that the setting up of these family courts was a dynamic step so far as reducing the backlog and disposing off cases while ensuring that there is an effective delivery of justice goes. However, as aforementioned, there are still matters of concern which plague these courts.

3. Comparison between Judicial Process and various ADR process

Judicial Process	Arbitration	Mediation
An adjudicatory process where a third party	A quasi-judicial adjudicatory process where the	A negotiation process and not an adjudicatory process. The

(judge/other authority) decides the outcome	arbitrator(s) appointed by the Court or by the parties decide the dispute between the parties	mediator facilitates the process. Parties participate directly in the resolution of their dispute and decide the terms of settlement.
Procedure and decision are governed, restricted, and controlled by the provisions of the relevant statutes.	Procedure and decision are governed, restricted and controlled by the provisions of the Arbitration & Conciliation, 1996.	Procedure and settlement are not controlled, governed or restricted by statutory provisions thereby allowing freedom and flexibility.
The decision is binding on the parties.	The award in an arbitration is binding on the parties.	A binding settlement is reached only if parties arrive at a mutually acceptable agreement.
Personal appearance or active participation of parties is not always required.	Personal appearance or active participation of parties is not always required.	Personal appearance and active participation of the parties are required.
A formal proceeding held in public and follows strict procedural stages.	A formal proceeding held in private following strict procedural stages.	A non-judicial and informal proceeding held in private with flexible procedural stages.
Decision is appealable	Award is subject to challenge on specified grounds.	Decree/Order in terms of the settlement is final and is not appealable

Mediation	Conciliation	Lok Adalat
Voluntary process	Voluntary process	Voluntary process
Mediator is a neutral third party.	Conciliator is a neutral third party. Presiding officer is a neutral third party.	Conciliator is a neutral third party. Presiding officer is a neutral third party.
Service of lawyer is available	Service of lawyer is available	Service of lawyer is available
The function of the Mediator is mainly facilitative.	The function of the conciliator is more active than the facilitative function of the mediator.	The function of the Presiding Officer is persuasive.
The consent of the parties is not mandatory for referring a case to mediation.	The consent of the parties is mandatory for referring a case to conciliation.	The consent of the parties is not mandatory for referring a case to Lok Adalat.
Regulated by Code of Civil Procedure, 1908	Regulated by Arbitration and Conciliation Act, 1996	Regulated by Legal Services Authorities Act, 1987
Not appealable.	Decree/order not appealable.	Award not appealable
parties are actively and directly involved.	parties are actively and directly involved.	parties are not actively and directly involved so much
Confidentiality is the essence	Confidentiality is the essence	Confidentiality is not observed

4. Conclusion

Apart from the above mentioned Dispute Resolution Mechanisms, there are several Constitutional and statutory institutions which look into complaints filed by citizens such as National Human Rights Commission, National Commission for Women, National Commission for SC, National Commission for ST, National Consumer Disputes Redressal Commission etc. which are covered in other documents. (Refer – Constitutional Bodies, Statutory bodies and Quasi-Judicial Bodies document). These are all institutions constituted for providing special focus on redressing the grievances of specific sections of society

Student Notes:

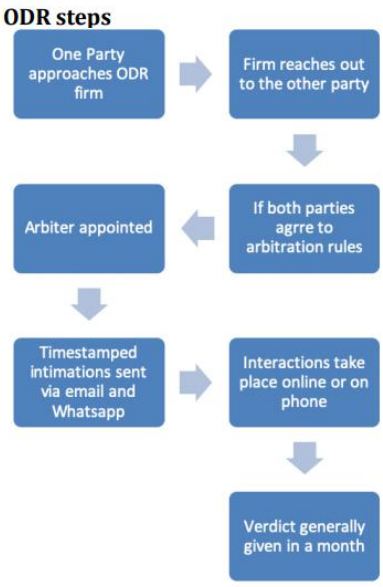
5. Recent Developments

5.1. Online Dispute Redressal

In the light of the pandemic-induced lockdown, the Supreme Court recently announced hearings would now take place in urgent matters through video conferencing. Legal experts see this as a spark that could usher in a large-scale infusion of technology in the justice system.

In 2005, an e-Committee established by the Supreme Court for planning the implementation of information and communication technology (ICT) in the judiciary recognised an "urgent need of re-engineering" of the judicial processes and ICT enablement as "mission-critical". However, a decade and a half later, much of this still remains work-in-progress.

However, Covid-19 has instilled an urgent need for Online Dispute Redressal (ODR) owing to the likelihood of a spurt in disputes before the courts—most notably in lending, credit, property, commerce, and retail.



- ODR is the resolution of disputes, particularly small- and medium-value cases, using digital technology and techniques of alternate dispute resolution (ADR), such as negotiation, mediation, and arbitration.
- While courts are becoming digitized through the efforts of the judiciary, more effective, scalable, and collaborative mechanisms of containment and resolution are urgently needed. ODR can help resolve disputes efficiently and affordably.
- ODR is more suited to complaints that are of low value, high volume and occurring between users with access to internet.
- There are two models under ODR
  - Opt-in model, in which option of going into mediation is voluntary.
  - Opt-out model, under which it is mandatory to enter into mediation for at least one session, and then the parties have the liberty to opt out if they feel so.

ODR mechanisms would assume significance on mainly three fronts:

- **Dispute resolution**: resolving disputes that reach the courts through open, efficient, transparent process. It has the potential to provide expeditious resolution of disputes along with being less expensive, and economical.
- **Dispute containment**: Only those disputes that require judicial resolution should reach the courts. Matters which do not require judicial resolution shouldn't reach the courts at all.
- **Dispute avoidance**: Facilitate and ensure through ODR that a problem does not reach the stage of a dispute. This would ensure a problem does not become a dispute.

5.1.1. Benefits of ODR

ODR offers a more accessible, transparent and faster option, particularly for companies dealing with high volume and low value transactions done online. With more Indians transacting online, the timing is right for ODR to gain acceptance as an easy mechanism to resolve grievances. Other benefits include:

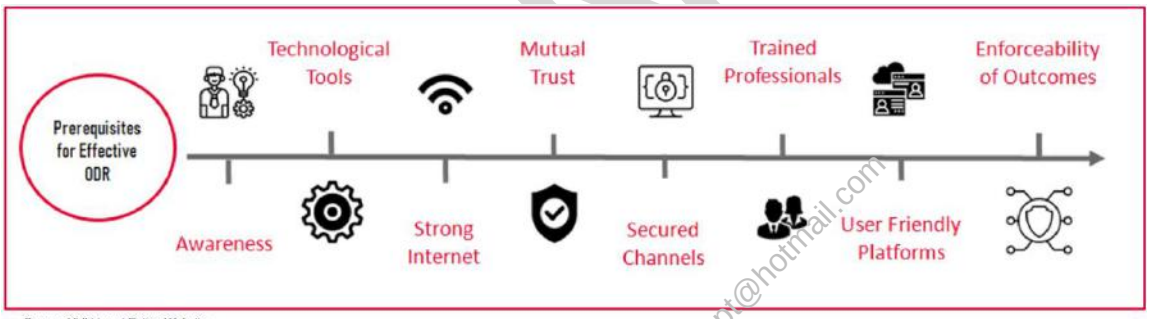
- **Reduction in pendency of cases**: 4.56 million and 31.5 million cases are pending in high courts and district courts respectively according to National Judicial Data Grid (NJDG).
- **Focus on complex cases**: It has the potential to reduce high volume of disputes outside the courts and allow courts to focus more on complex or high public interest cases and provide accessible, affordable and expedient justice.

- **Ease of Doing Business**: Enabling ODR will help to move up the Ease of Doing Business ranking and enhance the enforceability of contracts. E.g. a case that would take six months via arbitration is being settled in 30 days through ODR.
- **Consumer satisfaction**: ODR is the best option for enhancing the redress of consumer grievances, strengthening their trust in the market.
- **Environmental benefit**: ODR has made possible to carry on proceedings in an 'electronic room', this led to reduce the travel related carbon footprints.

5.1.2. Concerns related to ODR

> ***Do we need a separate law for ODR?***
> There is nothing in the law that prohibits ODR. We don't need to have an amendment to the Arbitration Act per se, arbitration can be done on an electronic platform. If it can happen face to face, it can certainly happen remotely on a digital platform.

- **Infrastructural issues**, including technical impediments like high speed internet, latest audio and video equipment's etc. hinder widespread adoption of ODR in India. Further internet penetration is yet to reach many parts of India.
- Like ADR, ODR is also best **suited to resolve only certain types of disputes** like damages that may be payable for breach of contract.
- **Procedural issues**, as, some cases may require discovery, interrogatories, recording the testimony of a witnesses and the cross-examination, which may not be convenient to process over the internet.
- **Difficulty in enforcement** of online awards, as, generally, the orders in execution are subject to appeals and this delays the process of execution.
- Other challenges include **Privacy and data security** due to rise in cyber-threats; lack of **digital literacy**; lack of enough arbitrators, building trust among consumers etc.



Source: Vidhi Legal Policy Website

5.1.3. Measures that can be taken to establish ODR as effective Dispute Redressal Mechanism

For this, all the stakeholders would need to fulfill their responsibilities. For example

- **The providers of technology enabled services:** The tech enabled service providers create a platform where parties can be made aware of their rights, the remedies which are available to them, and create facilities for negotiation and mediation with neutrals.
- **Professional bodies**: They will offer trained personnel. They could be law firms on a standalone basis, or as a consortium of service providers.
- **Industry**: The industry must internalize dispute containment and dispute avoidance, perhaps by introducing contractual clauses, which mandate the requirement of going to mediation or negotiation before accessing any legal remedies.
- **Governments and courts**: Their role is important in understanding where disputes arise, what aggravates them, what mitigates them.
    - The Government can also identify disputes most suitable for ODR. For eg - Disputes arising out of Motor Vehicles Act, cheque bouncing, insurance claims can be resolved through ODR to reduce the backlog and pendency.

Student Notes:

- This can be used as an opportunity by the Government to employ objective AI tools to aid government litigation.
- In the short term, in the context of COVID, incentives need to be created for recourse to ODR by recognizing the role of private, voluntary ODR by encouraging businesses to seek recourse to ODR technology.
- The judiciary can refer pending matters to ODR platforms for dispute resolution. Lok Adalats must be encouraged to utilize ODR platforms to conduct online Lok Adalats. NALSA and state legal services authorities can be encouraged to engage with ODR institutions. This way, courts can focus on urgent matters.

Additionally, the following measures may also be taken to ensure that ODR does not work in a regulatory vacuum.

- The recently formed Arbitration Council of India could act as a standard-setting body from a technology perspective to encourage institutional arbitration.
- The government needs to issue guidelines on the minimal standards of fairness and data protection that these platforms need to adhere to.
- To develop adequate judiciary's ODR capability, the government needs to provide sufficient funds and expertise to help phased adoption of ODR

ODR can supplement Indian judiciary, supplement the judicial justice delivery system, and democratize access to dispute resolution using ADR tools and technology. A hybrid model of courts (& virtual courts) & ODR would be a steady state of dispute resolution. To combine technology with the most thoughtful, equitable way to enhance justice for all. For a transformative impact, we need to develop digital infrastructure to reach the masses, and we also need a change in mindsets.

5.2. New Delhi International Arbitration Centre (NDIAC) Act

Recently, the government has passed New Delhi International Arbitration Centre (NDIAC) Act. The Act envisages NDIAC to replace International Centre for Alternative Dispute Resolution (ICADR) as an Institution of National Importance. A major drawback of ICADR, as identified by the Justice Srikrishna Committee, was its failure in keeping pace with new developments in the arbitration scenario to match up with the dynamic developments in the field of arbitration globally. Moreover, a large governing council made it difficult for the institution to coordinate its governance.

NDIAC will facilitate conducting of international and domestic arbitration, mediation and conciliation proceedings in a most professional, cost effective and timely manner.

- It will be headed by a chairperson, who has been a judge of the Supreme Court or a High Court or an eminent person having special knowledge and experience in the administration of arbitration.
- Other objectives of the centre includes:
  - maintaining panels of accredited arbitrators, conciliators and mediators through a Chamber of Arbitration
  - establishing an Arbitration Academy for training arbitrators
  - promoting studies and reforms in the field of alternative dispute resolution and related matters
  - co-operating with other societies, institutions and organisations, national or international for promoting alternative dispute resolution

6. UPSC Previous Years Mains Questions

1. What are the major changes brought in the Arbitration and Conciliation Act, 1966 through the recent ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss. (2015)

Student Notes:

7. UPSC Previous Years Prelims Question

1. With reference to the 'Gram Nyayalaya Act', which of the following statements is/are correct?
1. As per the Act, Gram Nyayalayas can hear only civil cases and not criminal cases.
2. The Act allows local social activists as mediators/reconciliators. Select the correct answer using the code given below.
(a) 1 only
(b) 2 only
(c) Both 1 and 2
(d) Neither 1 nor 2

8. Vision IAS Mains Test Series Questions

1. Highlight the issues facing arbitration as an effective alternative dispute resolution mechanism in India. How does Arbitration and Conciliation (Amendment) Act, 2019 strengthen the arbitration set up in India?

Approach:

- Giving a brief introduction about the concept of arbitration and its current setup in India.
- Bring out the challenges to the arbitration setup in India.
- Discuss how the recent amendments to the Arbitration and Conciliation Act are trying to address these challenges.
- Conclude with few suggestions.

Answer:

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators (third party) who make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court. Arbitration process is aimed at reducing the burden on courts, expeditious disposal, improving ease of doing business etc.

In India, Arbitration mechanism is regulated by the Arbitration and Conciliation Act, 1996. However, multiple issues remained in arbitration as an effective mechanism for alternative dispute resolution:

- **Ambiguities in the legislation**: Losing parties have exploited the ambiguities in the Arbitration and Conciliation Act, 1996 to challenge the awards, which has led to a lack of finality of awards.
- **Duplicative Litigation:** The parties almost invariably appeal against arbitration awards, resulting in long drawn-out disputes that can last up to 10 years.
- **Lack of Institutional mechanism:** There is no tribunal or other dedicated institution to enforce the awards in time-bound manner.
- **Lack of arbitration infrastructure**: There are very few qualified arbitrators in the country. Also the rules and practices followed are often outdated and inadequate.
- Delays in Indian courts and excessive judicial involvement in arbitral proceedings contributed to discouraging foreign parties to arbitrate in India.

The **recent amendments to the Arbitration and Conciliation Act in 2019** aims to overcome the existing challenges in the arbitration mechanism in India:

- **Arbitration Council of India:** A permanent body is established to promote and encourage arbitration, mediation, conciliation or other ADR mechanism. It will also form policy and guidelines for the establishment, operation and mainstream of uniform professional standards.

Student Notes:

- **Appointment of Arbitrators:** Earlier, parties were free to choose arbitrators. Now, the Supreme Court and High Courts may designate arbitral institutions, which parties can approach for the appointment of arbitrators.
- An application for appointment of an arbitrator is required to be disposed of within 30 days.
- It prescribes minimum qualifications for a person to be accredited as an arbitrator.
- **Time limit:** The Act seeks to remove time restrictions of 12 months for international commercial arbitrations.
- **Confidentiality of proceedings:** The Act provides that all details of arbitration proceedings will be kept confidential except for the details of the arbitral award in certain circumstances.

However, since the Supreme Court has struck down Section 87 inserted by the new amendment, further clarity needs to be brought in to ensure smooth process of arbitration. The act aims to make India as a global arbitration hub. It will not only help the government and businesses in cutting down lengthy legal proceedings but also boost India's ranking in the '**Ease-of-doing-Business Index**'.

2. Settlement of cases by mutual compromise is much better than seeking adjudication in the adversary system. With reference to this statement discuss various ADR mechanisms available in India.

Approach:

Discuss shortcoming of justice delivery system in India and analyze how ADR can overcome these. Discuss different ADR mechanisms available.

Answer:

Justice delivery system plays a fundamental role in promoting public interest and in the preservation of order in the society. Effective system for the resolution of disputes is essential for dispensing justice.

Problem with justice delivery mechanism

- To get justice through courts one has to go through difficult and expensive procedures involved in litigation. Serious concerns have been shown by all the concerned with the justice dispensing system over the costs, delays and congestion in the courts.
- Dispute resolution through legal proceedings in the courts has become excessively procedural and adversarial in nature, thereby resulting in undue delays, high costs and unfairness in litigation. Huge pendency of cases has serious implications for society's trust and credibility in the judicial system.
- Besides this, the adversarial nature of litigation in the formal courts is not found to be conducive to the social and business relationships, which are needed to be preserved. This system does not generate a climate of consensus, compromise and co-operation. Adversarial litigation does not end in harmony usually,

This state of affairs has caused dissatisfaction among the parties to the dispute and has led to the development of a more flexible means of dispute resolution. The trend worldwide since the last decade has been to resort to alternative dispute resolution (ADR) methods due to the shortcomings being faced in the formal justice delivery system.

Student Notes:

Advantage of ADR mechanism

The process of dispute resolution by ADR is different from that of the judicial process. Under ADR, disputes are settled with the assistance of a neutral third person, generally of parties' own choice; that person is generally familiar with the nature of dispute.

- Here the proceedings are informal without any procedural technicalities. It is expeditious, inexpensive and confidential. Thus the decision-making process aims at substantial justice. The goal is to provide more effective dispute resolution. Availability of ADR creates more choices within the justice system.

Types of ADR

The ADR mechanisms can be divided into two parts. These are adjudicatory and non-adjudicatory.

- Adjudicatory method is the one where the neutral third party hears both the parties and thereafter decides the matter. This method is called Arbitration.
- Non-adjudicatory method is where the neutral third person does not decide the matter. Rather the parties to the dispute retain their control over the outcome of the proceedings. These mechanisms are Negotiation, Mediation and Conciliation.

Arbitration:

Arbitration is a legal process, which takes place outside the courts, but still results in a final and legally binding decision similar to a court judgment. It is the procedure by which parties agree to submit their disputes to an independent neutral third party, known as an arbitrator, who considers arguments and evidence from both sides, and then hands down a final and binding decision.

Negotiation:

It is a non-binding procedure involving direct interaction of the disputing parties, wherein parties approach each other with offer of a negotiated settlement based on an objective assessment of each other's position. It is a voluntary non-binding process in which parties control the outcome as well as procedures. Negotiation differs from other dispute resolution procedures in as much as it does not involve a third party to facilitate or promote the settlement while all other procedures essentially involve a third party.

Mediation:

Mediation is a facilitated and structured negotiation presided over by a facilitator with the skill, training and experience necessary to help the parties reach a resolution of their dispute. A mediator uses special negotiation and communication techniques to help the parties to come to a settlement. A third party is involved in order to structure the meetings and come to a final settlement based on the facts given through the discussions. It is a non-binding procedure, in which a neutral third party assists the disputing parties in mutually reaching an agreed settlement of the dispute.

Conciliation:

Conciliation is one of the non-binding procedures where an impartial third party, known as the conciliator, assists the parties to a dispute in reaching a mutually agreed settlement of the dispute. A conciliator does not give a decision, but his main function is to induce the parties themselves to come to settlement. The Conciliator may formulate or reformulate the terms of settlement.

International Centre for Alternative Dispute Resolution (ICADR) was established and registered as a society under the Societies Registration Act, 1860 in 1995 for the promotion and development of ADR facilities and techniques in India. The main

objectives of the ICADR are to propagate, promote and popularize the settlement of domestic and international disputes by different modes of ADR. It establishes facilities and provides administrative and other support services for holding conciliation, mediation and arbitration proceedings along with promoting reform in the system of settlement of disputes and its healthy development within the framework of the social and economic needs of the community.

The emerging Alternative Dispute Resolution methods, which are non-litigation alternatives offer opportunities for effectively resolving disputes. Depending on the nature of the relationship between the parties involved in the disputes and the circumstances under which the dispute is evolved, different methods of dispute resolution mechanism may be preferable.

Student Notes:

3. Examine the need of ADR mechanisms in India and comment on their efficacy in dispute redressal.

Approach:

- The question is about the need and efficacy of ADR mechanisms. First and foremost one should know what ADR mechanisms are.
- The need of ADR mechanisms can be examined by highlighting the shortcomings that exist in the formal justice system. It also needs to be explained how the ADR mechanisms curb these shortcomings.
- Thereafter, the efficacy should be examined. While doing this, the limitations that exist in the ADR mechanisms should be discussed. A trade-off between the strengths and weaknesses would explain whether these are effective or not vis. a vis. the formal justice system.

Answer:

Justice delivery system plays a fundamental role in promoting public interest and preservation of order in the society. An effective system for resolution of disputes is essential for dispensing justice. However, the formal justice delivery system suffers from various limitations. Consider for instance, the following:

- To get justice through courts one has to often go through difficult and expensive procedures involved in litigation. Moreover, there exist serious concerns regarding costs, delays and congestion in the courts.
- Dispute resolution through legal proceedings in the courts has become excessively procedural and adversarial in nature, thereby resulting in undue delays, high costs and unfairness in litigation. Huge pendency of cases has created serious implications for the trust and credibility, which the society is supposed to have in the judicial system.
- Besides this, the adversarial nature of litigation in formal courts is found to be unconducive to social and business relationships, which need to be preserved. Thus this system neither generates a climate of consensus, compromise and co-operation nor does it end in harmony. This state of affair often causes dissatisfaction among disputants and creates a need for a more flexible means of dispute resolution.

It is in light of these limitations that the need for Alternative Dispute Resolution (ADR) mechanisms arise. Under ADR disputes are settled with the assistance of a neutral third person, who is generally of parties' own choice. Moreover, this person is usually familiar with the nature of dispute.

Student Notes:

Further, the proceedings are informal, without any procedural technicalities. The process is not only expeditious, inexpensive and confidential, but it also aims at substantial justice. The goal here is to provide more effective dispute resolution. Thus, the availability of ADR creates more choices within the justice system. This is how the shortcomings faced in the formal justice delivery system can be overcome through the ADR methods.

However, despite the advantages that ADR enjoys over the formal justice system, it is not a substitute to litigation. There exists a different set of limitations in the ADR too. For instance:

- ADR processes cannot be used in those situations where the dispute is regarding systematic injustice, discrimination, and violation of human rights or serious frauds.
- ADR processes do not set precedent, since they function in private. They seek to resolve individual disputes. Moreover, resolution may be different in two similar cases, depending on the surrounding conditions.
- In cases that involve an extreme power imbalance between the parties, ADR processes cannot work well. A more powerful party may coerce the weaker party to accept the unfair consensus.
- In multi party disputes, ADR processes cannot work effectively, if some of the parties do not participate.
- ADR settlements do not have any educational or deterrent effect on the public, since they are settled privately. Only courts can award punitive damages.
- Many people are not aware of the existence of ADR methods. Unless they are aware they cannot use these methods.

So, the efficacy of ADR depends on the trade-off between its benefits and limitations. It needs to be stressed once again that though ADR mechanisms are effective, they cannot be a substitute for litigation and a formal justice system.

4. What do you understand by alternate dispute redressal mechanism? Discuss the various tools of ADR. In light of the problems faced by the Indian judiciary enumerate the advantages of Lok Adalats.

Approach:

- Define ADR and discuss various tools such as arbitration, mediation, conciliation.
- Briefly bring out the problems such as high number of cases, inadequacy of judges etc. in courts.
- Discuss how Lok Adalats help overcome these problems in last part of the answer.

Answer:

Alternative dispute redressal mechanism includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an agreement without litigation. Following are the tools of ADR:

- Arbitration: Arbitration is a process in which a neutral third party render a decision based on the merits of the case.
- Mediation: The process of mediation aims to facilitate the development of a consensual solution by the disputing parties. Mediation is overseen by a non-partisan third party.
- Conciliation: This is a process by which resolution of disputes is achieved by compromise or voluntary agreement. In contrast to arbitration, the conciliator does not render a binding award.

Student Notes:

Indian judicial system is characterized by rampant delay in the disposition of the cases due to inadequate number of courts and judges in the country. High cost of litigation and complex legal procedure alienates the poor and uneducated from the judicial system.

Based on Gandhian principles Lok Adalat is Indian contribution to the world jurisprudence of ADR. Lok Adalats are a step towards fulfilling the directives under Article 39A for equal justice and free legal aid.

Advantages of the Lok Adalats:

- The Lok Adalats can ensure speedy justice as they can be conducted at suitable places and in local languages.
- Lok Adalat is the only institutionalized mechanism of dispute resolution in which parties do not have to bear any expenses and fee paid in a regular court is refunded if the case is settled in Lok Adalat.
- In Lok Adalats, disputes are not only settled but also the cordial relations between the parties are retained as disputes are resolved amicably.
- Disputes can be directly brought before the Lok Adalats and no appeals lies against the order of the Lok Adalats and thus it helps to alleviate the burden of arrears of cases.

The introduction of Lok Adalats succeeded in providing a supplementary forum to the victims for satisfactory settlement of their disputes. This mechanism should be taken full advantage of and more number of Lok Adalats needs to be organized to achieve "access to justice for all".

5. What are the various modes of Alternate Dispute Redressal (ADR) mechanisms available in India? Identifying the problems being faced by them, provide suggestions needed to increase their effectiveness.

Approach:

- Introduce by mentioning the various modes of Alternate Dispute Resolution (ADR).
- Mention the issues and challenges that come in their role of dispensation of justice.
- Make suggestions to improve their effectiveness.

Answer:

Alternative Dispute Resolution (ADR) refers to different modes of resolving legal disputes, in addition to ordinary courts. These modes are ensured by legal provisions such as Legal Services Authorities Act, 1987 and The Arbitration and Conciliation Act, 1996. The various modes of Alternate Dispute Redressal mechanisms in India are:

- **Arbitration:** A third party reviews the evidence of the case and imposes a decision that is legally binding on both sides and enforceable with limited rights of review and appeal. It may be mandatory or voluntary as per the contract.
- **Mediation:** A neutral third party assists the parties in amicably resolving their disputes using specified communication and negotiation techniques. The mediator only acts as a facilitator to reach a negotiated settlement and he makes no decisions and does not impose his view of what a fair settlement should be.
- **Conciliation:** A voluntary process whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences by lowering tensions, improving communications, exploring potential solutions and bring about a negotiated settlement.
- **Lok Adalat:** They are constituted under the Legal Services Authorities Act, 1987. It is a form of a public conciliation, presided over by 2 or 3 people who are judges or

advocates with experience. They have been given powers of a civil court up to a limited extent.

- **Nayaya Panchayats:** These village courts are guided by local traditions, culture and behavioural patterns of the village community and thus instill confidence in the administration of justice. Pecuniary claims of upto Rs. 200 may be taken. Its criminal jurisdiction extends to minor cases of Negligence, trespass, nuisance etc. Emphasis is laid on conciliation.

Benefits of ADR

- Provides easy, fast and inexpensive justice.
- Free from technicalities as in the case of conducting cases in law Courts.

Issues associated with ADR

- No guarantee towards final resolution unlike the case in traditional judiciary.
- Lack of professional training amongst conciliators and arbitrators, coupled with ignorance amongst the general public.
- Concentrated mainly around big cities thereby limiting its effectiveness.
- Lack of institutional infrastructure in India for the promotion of ADR.
- Some forms of ADR are as costly or even more than the adversarial system of justice.
- Situations where amicable settlement through ADR is not favoured acts as a natural limitation.

Suggestions to increase their effectiveness are:

- There is need to enact a comprehensive legislation governing all facets of ADR to ensure procedural integrity, timely redressal and satisfaction of the parties.
- A code of conduct or code of ethics should be developed for arbitrators, mediators or conciliators for their non-biased performance.
- Expanding the role of ADRs in pre-litigation stages as at present, most of them come into picture once the parties enter into litigation.
- Focus on changing peoples' attitudes towards dispute resolution from adversarial to win-win.
- Build trust as an integral component of broader community relations activities.
- Promote legal education in this field.
- Professionalising ADR keeping in mind the changing socio-economic setup of India.

Student Notes:

PRESSURE GROUPS

Contents

Student Notes:

1. What is a Pressure Group?

A pressure group is an organized group of people that aims to influence public opinion or policies/actions of government. It includes *churches and charities, businesses and trade associations, trade unions and professional associations, think tanks of various complexions etc*.

Purpose of a Pressure Group

Although some pressure groups were set up for the specific purpose of influencing government, many pressure groups exist for other purposes and only engage in politics as a secondary or associated activity. As pressure groups exert influence on government from outside, they do not therefore put candidates up for election. In that sense, they are part of **civil society**. These groups use various **methods** to achieve their aims including lobbying, research campaigns, media campaigns, policy briefs and polls.

Pressure groups can therefore act as a channel of communication between the people and government.

Pressure groups are defined by the following key **features**:

- **External to the Govt**.: Pressure groups do not make policy decisions, but rather try to influence those who do (the policy-makers). In that sense, they are 'external' to government.
- **Narrow Domain**: They typically have a narrow issue focus. In some cases, they may focus on a single issue (for instance opposing a planned road development).
- **Shared beliefs or interests**: Their members are united by either a shared belief in a particular cause or a common set of interests. People with different ideological and party preferences may thus work happily together as members of the same pressure group.
- **Protection of interests**: Each pressure group organises itself keeping in view certain interests and thus tries to adopt the structure of power in the political systems. In every government and political party there are clashing interest groups. These groups try to dominate the political structure and to see that groups whose interests clash with theirs are suppressed.
- **Use of modern as well as traditional means**: They try to follow modern means of exerting pressure, without fully giving up the traditional or old ways of operation. They adopt techniques like financing of political parties, sponsoring their close candidates at the time of elections and maintaining relations with the bureaucracy. Their traditional means include exploitation of caste, creed and religious feelings to promote their interests.

2. Types of Pressure Groups

There are various ways to classify pressure groups on the basis of their structure and organization such as-

i. **Interest Groups and Cause Groups**
ii. **Insider and outsider groups**

i. Interest and Cause Groups

The interest/cause classification is based on the purpose of the group in question. It therefore reflects the nature of the group's goals, the kind of people who belong to it, and their motivation for joining.

Interest groups (sometimes called 'sectional', 'protective' or 'functional' groups) are groups that represent a particular section of society: workers, employers, consumers, an ethnic or religious group, and so on.

Student Notes:

Interest groups have the following features:

- They are concerned to protect or advance the interests of their members.
- Membership is limited to people in a particular occupation, career or economic position.
- Members are motivated by material self-interest.

Trade unions, business corporations, trade associations and professional bodies are the prime examples of this type of group. They are called **'sectional' groups** because they represent a particular section of the population. Some of the examples of interest groups are FICCI, CII, AITUC etc.

While sometimes, the terms interest groups and pressure groups are used interchangeably, there are following differences between the two:

Interest Group	Pressure Group
Formally organized	Strictly Structured
Interest-oriented	Pressure-focused
May or may not influence the policies of the government	Must influence the policies of government
Softer in outlook	Harsher in attitude
More or less protective	Protective and Promotive

Interest groups can be classified into four categories-

i) **Institutional Interest Groups**: These groups are formally organised which consist of professionally employed persons. They are a part of government machinery and try to exert their influence. But they do have much autonomy. These groups include political parties, legislatures, armies, bureaucracies, churches etc. An **example** of institutional group can be the West Bengal Civil Services Association. Whenever such an association raises protest it does so by constitutional means and in accordance with the rules and regulations.

ii) **Associational Interest Groups:** These are organised specialised groups formed for interest articulation, but to pursue limited goals. These include trade unions, organisations of businessmen and industrialists and civic groups. Some **examples** of Associational Interest Groups in India are Bengal Chamber of Commerce and Industry, Indian Chambers of Commerce, Trade Unions such as AITUC (All India Trade Union Congress), Teachers Associations, Students Associations such as National Students Union of India (NSUI) etc.

iii) **Anomic Interest Groups:** These are the groups that have analogy with individual self-representation. In such type of groups, perpetual infiltrations such as riots, demonstrations are observed. These groups are found in the shape of movement demonstrations and processions, signature campaigns, street corner meetings, etc. Their activities may either be constitutional or unconstitutional.

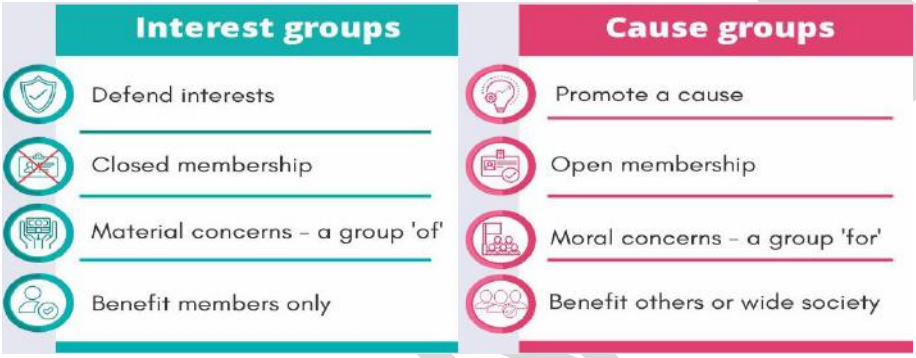
iv) **Non-Associational Interest Groups:** These are the kinship and lineage groups and ethnic, regional, status and class groups that articulate interests on the basis of individuals, family and religious heads. These groups have informal structure. These include caste groups, language groups, etc.

Cause groups (sometimes called 'promotional', 'attitude' or 'issue' groups) are groups that are based on shared attitudes or values, rather than the common interests of its members. The causes they seek to advance are many and various. They range from charity activities, poverty reduction, education and the environment, to human rights, transparency in governance etc.

Cause groups have the following features:

- They seek to advance particular ideals or principles.
- Membership is open to all.
- Members are motivated by moral or altruistic concerns (the betterment of others).

Mazdoor Kisan Shakti Sangathan (MKSS) can be cited as a prime example of a cause group as it seeks to promote transparency in governance, for example, by creating pressure for the introduction of right to information to citizens. Other examples could be PETA, India against Corruption etc.



ii. Insiders and Outsiders

The insider/outsider distinction is based on a group's relationship to government. It therefore affects both the strategies adopted by a group and its status i.e. whether or not it is considered 'legitimate' or 'established'.

Insider groups are groups that are consulted on a regular basis by government. They operate 'inside' the decision-making process. They may also sit on government policy committees and agencies and have links to parliamentary select committees. Therefore, the insider pressure groups have a better chance of creating an impact on how the policy shapes up, as they are consulted at various stages of policy formulation. Some of the examples of insider groups are **National Advisory Council, CII** etc.

Outsider groups, on the other hand, are the ones that are not so closely involved with the decision makers and who find it harder to get their voices heard in the higher echelons of policy making. They are kept, or choose to remain, at arm's length from government. They therefore try to exert influence indirectly via the *mass media* or through *public opinion campaigns*. One of the examples of an outsider group is the **Association for Democratic Reforms (ADR)** which has been pushing for reforms in the way representatives are elected by the citizens of India.

But at times many groups employ both insider and outsider tactics. This certainly applies in the

case of high-profile insider groups, which recognize that the ability to mount public-opinion and media campaigns strengthens their hands when it comes to bargaining with government.

3. Roles/Functions of Pressure Groups

Pressure groups carry out a range of functions including:

Representation

Pressure groups provide a mouthpiece for groups and interests that are not adequately represented through the electoral process or by political parties. This occurs, in part, because groups are concerned with the specific rather than the general. In other words, while the political parties attempt to broaden their appeal in order to attract all voters, the pressure groups articulate the views or interests of particular groups and focus on specific causes. It has even been argued that pressure groups provide an alternative to the formal representative process through what has been called **functional representation**.

However, questions have also been raised about the capacity of pressure groups to carry out representation:

- Pressure groups have a low level of internal democracy, creating the possibility that they express the views of their leaders and not their members.
- The influence of pressure groups on government does not always reflect their membership size or their popular support.

Political Participation

Pressure groups have become an increasingly important agent of political participation. In UK, 40–50 per cent citizens belong to at least one voluntary association, and a large minority (20 per cent) belong to two or more. Moreover, a range of pressure groups, mainly outsider groups, seek to exert influence precisely by mobilizing popular support through activities such as *petitions, marches, demonstrations* and other forms of political protest. Such forms of political participation have been particularly attractive to young people.

Education

Much of what the public knows about politics is through pressure groups of one kind or another. Many pressure groups operate largely through their ability to communicate with the public and raise political consciousness. Groups, therefore, often devote significant resources to carry out research, maintaining websites, commenting on government policy and using high-profile academics, scientists and even celebrities to get their views across. An emphasis is therefore placed on cultivating **expert authority**.

Policy Formulation

Although pressure groups, by definition, are not policy-makers, this does not prevent them from participating in the policy-making process. The pressure groups are a vital source of information and advice to the governments. Many groups are therefore regularly consulted in the process of policy formulation, with government policy increasingly being developed through **policy networks**. An example of such group is **Observer Research Foundation (ORF)**, which works on policy issues primarily related to foreign affairs.

Policy Implementation

The role of some pressure groups extends beyond trying to shape the content of public policy to playing a role in putting the policy into practice. Not only do such links further blur the distinction between groups and government, but they also give the groups in question clear leverage when it comes to influencing the content of policy.

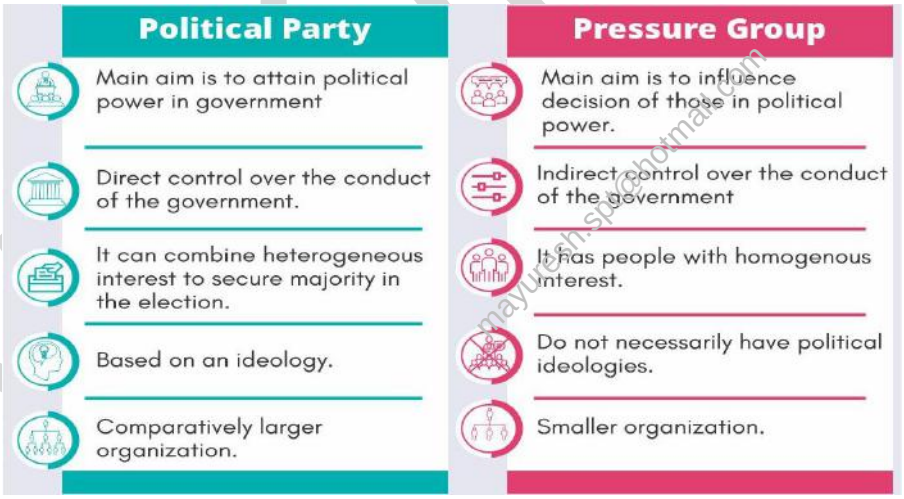
However, questions have also been raised about the role of groups in implementing policy. Some have criticized such groups for being very close to government and thereby endangering their independence. Others have argued that policy implementation gives groups unfair political leverage in influencing policy decisions.

4. Pressure Groups and Political Parties

Pressure groups and political parties greatly resemble each other. Both of them are channels through which public can communicate with the government. Prima facie, both of them carry out representation, facilitate political participation and contribute to the policy process. However, in reality, groups and parties are very different from each other.

Conventionally, political parties are the bodies which are regarded as providing the way through which people's interests are represented in the political system. They also function as a means of political communication, since individuals can express their own views to politicians by becoming members of political parties and can represent their party's viewpoint to others in the community.

On the other hand, pressure groups can be seen as providing an additional form of representation within the political system and an additional channel of political communication. Some of the differences between Political parties and the pressure groups have been mentioned below:



There are several reasons why political parties are often confused with the pressure groups such as-

- Many small political parties resemble pressure groups in that sometimes they may have a **narrow issue focus**. For example, the British National Party (BNP) is primarily concerned with issues of race and immigration. The Green Party, despite developing wide-ranging manifestos, places greatest emphasis on environmental issues such as pollution, economic sustainability and climate change.
- Some pressure groups **use elections as a tactical weapon**. Any group that puts candidates up for election is technically a party, not a pressure group. But some pressure groups use

elections as a means of gaining publicity and attracting media attention, with little or no expectation of winning the election.

The **relationship between the pressure groups and political parties** is an interesting one. A pressure group with a close relationship to a political party may work to its advantage. But this can be harmful at times, especially when the opposing party comes to power, as the pressure group's influence on policy formulation is bound to decrease. National Students Union of India (NSUI) provides future leadership to the Congress while the Akhil Bharatiya Vidyarthi Parishad (ABVP) does so for the Bharatiya Janata Party. While some pressure groups are linked to particular political parties, there are many which have no linkages to any political party.

5. How Pressure Groups Exert Influence?

The choice of targets and methods used by the pressure groups depends on two factors.

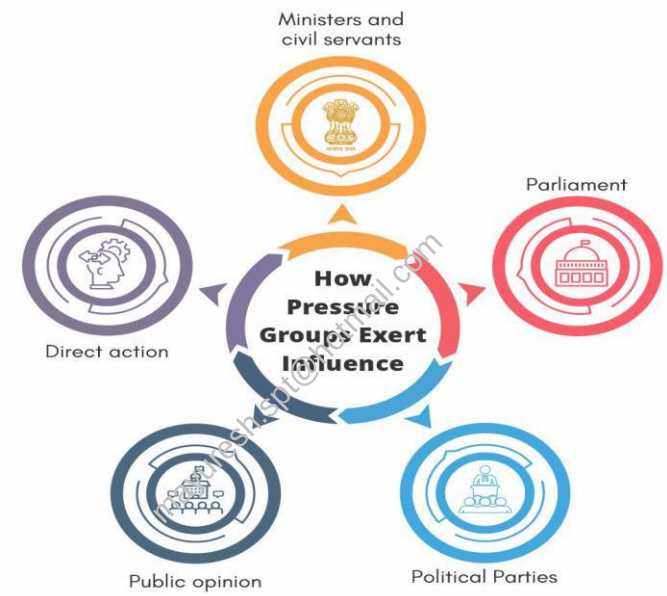
First, how *effective* is a particular strategy likely to be?

Second, given the group's aims and resources, which strategies are *available*?

Pressure groups can exert influence through a variety of ways, such as:

Ministers and Civil Servants

Ministers and civil servants work at the heart of the 'core executive', the network of bodies headed by the Prime Minister and Cabinet, which develop the government policy. This is where power lies. Many groups therefore aspire to get in touch with senior civil servants and ministers to get some sort of influence over the policies while they are being implemented.



Although such influence may involve formal and informal meetings with ministers, routine behind-the scenes meetings with civil servants and membership of policy committees may be the most important way of exerting influence.

Parliament

Groups that cannot gain access to the executive may look to exert influence through Parliament. In some cases, groups may use parliamentary lobbying to supplement contacts with ministers and civil servants. Although less can be achieved by influencing Parliament than by influencing the executive, changes can nevertheless be made to the details of legislation or the profile of a political issue. This can happen through influence on, for instance, private members' bills, parliamentary questions (written and oral) and select committee enquiries.

Political Parties

The most obvious way in which groups influence parties is through funding and donations. Influencing party policy can lead to influence on government policy.

Public Opinion

These strategies are adopted by outsider groups, although high-profile insider groups may also engage in public-opinion campaigning. The purpose of such strategies is to influence

government *indirectly* by pushing issues up the political agenda and demonstrating both the strength of commitment and the level of public support for a particular cause. The hope is that government will pay attention for fear of suffering electoral consequences. **Association for Democratic Reforms** has helped in shaping public opinion to some extent by putting up details of political representatives of various political parties from each constituency on www.myneta.info.

Direct Action

Direct action as a political strategy overlaps with some forms of public-opinion campaigning. However, whereas most political protests take place within the constitutional and legal framework based on established rights of freedom of speech, assembly and movement, direct action aims to cause disruption or inconvenience. **Strikes, blockades, boycotts and sit-ins** are all examples of direct action. Direct action may be violent or non-violent. A non-violent example of direct action is the protests organized at Ramleela Maidan by **India Against Corruption (IAC)**.

Techniques used by Pressure Groups

Overall, the pressure groups resort to broadly three different **techniques** in securing their purposes.

- **Electioneering**: Placing in public office persons who are favorably disposed towards the interests the concerned pressure group seeks to promote.
- **Lobbying**: Persuading public officers, whether they are initially favorably disposed towards them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests.
- **Propagandizing**: Influencing public opinion and thereby gaining an indirect influence over government, since the government in a democracy is substantially affected by public opinion.

6. Pressure Groups and Lobbying

People often confuse pressure groups with lobbying but both of them are not one and the same thing. Lobbying takes place when a few members of the pressure groups loiter in the lobbies of legislatures/public offices with a view to securing an opportunity to interact with them and to influence their decision. Lobbyists are representatives of particular interest groups. Lobbying is a communication process used for persuasion, it cannot be treated as an organization. Lobbying is different from pressure groups in a sense that pressure groups are organized groups and lobbying is just one of the functions performed by them.

Global Experience with Lobbying

Many countries see lobbying as an integral part of democratic functioning that allows individuals and groups to legitimately influence decisions that affect them. No country in the world, including India, has banned lobbying. In fact, a few countries even regulate the activity, prominent among these are USA, Canada, Australia, Germany and Taiwan. These countries treat lobbying as a legitimate right of citizens.

Regulations serve as a tool to enhance transparency in the policymaking process rather than restricting access to policymakers. In fact, that is one of the key reasons why the UK regulates the lobbied rather than lobbying. The effectiveness of the law largely depends on how it defines lobbying and lobbyists. In USA, lobbying is regulated under the Lobbying Disclosure Act, 1995. This Act requires lobbyists to register and report lobbying fees above a certain amount. It also requires companies to report all the lobbying expenditure along with the list of issues, lobbyists involved and the public officials and offices contacted.

Lobbying in India

Student Notes:

In India, where there is no law regulating the process, lobbying had traditionally been a tool for industry bodies and other pressure groups to engage with the government ahead of the national budget. For decades, organisations such as the Federation of Indian Chambers of Commerce and Industry (FICCI) and the Confederation of Indian Industry (CII), among others, have worked hard on behalf of their members to influence key ministries and policies. In recent years, the need for this continuous engagement has increased and so has the sophistication.

Why Lobbying is equated with corruption in India?

Lobbying is arguably one of the most controversial activities in modern democracies. Lobbyists provide governments with valuable policy-related information and expertise but if the activity is not transparent, *public interest may be put at risk in favour of specific interests*. It is easy to equate lobbying, which is an attempt to influence policy through legal and ethical means, with corruption in India because a large chunk of the population believes that almost every dealing with the government requires bribes to be paid to officials. Lobbying is a dirty word in India, one reason being that lobbying activities were repeatedly identified in the context of corruption cases. *For example*, in 2010 , leaked audio transcripts of conversations of an influential Indian lobbyist, Nira Radia, revealed suspicious dealings between the government and several business groups , reinforcing public perceptions about lobbying.

In reality, lobbying is not corruption; at least not the western model that is increasingly gaining traction in India, as an open economy pulls in new rules of engagement from developed economies. Given that most foreign companies have to follow strict anti-corruption laws in their own countries, few are keen to come under the lens of their regulators, lose face and pay fines. The Indian government itself spends millions of dollars every year to influence the U.S. government and other interest groups there. *Few examples* include:

- Ranbaxy paid $90,000 to Patton Boggs to preserve access to affordable generics.
- Wipro, like many Indian software firms, lobbied in the U.S for favourable visa policies.
- Not only private companies but even Indian government has been paying a fee every year since 2005 to a US firm to lobby for the Indo-US civilian nuclear deal. As reported by the Daily Mail in November 2012, Washington-based Barbour Griffith & Rogers (BGR), hired by the Indian embassy, also used to seek media interviews for Prime Minister Manmohan Singh and get Congressional resolutions passed in his support ahead of a US visit.

While lobbying is not a new phenomenon in India, it is *largely unregulated*. There are no laws that defined the scope of lobbying, who could undertake it, or the extent of disclosure necessary. Companies are not mandated to disclose their activities and lobbyists are neither authorized nor encouraged to reveal the names of clients or public officials they have contacted. The distinction between lobbying and bribery still remains unclear.

A private member's Bill to regulate lobbying, *Disclosure of Lobbying Activities Bill, 2013*, was introduced in the Lok Sabha by Kalikesh Narayan Singh Deo, which defined the term as "an act of communication with and payment to a public servant with the aim of influencing" legislation or securing a government contract. The Bill required lobbyists to register with an authority and declare certain information.

It is not lobbying that is the problem, but the lack of transparency, lack of comprehensive regulations and lack of mechanisms to monitor the activities of the powerful that is at the root of the problem. Right to Information Act (RTI) is a good step in this direction. But until comprehensive levels of transparency are achieved, legalising lobbying would mean no good. Also, regulations need to evolve and be documented in an iterative manner before embarking upon such a move. India needs to determine a regulatory model that suits its socio-political needs. Furthermore, it should tread a fine line while drafting the disclosure requirements. Very high disclosure requirements could drive lobbyists underground while very low penalties may not act as sufficient deterrent for law-breakers.

Controversy regarding Walmart Lobbying

In 2012, as part of a routine disclosure under U.S. law, Walmart revealed it had spent $25 million since 2008 on lobbying to "enhance market access for investment in India." This disclosure, which came weeks after the Indian government made a controversial decision to permit FDI in the country's multi-brand retail sector, created uproar in India. Groups protesting against FDI in multi-brand retail used Walmart's disclosure to advocate their case. The US retailer's lobbying had drawn sharp criticism from the opposition parties, forcing the Indian government to order an inquiry by a former Chief Justice of the Punjab and Haryana High Court Mukul Mudgal but the report of the panel remained inconclusive due to alleged non-cooperation by Walmart.

Views in favour of Lobbying

- Proponents of lobbying feel that it is inherent in any democracy to convince a policy maker of a particular position.
- Industry chambers such as FICCI and ASSOCHAM feel that business groups should be entitled to voice their concerns related to a particular policy matter with the government if they feel their interests may be jeopardised.
- It is argued that making lobbying and advocacy legal would lead to a clean way of approaching the policymakers and lawmakers if they have any legitimate and genuine interests.

Views against Lobbying

- Critics argue that corporates or people with mighty socioeconomic power, by themselves or through their industry bodies, corrupt the laws to serve a self-serving agenda by bending or deflecting them away from general fairness to majority of the population.
- It would also be against the right to equality guaranteed to citizens of the country, as businessmen with extensive money power can indulge in lobbying and get things done. While common man has to wait for hours or days to meet his MP/MLA. Thus, those with (financial) resources will win and those without cash will lose.

Difference between advocacy and lobbying

When non-profit organizations advocate on their own behalf, they seek to positively affect majority of the society, whereas lobbying refers specifically to advocacy efforts that attempt to influence policy or legislation of a country by interested groups, irrespective of its best outcome to the society.

7. Are Pressure Groups Becoming More Powerful?

Not all debates about pressure-group power focus on the power of individual groups. Others address the *overall* power of groups, and whether or not they have generally become more powerful. Commentators increasingly argue, for instance, that pressure groups have become more influential in recent years, perhaps even more influential than political parties.

The rise of pressure-group power

Those who argue that pressure groups have become more powerful usually draw attention to one of three developments:

1. **The growth of cause groups -** Looked at simply in terms of political participation, groups certainly appear to be becoming more important. This is best demonstrated by the growth of cause groups in particular. Some of the reasons cited for increase in the number of pressure groups are:

Student Notes:

i. **Increased leisure time**, both in terms of the shorter working week and more early retirement, has increased the number of people with time to devote to such activities
ii. **Higher educational standards** have increased the numbers of people with the organisational skills to contribute to pressure groups.
iii. **Changes in gender roles** have removed many of the barriers to participation by women in pressure group activity
iv. **Membership of political parties has declined**. It has been argued that this reflects the failure of the political parties adequately to reflect the needs of different groups of people in society, and that cause groups offer a more promising route for bringing about political change.

2. **The widening of access points through devolution –** A variety of pressure groups have benefited from the fact that new pressure points have emerged in politics, such as:
   I. Devolution has allowed pressure groups to exert influence through the local/grassroots level, especially after the **73rd/74th Constitutional Amendment Act**.
   II. The passage of the **Protection of Human Rights Act, 1993**, has substantially increased pressure-group activity focused on the courts. This has especially benefited groups that represent the interests of religious or ethnic minorities, and groups that have an interest in civil liberties issues (such as Liberty).
   III. Similarly, the **Right to Information Act, 2005** has also enabled more pressure groups to grow stronger and ask tough questions to those in power.
3. **Globalization** - Globalization has strengthened pressure groups in a number of ways. In particular, there is general agreement that business groups have become more powerful in a global age. This is because they are easily able to relocate production and investment, so exerting greater leverage on national governments. Such trends have strengthened pressures on governments, for instance, to cut business taxes and reduce corporate regulation.
   Another feature of globalization has been the emergence of NGOs, such as the World Development Movement and the World Social Forum, as major actors on the global stage. Some 2,400 NGOs, for example, took part in the Earth Summit in Rio de Janeiro in 1992.

The decline of pressure groups

However, not everyone believes that pressure groups have become more important. Some even talk in terms of the decline in pressure-group power in recent years. Such arguments are usually based on one of two developments:

1. **The end of corporatism**. For some, the high point of pressure-group influence came in the 1970s, especially in the case of developed countries. This was a period of so-called tripartite government or **corporatism**. Economic policy was therefore developed through a process of routine consultation and group bargaining. However, corporatism was dismantled in the 1980s and it has never been re-established.

> 'Corporatism' refers to the close relationship between the government and economic interest groups (trade unions and employers' organisations) in decision making on economic matters.

2. **A decline in meaningful and active participation**. An alternative explanation of the decline of pressure groups challenges the idea that recent years have witnessed an upsurge in group activity. This suggests that while group membership may have increased, these members have become increasingly passive.

8. Pressure Groups and Democracy

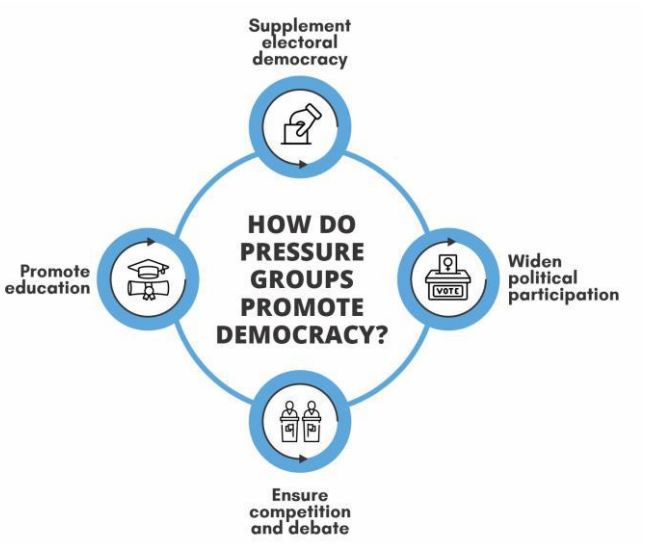
8.1. How Pressure Groups promote Democracy?

Pressure groups promote democracy in a number of ways, such as:

Student Notes:

Supplement electoral democracy

Pluralists often highlight the advantages of group representation over representation through elections and political parties. Pressure groups may either supplement electoral democracy (making up for its defects and limitations) or they may replace political parties as the main way in which people express their views and interests:



- **Pressure groups keep government in touch with public opinion in-between elections**. One of the weaknesses of elections is that they only take place every few years. By contrast, pressure groups force the government to engage in an ongoing dialogue with the people, in which the interests or views of the various sections of society cannot be ignored.
    - ***IAC's anti-corruption movement*** was one such example where the pressure groups made the government aware of rising sentiment in general public against corruption in public life.
- **Pressure groups give a political voice to minority groups** and articulate concerns that are overlooked by political parties. Elections, at best, determine the general direction of government policy, with parties being anxious to develop policies that appeal to the mass of voters. Pressure groups are therefore often more effective in articulating concerns about issues such as the environment, civil liberties, global poverty, violence against women and the plight of the elderly.
    - Women's organizations such as **SEWA, NCW** have campaigned for women-friendly laws such as the Protection of Women from Domestic Violence Act, 2005.
    - In the North-Eastern State of Manipur, many groups including 'Just Peace', Apunba Lup (students' organization) and Meira Paibis (women's groups) are trying to influence the government to listen to people's genuine grievances. Together, these groups are associated with Irom Sharmila, a civil rights activist known as 'the Iron Lady of Manipur' who has been on a hunger strike since November 2000.

Widen political participation

The level of political participation is an important indicator of the health of democracy. Democracy, at heart, means government *by* the people. Pressure groups have become increasingly effective agents of political participation. Not only has single-issue politics proved to be popular but the grass roots activism and decentralized organization of many campaigning groups have proved to be attractive to many young people and those who may be disillusioned with conventional politics.

Ensure competition and debate

Pressure groups help to promote democracy by widening the distribution of political power. They do this, in part, because these pressure groups compete against one another. This ensures that no group or interest can remain dominant permanently.

Promote education

Pressure groups promote political debates, discussions and arguments. In so doing, they create a better-informed and more educated electorate. This, in turn, helps to improve the quality of public policy.

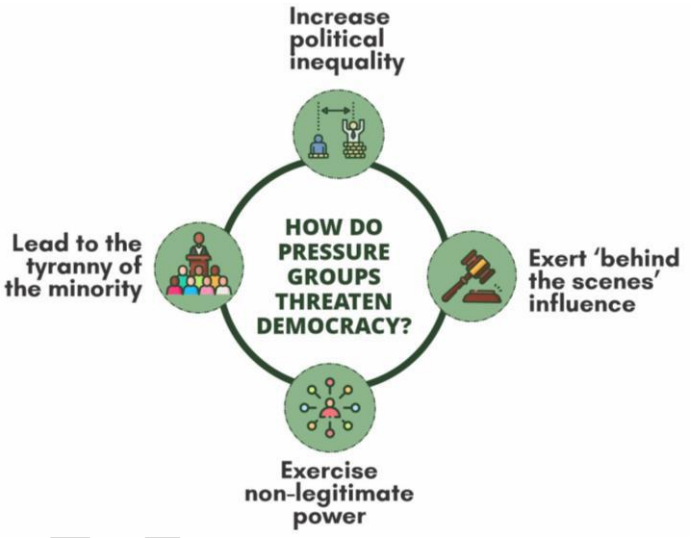
8.2. How pressure groups threaten democracy?

Student Notes:

Some political scientists and politicians have taken the view that pressure groups are non-democratic, or even anti-democratic, in the sense that they intervene in the political process, which is based on electoral accountability. A 2014 Intelligence Bureau report had also highlighted that foreign-funded NGOs were "negatively impacting economic development" in India. The ways in which the pressure groups threaten democracy are listed below:

Increase political inequality

A central argument against the pluralist image of group politics is that, far from dispersing power more widely and empowering ordinary citizens, pressure groups tend to empower the already powerful. They therefore increase, rather than reduce, political inequality. Pluralists argue that political inequality is broadly democratic, in that the most successful groups tend to be ones with large membership, and which enjoy wide and possibly intense public support. This is very difficult to sustain. In practice, the most powerful pressure groups tend to be the ones that possess money, expertise, institutional leverage and privileged links to government.



Exert 'behind the scenes' influence

Regardless of which groups are most powerful, pressure-group influence is exerted in a way that is not subject to scrutiny and public accountability. Pressure groups usually exert influence '***behind closed doors***'. This particularly applies in the case of insider groups, whose representatives stalk the 'corridors of power' unseen by the public and away from media scrutiny. No one knows (apart from occasional leaks) who said what to whom, or who influenced whom, and how.

Not only does this contrast sharply with the workings of representative bodies such as Parliament, but it also undermines parliamentary democracy. Insider links between groups and the executive bypass Parliament, rendering elected MPs impotent as policy is increasingly made through deals between government and influential groups that the Parliament does not get to discuss.

Exercise non-legitimate power

Critics have questioned whether pressure groups exercise rightful or legitimate power in any circumstances. This is because, unlike conventional politicians, pressure-group leaders have not been elected. Pressure groups are therefore ***not publicly accountable***, meaning that the influence they exert is not democratically legitimate.

This problem is compounded by the fact that ***very few pressure groups operate on the basis of internal democracy***. Leaders are very rarely elected by their members, and when they are (as in the case of trade unions) this is often on the basis of very low turnouts. Indeed, there has been a growing trend for pressure groups to be dominated by a small number of senior professionals. Some pressure-group leaders may, in fact, be little more than self-appointed political spokespeople.

Lead to the tyranny of the minority

Pressure groups, by their very nature, represent minorities rather than majorities. For pluralists, of course, this is one of their strengths. Pressure groups help to prevent a 'tyranny of the majority' that is, perhaps, one of the inevitable features of electoral democracy. However, pressure groups may create the opposite problem. Minority views or 'special' interests may prevail at the expense of the interests of the majority or the larger public.

9. Pressure Groups in India

9.1. Nature of Pressure Groups in India

The different types of pressure groups found in India are *business groups, trade unions, peasant groups, student groups, teachers' association, caste and religious associations, women's associations,* etc.

Business Groups

- The Business Groups are the most important and organised pressure groups in India. They are also most effective. They are **independent of the political parties** that exist and they have enough resources with which they can safeguard their interests. Business associations have existed in India even before Independence.
- The **important business groups** include the Confederation of Indian Industry (CII), Federation of Indian Chambers of Commerce and Industry (FICCI) and Associated Chamber of Commerce. They exert varied kinds of pressures, they try to influence planning, licensing bodies and economic ministries.
- The businesspersons are **usually present in different legislatures at the Central as well as State level**. Every Ministry of the Government of India has some kind of consultative committee and business groups are represented there. During pre-budget meetings the Finance Ministry interacts with the groups, to secure suitable inputs which helps in budget formulation.

Trade Unions

- The trade unions in India have been **present since even before the Independence** such as the All India Trade Union Congress (AITUC), which was established in 1920 and the Indian National Trade Union Congress (INTUC) established in 1947. The emergence of the communist movement also played an important role in the growth of trade unions in India.
- Trade Unions in India are **closely affiliated with the political parties**; many national political parties have got their own federations of trade unions. In fact, very little amount of independence from political parties exists in trade unions. They seem to have been able to exert significant pressure at the policy formulation level and their strength is well recognised by political parties and government.
- The trade unions when required can be very vocal and militant in their actions to meet their demands. They work through the **weapon of strike** and have been able to achieve monetary gains in terms of wage increase, bonus, change in wage structure, etc. These types of pressure groups have been able to encourage class consciousness and class solidarity among the workers.
- India has witnessed the trade unions resorting to demonstrations, during the disinvestment by the government in public sector undertakings over the past few years. Despite certain institutional limitations, such as, ideological differences, internal splits, external pressures, lack of international backing, the trade unions exert **significant pressure at various levels of policy formulation**.

Peasant Organisations

- The rise of peasants groups in India has been mainly due to **factors** such as abolition of Zamindari System and other land reform measures, implementation of Panchayati Raj, and

Green Revolution Movement. They gained huge power since 1960s. Although, the peasant organisations such as the All India Kisan Sabha (1936) have been existing since pre-independence.

- Different parties have got their own peasant organisations. **Like the trade unions, there is no peasant organisation, which may be independent of party control**, though at the state level, their organisations are non-political, independent of the political parties and homogenous.
- Even though there are some important All India Kisan Associations like All India Kisan Congress, All India Kisan Kamgar Sammelan, Akhil Bharatiya Kisan Sangh, peasant groups have been **mainly organised on territorial basis rather than on all-India basis**. Their **demands** relate to procurement prices of agricultural products, fertiliser subsidy, tenancy rights, electricity charges, etc.
- The Bharatiya Kisan Party (BKP) in Western U.P. is considered the most significant pressure group. The **interplay of language, caste factor, weak financial positions, etc**. have been greatly responsible for lack of emergence of multiple national level peasants' pressure groups.

Student Organisations

- The student organisations in India have acted as pressure groups both prior to Independence and after Independence. Some **pre-independence student organisations** were the All Bengal Students Association formed in 1928 and All India Students Federation (AISF) in 1936.
- **After Independence** the political parties continue to be affiliated with student organisations.
    - The All India Students Congress and later on the National Students Union of India (NSUI) is affiliated to the Congress Party.
    - The All India Students Federation and Students Federation of India (SFI) is associated with the Communist Party of India.
    - The Akhil Bharatiya Vidyarthi Parishad (ABVP) etc. is affiliated to BJP.
- Their **activities** are not just confined to educational issues. They try to pressurise governmental policy on various crucial issues such as fees, hostel facilities, curriculum etc.

Community Associations

- There are various community associations in India. These community groups are organised on the basis of caste, class and religion.
    - Some examples of **caste organisations** are Scheduled Caste Federation, Backward Caste Federation, etc.
- Amongst other organisations there are some like Vishwa Hindu Parishad, Northern and Southern India Christian Conference, etc. which represent interests that are supposed to **safeguard their respective religions**.

Civil Society Organizations

- India has a very **large number of Civil Society Organizations (CSOs)** i.e. organizations established by citizens of the country, to pursue certain interests. Many of these organizations act as pressure groups on the government, to promote implementation of policies in their areas of concerns.
- These organizations are **run by ordinary persons** who feel strongly committed to certain issues. Many ordinary persons come together informally or formally to share their feelings about different issues and prevailing social injustice. People take up issues of gender discrimination, child labour, street children and so on, and contribute through individual and collective action. Such organizations are able to mobilize public opinion because these issues are relevant to many people in society.
- Some of the **Civil Society Organizations** include Mazdoor Kisan Shakti Sangathan (MKSS,

Student Notes:

Rajasthan), People's Union for Civil Liberties (PUCL), National Alliance of People's Movements (NAPM), National Alliance of Women's Organizations (NAWO), Medico Friends Circle (MFC), and many others.

- Such organizations **put pressure on the government** for changing policies on many important issues such as corruption, human rights, livelihood of different people, environmental protection, women empowerment, educational and health issues. All these organizations involve a large number of people who struggle to bring about changes in State policies. Many of the organizations and groups believe in following non-violent methods.

Student Notes:

9.2. Methods of Operation of Pressure Groups in India

The pressure groups adopt different methods to achieve their goals. These methods *range from cordial rapport with the political party in power, to resorting to agitational methods.*

The pressure groups **finance the political parties** during the election time and sometimes even during the non-election times. They control the parties through this funding mechanism. Once the parties receive financial support, they cannot oppose these groups and their interests. On the other hand, they have to promote their interests.

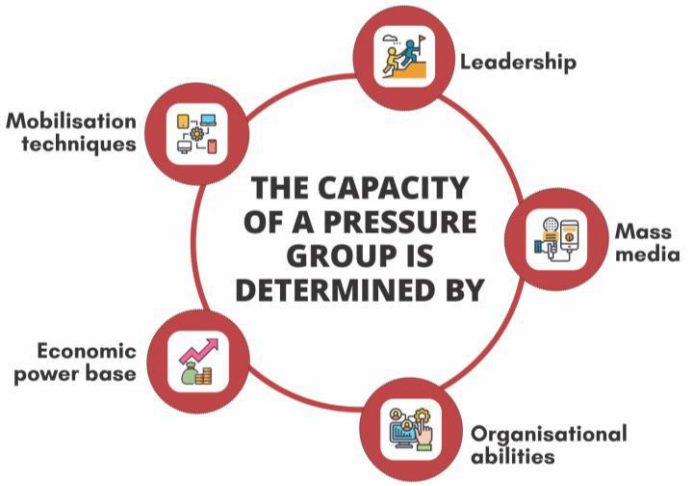
The pressure groups also maintain close **rapport with the State apparatus, viz., the bureaucratic machinery.** The organised pressure groups maintain a relationship with the key bureaucrats. The liaison officers are appointed to take care of the bureaucrats, particularly when they are stubborn. The lobbyists, middlemen, etc. have acquired enough of skills to manage them. This has also given rise to favouritism, corruption and other maladies in bureaucracy.

While one cannot find anything seriously wrong with the pressure groups, it is the methods of operation which have become controversial. Although all the pressure groups use identical methods, there are some groups which are far more effective than the others.

The capacity of a pressure group is determined by following factors:

Leadership

- Leadership is one of the essential components of pressure groups, as it has the prime responsibility to protect the interests of the group. The leadership should **regularly communicate to the political parties, policy-making agencies and the public**. The support of all these three forces is essential.
- The leadership should be able to **establish credibility and be able to carry public opinion**. The leadership should be, therefore, capable of communicating the viewpoint of their group orally, in writing and through dialogue. In short, the success of leadership lies in universalising the particular interest.



Mass Media

In India, the mass media is gaining increasing importance. The newspapers are by and large owned by the major industrial houses. Now, the regional newspapers are also becoming influential. The print as well as the television in present time, through their skills of communication, create powerful public images and

through continuous debate and propaganda influence the public opinion. The political parties and policy-making agencies are sometimes kept on tenterhooks by the media.

- For example, in the post-Independent India one issue on which government had to retreat is the issue of freedom of press. Whenever the bills were introduced either in the state legislatures or Parliament, they had to be withdrawn. Enough public pressure could be built on this issue. Therefore, this is a major weapon in the hands of the industrial houses or private sector to influence the policy-making process.

Organisational Abilities

There is a need for an extensive organisational network for building capacity of pressure groups, especially in a country like India with its size and magnitude. These organisations are needed for two reasons:

- To associate the various facets of the pressure groups and consolidate them.
- In a highly diversified society, communication should take place at multiple points so that rapport with different agencies at different levels is maintained.

The size and organisational strength can always play a significant role in terms of the response of political system to the demands that the pressure group puts forward.

Economic Power Base

The influence a pressure group commands is proportionate to its economic strength. From financing the elections and party funds to carrying propaganda, the economic power of the group plays an important role. Due to their economic might, the industrial and trading houses in India have been far more influential and powerful than the farmer's associations, despite farmers being spread all over the country. It is clear that without adequate economic resources, the pressure groups cannot exert enough and sustained pressure.

Mobilization Techniques

Effectiveness of the pressure groups also depends on their capacity to mobilize the people. The pressure groups not only create public opinion but sometimes draw the general masses into agitational and protest politics.

- For example, if they want to set an industry in a particular area, they create the necessary climate and make the people of the area demand for the industry. If they want infrastructure facilities, they pressurise the government through its network at first and through public demand and an agitation, later, if necessary. This is how a major irrigation dam can also be demanded and realised.

In a society where the majority is semi-literate and semiconscious, private interests can always be converted into public interests.

10. Limitations of Pressure Groups

- **Focus of the pressure groups**: In India, organised groups largely influence the administrative process rather than the formulation of policy. This is dangerous as a *gap is created between policy formulation and implementation.*
- **Issues raised by pressure groups**: Many a time *issues dominated by caste and religion eclipse those related to socio-economic interests*. The result is that instead of serving a useful purpose in the political administrative process, they are reduced to work for narrow selfish interests.
- **Lack of resources**: Many of the groups have a *very short life* because of the lack of resources. This explains the reason for the mushroom growth of pressure groups as well as their withering away as it becomes difficult to sustain the interest of the persons, initially attracted to form these pressure groups.

Student Notes:

Student Notes:

- **Serving political interests**: In a country like India, the tendency to politicise every issue, whether it has social, economic, cultural import, restricts the scope, working, and effectiveness of pressure groups. Instead of exerting influence on political process, the pressure groups *become tools and implements to subserve political interests.*
- **Low level of internal democracy**: Pressure groups have a low level of internal democracy, creating the possibility that they express the views of their leaders and not their members.

11. Comparison of Indian and Western Pressure Groups

India and most countries of the West are democracies with either Presidential or Parliamentary form of government. India, a parliamentary democracy, differs from countries of the West in terms of development. Therefore, there are some **differences** in the role of pressure groups.

- **Significance of pressure groups:** The American pressure groups are regarded as the fourth organ of the government but the Indian pressure groups are not yet able to play such significant role in politics.
- **Targets of pressure groups:** In India and Great Britain the cabinet and civil service are the main targets of pressure groups for lobbying purposes rather than the Parliament. However, the targets of American pressure groups are the Congress and its committees rather than the President for lobbying purposes.
- **Themes or issues raised**: Indian pressure groups based on caste, religion, region, etc. are more powerful than the modern groups such as business organisations.
- **Foreign policy:** A significant feature of American pressure groups is that their pressure groups take interest in foreign policy issues while in India pressure groups do not seem to have interest in foreign policy matters. Comparatively, the Indian pressure groups are concerned more with domestic policy issues and problems.

However, in general, despite the differences, democratic politics presupposes the crucial role of pressure groups for serving the interests of different sections of society.

12. Conclusion

Pressure groups are now considered as an helpful and indispensable element of the democratic process. The society has become highly complex and individuals cannot pursue their interests on their own. They need the support of other fellow beings in order to gain greater bargaining power. This gives rise to pressure groups based on common interests.

For a long time, these groups remained unnoticed. Initially they were considered as harmful for the democratic process, but now their role in the political process has become very important. Democratic politics has to be politics through consultation and negotiation and some amount of bargaining is also involved as well. Thus, it is very essential for the government to consult these organised groups at the time of policy formulation and implementation.

13. UPSC Previous Years' Questions

1. Pressure group politics is sometimes seen as the informal face of politics. With regards to the above, assess the structure and functioning of pressure groups in India. (2013)
2. How do pressure groups influence Indian political process? Do you agree with this view that informal pressure groups have emerged as more powerful than formal pressure groups in recent years? (2017)

14. Vision IAS Previous Years' Questions

Student Notes:

1. Discuss the role of Pressure Groups in Indian polity. Are they strengthening or hindering our democracy?

Approach:

Discuss briefly what pressure groups are. Then analyze how they affect the major aspects of Indian democracy. Their strengthening and hindering roles can be covered separately.

Answer:

A pressure group is an organized group of people that aims to influence the policies or actions of the Government. Pressure groups can therefore act as a channel of communication between people and the government.

Pressure groups are defined by three key features:

- They seek to exert *influence* from outside, rather than to directly exercise government power. Pressure groups do not make policy decisions, but rather try to influence those who do (the policy-makers). In that sense, they are 'external' to the government.
- They typically have a *narrow* focus. In some cases, they may focus on a single issue (for instance opposing a planned road development).
- Their members are *united* by either a shared belief in a particular cause or a common set of interests. People with different ideological and party preferences may thus work happily together as members of the same pressure group.

Pressure groups promote democracy in a number of ways:

- Supplementing electoral democracy
- Widening political participation
- Promoting education
- Ensuring competition and debate

Supplementing electoral democracy- Pressure groups supplement electoral democracy (making up for its defects and limitations) through the following:

- *Pressure groups keep government in touch with public opinion between elections*.

One of the weaknesses of elections is that they only take place every few years. By contrast, pressure groups force the government to engage in an ongoing dialogue with the people, in which the interests or views of the various sections of society cannot be ignored.

- *Pressure groups give a political voice to minority groups and articulate concerns that are overlooked by political parties*. Elections, at best, determine the general direction of the government policy, with parties being anxious to develop policies that appeal to the mass of voters. Pressure groups are therefore often more effective in articulating concerns about issues such as the environment, civil liberties, global poverty, abortion, violence against women and the plight of the elderly.

Widening Political Participation

The level of political participation is an important indicator of the health of democracy. Democracy, at heart, means government *by* the people. If this is the case, declining electoral turnout and steadily falling party membership highlights a major 'democratic deficit' in Indian politics. In this context, pressure groups have become increasingly effective agents of political participation. Not only has single-issue politics proved to be

popular but the grass roots activism and decentralized organization of many campaigning groups have proved to be attractive to many young people and those who may be disillusioned with conventional politics.

Student Notes:

Promoting Education

Pressure groups promote political debate, discussion and argument. In so doing, they create a better-informed and more educated electorate. This, in turn, helps to improve the quality of public policy. Without pressure groups, the public and the media would have to rely on a relatively narrow range of political views, those expressed by the government of the day and a small number of major parties. Pressure groups challenge established views and conventional wisdom. They offer alternative viewpoints and widen the information available to the public, especially through their access to the mass media and the use of 'new' communications technology such as the Internet. Pressure groups are therefore prepared to 'speak truth to power'. In many cases, pressure groups raise the quality of political debate by introducing specialist knowledge and greater expertise.

Ensuring Competition and Debate

Pressure groups help to promote democracy by widening the distribution of political power. They do this, in part, because groups compete against one another. This ensures that no group or interest can remain dominant permanently. Group politics is therefore characterized by a rough balance of power. This is the essence of pluralist democracy.

However Pressure groups also threaten democracy in a number of ways. They:

- **Concentrate power**. Groups widen political inequality by strengthening the voice of the wealthy and the privileged: those who have access to financial, educational, organizational or other resources. Other groups are poorly organized, lack resources or are ignored by government.
- **Narrow self-interest**. Groups are socially and politically divisive, in that they are concerned with the particular, not the general. In defending minority views or interests, pressure groups may make it more difficult for governments to act in the interest of the larger society.
- **Unaccountable power**. Being non-elected, groups exercise power without responsibility. Unlike politicians, group leaders are not publicly accountable. Pressure groups usually lack internal democracy, meaning that leaders are rarely elected and so are unaccountable to their members.
- **Undermine Parliament**. Groups undermine parliamentary democracy by bypassing representative processes. They also make the policy process 'closed' and more secretive by exerting influence through negotiations and deals that are in no way subject to public scrutiny.

2. Compare pressure groups in India with those in the west.

Approach:

- Briefly write why there are differences
- Then write the differences.

Answer:

Within western countries there are differences between Presidential and Parliamentary form of government. India though a parliamentary democracy differs from west in terms of developmental levels. Therefore there are some differences in the role of pressure groups. Some of the differences are:

Student Notes:

- The American pressure groups are regarded as the fourth organ of the government but the Indian pressure groups are not yet able to play such significant role in politics.
- In India and Great Britain the cabinet and civil service are the main targets of pressure groups for lobbying purposes rather than the parliament. However, the targets of American pressure groups are the Congress and its committees rather than the President for lobbying purposes.
- Indian pressure groups based on caste, religion, region, etc. are more powerful than the modern groups like business organisations.
- A significant feature of American pressure groups is that in the USA, pressure groups take interest in foreign policy issues while in India, pressure groups do not seem to have interest in foreign policy matters. Comparatively, the Indian pressure groups are concerned more with domestic policy issues and problems, and less with foreign policy matters.

However in general, despite the differences, democratic politics presupposes the crucial role of pressure groups for serving the interests of different sections of society.

3. The capacity of a pressure group to promote its interests is contingent upon a number of internal and external factors. Discuss.

Approach:

- Very briefly describe pressure groups.
- List out the internal and external factors that influence it, with suitable examples wherever possible.

Answers:

Pressure groups are groups which may be profit or non-profit based and usually voluntary organization whose members have a common cause for which they seek to influence political or corporate decision makers to achieve a desired objectives. Numbers of internal and external factors that influence the promotion of these interests are:

Internal Factors

Wealth

- They can have high public profile, access to media, can run expensive advertising campaigns.
- They can also meet huge electoral expenses and manipulate the electoral results in their favor. E.g Corporate and media lobbies have a better influence than trade unions specially in U.S.A.

Size

- Large groups can claim to represent public opinion; hence it can have a major electoral impact.
- Many groups can manage their finances with the help of its huge group and its financial support itself.

Organisation and its leadership

- Organized groups are more powerful and more efficient than the less organized groups.
- A good leadership can also provide better concerted efforts and better management and channelization of resources, towards success of the group. E.g

Kailash Styarthi as a Nobel Laureate can better advocate and champion the cause of Child rights.

- A good leadership can also provide the organization with:
  1. Acute political Skills
  2. Contacts
  3. Developed media Skills
  4. A high public profile.

External Factors

Public support

- Groups with high level of support from public also enjoy higher political influence.
- E.g. India against Corruption could gain huge popularity because of anti-corruption sentiments boiling in the country at that point.

Views of the Government

- Groups which have their interests and ideology coinciding with the goals of the government enjoy greater influence. E.g Rashtriya Swayam Sevak Sangh during BJP government.
- Groups with interests antithetical to government interests, have least chances of meeting their interests.

Opposition Groups

- Where an interest group is lucky enough not to face serious opposition from other interest groups they may have better chances of meeting their political demands.

Source of funds

- In the needs of the funds the pressure groups are many a times forced to also further the interests of their financers.

Thus the performance and influence of the pressure groups are not just determined by the legitimacy of their demands but also by other internal and external factors that are used to manufacture the consent and put pressure on the government to push forward their demands.

4. Pressure groups ensure that an individual's democratic rights are not confined just to the act of voting. Discuss.

Approach:

- Introduce by defining pressure groups.
- Then discuss how pressure groups facilitate citizens' involvement in democracy- through education, representation, policy formulation, policy implementation etc.

Answer:

A pressure group is an organized group of people that aims to influence the policies or actions of government. The pressure group universe may include churches and charities, businesses and trade associations, trade unions and professional associations, think tanks of various complexions, and so forth.

Pressure groups help in citizens' participation in democracy in following ways:

- **Representation:** Pressure groups provide a mouthpiece for groups and interests that are not adequately represented through the electoral process or by political parties.

Student Notes:

- **Education:** Much of what the public knows about politics it finds out through pressure groups of one kind or another. Many pressure groups, indeed, operate largely through their ability to communicate with the public and raise political consciousness.
- **Policy formulation:** Pressure groups are a vital source of information and advice to governments. Many groups are therefore regularly consulted in the process of policy formulation, with government policy increasingly being developed through policy networks.
- **Policy implementation:** The role of some pressure groups extends beyond trying to shape the content of public policy to playing a role in putting policy into practice.
- Pressure groups keep government in touch with public opinion between elections.
- Pressure groups give a political voice to minority groups and articulate concerns that are overlooked by political parties.

Democratic politics has to be politics through consultation and negotiation. The society has become highly complex and individuals cannot pursue their interests on their own. Pressure groups ensure that an individual's democratic rights are not confined just to the act of voting.

5. Compare and contrast pressure groups with political parties. Describe the different techniques through which pressure groups influence policies in India.

Approach:

- Firstly, define pressure groups.
- Then elaborate upon their differences from political parties.
- Lastly discuss various techniques that they use like electioneering, lobbying etc.
- Conclude by commenting on their role in a democracy.

Answer:

A pressure group is a group of people who are organised actively for promoting and defending their common interest. They try to influence public opinion as well as government policies. It is not necessary that they will exert any 'pressure' (such as through protests) to influence the decision. They may resort to mass communications, advocating, lobbying, etc. to achieve their aims.

Pressure Groups and Political Parties

Pressure groups	**Political Parties**
Pressure groups do not seek direct power; they only influence those who are in power for moulding decisions in their favour.	Political parties operate and seek political power to translate its policies into practice.
Pressure groups do not contest elections; they may support political parties of their choice.	Political parties nominate candidates, contest elections, and participate in election campaigns.
Pressure groups do not necessarily have political ideologies. They may seek to influence economic or cultural policy based on their needs.	Ideology for political parties is very important as they organize people around them based on ideology.
Pressure groups are not based on personality of an individual.	Apart from ideology, personality cult of individual leaders is important.
The interests of the pressure groups are usually specific and particular. Their activities are confined to the protection and promotion of those interests only.	The political parties have policies and programmes with national and international ramifications.

Their membership is limited	The membership is very broad based.
Pressure groups resort to agitation a politics like marches, demonstrations, strikes, fasts etc.	Political parties use Constitutional means to achieve their aims.

Techniques used by Pressure Groups

- The pressure groups influence the policy-making and policy-implementation in the government through legal and legitimate methods like lobbying, correspondence, publicity, propagandising, petitioning, public debating, maintaining contacts with their legislators and so forth.
- However, sometimes they resort to illegitimate and illegal methods like strikes, violent activities and corruption/bribing which damages public interest and administrative integrity.

> ***Electioneering*:** Try to place in public office persons who are favourably disposed towards the interests they seek to promote.
>
> *Lobbying*: Try to persuade public officers, whether they are initially favourably disposed toward them or not, to adopt and enforce the policies that they think will prove most beneficial to their interests.
>
> *Propagandizing*: To influence public opinion and thereby gain an indirect influence over government, since the government in a democracy is substantially affected by public opinion.

Pressure Groups can enhance as well as distort the political system. Because of the complexities of modern government, and the pluralistic nature of Indian society, pressure groups provide a means by which ordinary citizens can participate in the decision making process, as well as maintaining a check on government activity. Similarly, governments can be better informed of the electorate's sensitivities to policies, because of the pressures articulated by these groups.

6. Illustrate how pressure groups have emerged as a strong mechanism for making democracy participatory and responsive.

Approach:

- Briefly, write about pressure groups.
- Explain the role of pressure groups in making democracy participatory and responsive.

Answer:

A pressure group is a interest group organized to promote the interests of its members and influence the policies of the government without seeking themselves to exercise the formal powers of government. They use instruments like lobbying, campaigns and polls.

Role of pressure groups in making Democracy Participative:

- Democracy enables citizens to participate in election; however, it limits citizen participation after formation of government. Civil society and pressure groups fill this void in a democratic polity.
- Provides representation to a wide range of diverse interests and opinions which modern political parties often fail to do due to socio-political compulsions.
- Keeps government in touch with the public opinion in between elections. For e.g. Anti-corruption movement, 2011 led to passage of the Lokpal Act.
- Gives political voice to minority groups and articulate their concerns like Naz Foundation's fight for rights of LGBT community.

Student Notes:

Role of Pressure groups in making Democracy Responsive:

- Provide alternative platform to citizens to redress grievances and hold government responsible.
- Single-issue politics has led to mobilization of pressure groups and public on issues like environment, transparency etc. For e.g. Mazdoor Kisan Shakti Sangathan led the people's movement, which got the government to bring about the law on 'Right to Information'.
- Grass root activism and decentralized groups provides an alternative to youth disillusioned with conventional politics.
- Promote political education through political debate thus creating a better-informed and educated electorate and improving the quality of public policy.
- Competing pressure groups ensure that no group or interest remain dominant or dormant permanently.

Further, pressure groups also happen to be an indicator of political maturity and accommodation in a political system, for only in a truly democratized country, would such groups be allowed to have a say in the policies of the government.

7. Delineate the differences between pressure groups and interest groups. Citing examples, elaborate on the ways in which pressure groups influence government decisions and policy making in India.

Approach:

- Briefly introduce the answer with interest groups and write the difference between interest and pressure groups.
- Mention the different techniques and methods used by pressure groups. Provide relevant examples.
- Conclude appropriately.

Answer:

Interest Groups basically are organized groups of people which seek to attain certain interests. Their goal could be a policy that exclusively benefits group members or one segment of society (e.g., government subsidies for farmers) or a policy that advances a broader public purpose (e.g., improving air quality).

Pressure groups are a sub-type of interest groups. While interest groups vary widely in their form, focus area and organization, pressure groups are rather formally organized and focus more on engaging with political actors. While all pressure groups are interest groups, not every interest group is a pressure group.

Pressure groups make use of different techniques and methods to achieve their objectives. Some of the most common techniques are as follows:

- **Lobbying**: This includes making representations to the legislature or other departments of governments in order to influence public policy in favour of themselves. For instance, organizations like CII and FICCI often make representation to government to influence economic policies.
- **Strikes and demonstations**: This involves using non-violent methods in order to influence decision-making. For instance, Mazdoor Kisan Shakti Sangathan organized public hearings, strikes for demanding Right to Information Act.
- **Physical demonstrations and violence**: These methods are employed by anomic pressure groups. For instance, use of violence by Naxalites, ULFA.

Student Notes:

- **Association or affiliation with political parties**: Examples include trade unions, student organizations etc.
- **Propagandizing:** Influencing the public opinion by publishing information in mass domain using media and other means.
- **Use of traditional social structure**: This include communal groups and religious bodies which seek to influence government decision making. Rashtriya Swayam Sevak Sangh (RSS), All India Muslim Personal Law Board are examples of such a pressure group.

Pressure groups are now considered as an indispensable and helpful element of the democratic process. The society has become highly complex and individuals cannot pursue their interests on their own. They need the support of other fellow beings in order to gain greater bargaining power; this gives rise to pressure groups based on common interests.

Democratic politics has to be politics through consultation, through negotiation and some amount of bargaining is also involved. Thus, it is very essential for the government to consult these organised groups at the time of policy formulation and implementation.

Student Notes:

LOCAL GOVERNANCE

Contents

Student Notes:

1. Panchayati Raj in India: Historical Background and Evolution

The Panchayats or village assemblies existed in ancient India as self-governing institutions which had distinct and well-defined functions. The institution of Panchayat represented not only the collective will, but also the collective wisdom of the entire rural community. The system of local self-governance in India can be traced back to ancient (Vedic) period:

1.1. Ancient Period

- In the Vedic state, village acted as a basic unit of administration with **'Gramini'** as an important village functionary. In the Vedic texts, there are also references to **the Samiti** (Assembly) and **Sabha** where discussions took place mainly concerning with agricultural problems.
- **Arthashatra by Kautilya** provides an exhaustive account of the system of village administration prevailing at that time. He outlined the ideal size of the village, its demarcation, distance between one village and another, and grouping of villages for purposes of posting police force and other state officials.

1.2. Medieval Period

- This period witnessed a period of political change that was marked with centralization of leadership and decline in local governance. However, The hands of the administration reached only the district level. The village communities continued to exist.

1.3. Colonial Period

- The onset of colonial rule completely broke the old age self-sufficiency of the villages. Production for the market took the place of production for consumption in the village itself.
- Britishers adopted policies that established a direct connection between the central and provincial governments on one side and central government and the individual inhabitants of the village on the other. For instance, under Ryotwari system, the government dealt directly with the individual cultivator and not through the village panchayat. In addition, the government took the responsibility of construction and maintenance of irrigation works, roads, schools. payment of grants to them.
- However, the Britishers did take some initiatives to sustain and restore local self-governing institutions in India:
    - **The Regulation of 1816** conferred judicial authority to the village panchayats in a few provinces. Under this Regulation, the Panchayats under the Madres Presidency were allowed to try cases if both the parties agreed to submit the dispute to the panchayat
    - **The Mayo's resolution, 1870** gave impetus to the development of local institutions by enlarging their powers and responsibilities.
    - **Bengal Village Chowkidary Act, 1870** empowered the District Magistrate to constitute a panchayat in any village if majority of the adult male residents apply in writing to the District Magistrate to constitute a panchayat in such village.
    - **The Resolution on Local Self Government (Lord Ripon's Resolution) 1882** intended to build local self-government institutions on the foundations of local self-government system of ancient India and he designed them as an instrument of political and popular education.
    - **Morley Minto Reforms, 1909** incorporated the recommendations of Royal Commission on Decentralization (1907) which led to the enlargement of the election process in the Local Self Government structure in India.
    - **Montagu Chelmsford reforms of 1919** introduced dyarchy system where responsibility of the local government was given to ministers and the ministers enacted number of laws to revive the Panchayati raj institutions. Also The municipalities were vested with

more powers to impose taxes. Village Panchayat Act was also passed and made the panchayats a legal body. It established the village panchayat in many parts of the country and this continued up to 1940.

1.4. Mahatma Gandhi and Panchayati Raj

- Mahatma Gandhi was a staunch advocate of local self-government. In his book – ***India of My Dreams*** – he writes '*Independence must begin at the bottom. Thus, every village will be a Republic or Panchayat having full powers. It follows,* therefore, that every village has to be self-sustained and capable of managing its affairs even to the extent of defending itself against the whole world'.

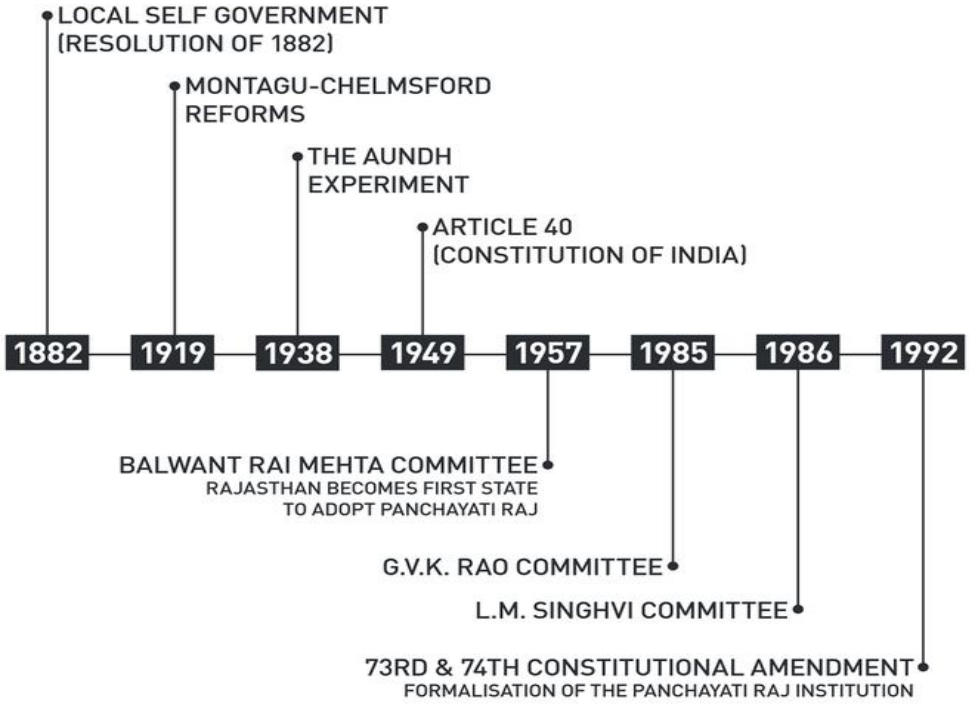
AUNDH EXPERIMENT

In November 1938, the ruler Aundh abdicated and declared that its affairs shall, henceforth, be managed by the people of Aundh themselves. In what was an unprecedented step, a 'Swaraj Constitution' was drafted for the people of Aundh with the help of Mahatma Gandhi and Maurice Frydman, a Polish Engineer, and Gandhian. The Aundh Experiment served as a base experiment and example of 'Swaraj', as envisaged by Gandhi, and was one of the earliest tests of local self-government in the princely states of India. While it is hard to gauge the extent of progress achieved in the decade that followed, the arrangement persisted till India gained independence, and Aundh merged with rest of India. The Aundh Experiment was successful in demonstrating that 'Panchayati Raj' was a realisable dream.

- In 1920, Gandhiji made a strong plea for the introduction of Self-Government in the villages with a view to improve their economy and self-sufficiency. He put forth the idea of **'Gram Swarajya'** or village republic.
- In the meantime; Indian National Congress had also undertaken a campaign to organize Panchayats in the villages. Thus, it became a part of the **ideology of Indian National Movement.** The boycott of the government courts and the establishment of peoples' private court had been one of the important aspects of the **Non-Cooperation Movement** under the leadership of Mahatma Gandhi.
- This was indeed a call for the revival of village panchayats and empowering of the village authorities to look after the administrative affairs of their locality.

1.5. Post Independence period

- Soon after the Independence, the political dispensation realized the importance of grassroots democracy. The Constitution of India, under **Article 40,** provisioned that "the state shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary for them to function as units of self-government."
- In 1957, the Government of India appointed the **Balwant Rai Mehta Committee** to examine the workings of **the National Extension Service and Community Development Program.** The Committee recommended a scheme for **"democratic decentralisation",** as well as a three-tier system with directly elected members at the village level. The recommendations of the Committee were accepted by the **National Development Council.** Rajasthan became the first state to adopt the system.
- Later the **G.V.K. Rao Committee 1985** recommended making the "district" as the basic unit of planning while the **L. M. Singhvi committee** recommended providing more financial resources and constitutional status to the panchayats to strengthen the.
- While many states implemented Panchayati Raj in some form, **there was a lack of uniformity** among the models adopted by different states.
- The formalisation of the system of Panchayati Raj in India culminated in the **73rd and 74th Constitutional Amendment Acts of 1992.**



PANCHAYATI RAJ: A TIMELINE

2. 73rd Constitutional Amendment Act of 1992

2.1. Introduction

- The passage of the Constitution (73rd Amendment) Act, 1992 marks a new era in the **federal democratic** set up of the country. It inserted **Part IX** in the Constitution of India and accorded Panchayats a Constitutional status as institutions of local self-governance for rural India. It also added Eleventh Schedule to the constitution that contains 29 functional items for Panchayats.
- As a result, 2,32,278 Panchayats at village level; 6,022 Panchayats at intermediate level and 535 Panchayats at district level have been constituted in the country. These Panchayats are being manned by about **29.2 lakh elected representatives** of Panchayats at all levels. This is the **broadest representative base that exists in any country of the world – developed or under- developed.**

2.2. Mains features of the act

The mains features of the Act are

- A 3-tier system of Panchayati Raj for all States having population of over 20 lakh. The Panchayats have been established in each state through acts of the respective states.
- Panchayat elections regularly every 5 years
- Reservation of seats for Scheduled Castes, Scheduled Tribes and women (not less than one-third of seats).
- The seats are to be reserved for SCs and STs in proportion to their population at each level. Out of the Reserved Seats, 1/3rd have to be reserved for the women of the SC and ST. Out of the total number of seats to be filled by the direct elections, 1/3rd have to be reserved for women.
- Appointment of State Finance Commission to make recommendations as regards the financial powers of the Panchayats

Student Notes:

As per the Constitution (73rd Amendment) Act, the Panchayati Raj Institutions have been endowed with such powers and authority as may be necessary to function as institutions of self- government and contains provisions of devolution of powers and responsibilities upon Panchayats at the appropriate level with reference to

(a) the preparation of plans for economic development and social justice
(b) the implementation of such schemes for economic development and social justice as may be entrusted to them.

2.3. Administrative Structure of the PRIs

- All States now have a uniform three tier Panchayati Raj structure. At the base is the 'Gram Panchayat'. A Gram Panchayat covers a village or group of villages.
- The intermediary level is the Mandal (also referred to as Block or Taluka). These bodies are called Mandal or Taluka Panchayats. The intermediary level body need not be constituted in smaller States. At the apex is the Zilla Panchayat covering the entire rural area of the District.
- The amendment also made a provision for the mandatory creation of the Gram Sabha. The Gram Sabha would comprise all the adult members registered as voters in the Panchayat area. Its role and functions are decided by State legislation.

2.4. Elections to the PRIs

- All the three levels of Panchayati Raj institutions are **elected directly** by the people. The term of each Panchayat body is five years.
- If the State government dissolves the Panchayat before the end of its five year term, fresh elections must be held within six months of such dissolution. A panchayat constituted upon the dissolution of a panchayat before the expiration of its duration shall continue only for the remainder of the period for which the dissolved panchayat would have continued had it not been so dissolved.
- This is an important provision that ensures the existence of elected local bodies. Before the 73rd amendment, in many States, there used to be indirect elections to the district bodies and there was no provision for immediate elections after dissolution.
- Also no person shall be disqualified on the ground that he is less than 25 years of age if he has attained the age of 21 years.

2.5. State Election Commission

- The superintendence, direction and control of the preparation of electoral rolls and the conduct of all elections to the panchayats is vested in the state election commission who is appointed by the governor. The conditions of service and tenure of his office shall is also determined by the governor.
- Earlier, this task was performed by the State administration which was under the control of the State government. Now, the office of the State Election Commissioner is autonomous like the Election Commissioner of India.
- However, the State Election Commission is **an independent office** and is not linked to nor is this officer under the control of the Election Commission of India.

2.6. Financial Powers of the PRIs

- Article 243-G of the Constitution of India provides that the States/UTs may, by law, endow the Panchayats with such powers and authority as may be necessary to enable them to function as institutions of self-government and to prepare plans for economic development and social justice and their implementation including those in relation to the matters listed in the Eleventh Schedule.

Student Notes:

- As per Article 243-H of the Constitution, State Legislatures have been empowered to enact laws;
  i. to authorise a Panchayat to levy, collect and appropriate some taxes, duties, tolls and fees;
  ii. to assign to the Panchayat, some taxes, duties, tolls levied and collected by the State Government;
  iii. to provide for making grants-in-aid to the Panchayats from the Consolidated Fund of the State
  iv. to provide for constitution of such funds for Panchayats for crediting all money received by or on behalf of Panchayats and also the withdrawal of such money therefrom.

2.7. State Finance Commission

- According to the act, the State government is also required to appoint a State Finance Commission once in five years. This Commission would examine the financial position of the local governments in the State.
- It would also review the distribution of revenues between the State and local governments on the one hand and between rural and urban local governments on the other.
- This innovation ensures that allocation of funds to the rural local governments will no more be dictated by political consideration.

2.8. Role of Panchayati Raj in the democracy

The Panchayati raj is no more an experiment in the Indian democratic process. It is an established administrative device. It's major contribution includes:

- **Political consciousness**: It enabled a large number of people to acquire leadership at local levels, especially women (since one-third of seats are reserved for the women candidates).
- **Strengthening democratic institutions and processes :** The experience gained by the new generation of leadership in democratic management has raised the quality of legislative debates and working of other higher level institutions. It has provided opportunity for the circulation of political elite which is very essential for maintaining democratic forms in their true spirit.
- **Planning and development**: The PRIs have been designed to play a crucial role in planning and development. A number of studies indicate that as units of planning and development, be it at the district or lower level, the Panchayati Raj institutions have contributed substantially. In Maharashtra, Karnataka, West Bengal and several other states, local level planning has been successfully formulated and implemented by these institutions. Ultimately to what extent the local bodies have the necessary autonomy and financial resources to take up developmental activities, depends largely on the state government.
- **Giving voice to local demands:** PRIs have become the connecting link between the Parliament and State Legislature on the one hand and local bodies on the other so that the respective members can exchange views on the objectives of a plan and its priorities. The local members talk about the local needs, urgencies and difficulties in the implementation whereas the members of Parliament and State Legislature can explain the possible solution since they decide national priorities and at the same time they are financially in a better position to help the rural bodies. This two way link has served the dual purpose of modifying the state policies at point of maladjustment as well as communicated the message from centre and/or state to the remote corner of the rural society.
- **Executive Institution:** Certain civic functions such as rural sanitation, public health, street lighting, drinking water supply, maintenance of village roads, culverts, management of primary and secondary education, etc., have been carried out by the Panchayati Raj bodies.
- **Breaking hierarchies:** Panchayati Raj has become a powerful tool where caste and local

interests interact, clash, compromise and arrive at common understanding on various issues.

Student Notes:

2.9. Challenges related to PRIs

While the State Panchayati Raj Acts have been enacted, State Election Commission and State Finance Commissions have been set up and regular Panchayat elections have been held providing reservation for SCs/STs/Women in Panchayats, the results of actual implementation of the Constitution (73rd Amendment) Act, 1992 have fallen far short of expectations on the ground level:

- Though the political decentralisation has been largely successful, with elections held regularly and with ample participation of people, there is only **minimum administrative and fiscal decentralisation**, which remain de facto under the control of the State Governments.
- Panchayats have not given adequate responsibilities to **levy and collect taxes, fees, duties or tolls**. Panchayats should have been granted appropriate powers to generate their own resources.
- Recommendations of State Finance Commissions have been either **accepted partially or implemented half-heartedly.**
- **Powers given to the State Election Commissions vary from State to State.** These Commissions should have been given powers to deal all matter relating to Panchayat elections namely, delimitation of constituencies, rotation of reserved seats in Panchayats, finalisation of electoral rolls, etc.
- Gram Sabhas have not been empowered and strengthened to ensure people's participation and transparency in functioning of Panchayats as envisaged.
- The Constitution does **not stipulate any size for Panchayats**, either in terms of population or in area
- In most States, Panchayats **do not have the power to recruit their staff** and determine their salaries, allowances and other conditions of service. Besides, due to the lack of financial resources, the power to recruit staff, even if such power exists remains grossly under utilised or not utilised at all.
- Under various State Panchayati Raj Acts, the respective **State Government** or their nominated functionaries command **considerable power** with regard to review and revision of actions taken by PRIs. These controls are in the form of power to suspend a Panchayat resolution; inquire into its affairs; power to remove elected Panchayat representatives; approval of the budget of a Panchayat etc.

2.10. 2nd ARC recommendation for rural governance

- States should ensure that as far as possible Gram Panchayats should be of an **appropriate size** which would make them viable units of self-governance and also enable effective popular participation. This exercise will need to take into account local geographical and demographic conditions.
    - Wherever there are large Gram Panchayats, States should take steps to constitute Ward Sabhas which will exercise in such Panchayats, certain powers and functions of the Gram Sabha and of the Gram Panchayat as may be entrusted to them.
- Panchayats should have power to **recruit personnel** and to regulate their service conditions subject to such laws and standards as laid down by the State Government.
- The provisions in some State Acts regarding approval of the budget of a Panchayat by the higher tier or any other State authority should be abolished.
- **State Governments should not have the power to suspend or rescind** any resolution passed by the PRIs or take action against the elected representatives on the ground of abuse of office, corruption etc. or to supersede/dissolve the Panchayats. In all such cases,

the powers to investigate and recommend action should lie with the l**ocal Ombudsman** who will send his report through the Lokayukta to the Governor.

- States must **undertake comprehensive activity mapping** with regard to all the matters mentioned in the Eleventh Schedule. This process should cover all aspects of the subject viz planning, budgeting and provisioning of finances. The State Government should set-up a task force to complete this work within one year.
- A comprehensive exercise needs to be taken up regarding **broadening and deepening of the revenue base** of local governments. This exercise will have to simultaneously look into four major aspects of resource mobilisation viz. (i) potential for taxation (ii) fixation of realistic tax rates (iii) widening of tax base and (iv) improved collection.
    - Except for the specifically tied, major Centrally Sponsored Schemes and special purpose programmes of the States, all other allocations to the Panchayati Raj Institutions should be in the form of untied funds. The allocation order should contain only a brief description of broad objectives and expected outcomes.
    - State Governments should release funds to the Panchayats in such a manner that these institutions get adequate time to use the allocation during the year itself. The fund release could be in the form of equally spaced instalments. It could be done in two instalments; one at the beginning of the financial year and the other by the end of September of that year
    - For their infrastructure needs, the Panchayats should be encouraged to borrow from banks/financial institutions. The role of the State Government should remain confined only to fixing the limits of borrowing.

3. The provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA), 1996

Context: The provisions of the 73rd amendment were not made applicable to the areas inhabited by the Adivasi populations in many States of India. In 1996, a separate act was passed extending the provisions of the Panchayat system to these areas. Many Adivasi communities have their traditional customs of managing common resources such as forests and small water reservoirs, etc. Therefore, the new act protects the rights of these communities to manage their resources in ways acceptable to them.

3.1. Objective

- The act extends Part IX of the Constitution with certain modifications and exceptions, to the Fifth Schedule Areas notified under article 244(1) of the Constitution.
- The Fifth Schedule of the Constitution deals with the administration and control of Scheduled Areas as well as of Scheduled Tribes residing in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
- At present, Fifth Schedule Areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.

3.2. Definition of Village and Gram Sabha

- Under the PESA Act, {section 4 (b)}, a village shall ordinarily consist of a habitation or a group of habitations or a hamlet or a group of hamlets comprising a community and managing its affairs in accordance with traditions and customs.
- Under the PESA Act, {section 4 (c)}, every village shall have a Gram Sabha consisting of persons whose names are included in the electoral rolls for the Panchayat at the village level.

Student Notes:

3.3. PESA and Gram Sabha

Student Notes:

The act exclusively empowers Gram Sabha to

- safeguard and preserve the
  a. traditions and customs of the people, and their cultural identity
  b. community resources
  c. customary mode of dispute resolution
- carry out executive functions to
  a. approve plans, programmes and projects for social and economic development;
  b. identify persons as beneficiaries under the poverty alleviation and other programmes
  c. issue a certificate of utilisation of funds by the Panchayat for the plans; programmes and projects.

PESA Empowers Gram Sabha/Panchayat at appropriate level with:

- right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons
- panchayat at an appropriate level is entrusted with planning and management of minor water bodies
- mandatory recommendations by Gram Sabha or Panchayat at appropriate level for prospective licenses/lease for mines and concession for the exploitation of minor minerals
- regulate sale/consumption of intoxicants
- ownership of minor forest produce
- prevent land alienation and restore alienated land
- manage village markets
- control over money lending to STs
- control over institutions and functionaries in social sector, local plans including Tribal sub plans and resources .

3.4. Importance of PESA

Effective implementation of PESA will not only bring development but will also deepen democracy in Fifth Schedule Areas. There benefits of PESA include:

- It will enhance people's participation in decision making.
- PESA will reduce alienation in tribal areas as they will have better control over the utilisation of public resources.
- PESA will reduce poverty and out-migration among tribal population as they will have control and management of natural resources will improve their livelihoods and incomes.
- PESA will minimise exploitation of tribal population as they will be able to control and manage money lending, consumption and sale of liquor and also village markets.
- Effective implementation of PESA will check illegal land alienation and also restore unlawfully alienated tribal land.
- And most importantly PESA will promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.

4. Urban Local Bodies (ULBs)

4.1. Historical Background

- The formation of **Madras Municipal Corporation in 1687** earmarked the era of Urban Local Governance in India. Later similar corporation were formed in Calcutta and Bombay Municipal Corporation in 1726.

- In 1882, **Lord Ripon** – the Viceroy of India - passed a resolution of local self-government which laid the democratic forms of municipal governance in India.
- Indian Independence ushered a new era of local governance in India. The Constitution of India allotted the local self-government to the state list of functions.
- In 1953, the U.P. Government took a decision to set-up Municipal Corporations in five big cities of Kanpur, Agra, Varanasi, Allahabad and Lucknow, popularly known as KAVAL Towns. As a result, the state of U.P. adopted a new Act for Municipal Corporations in 1959.
- In 1985, the Central Government appointed the **National Commission on Urbanization,** which gave its report in 1988. This was the first commission to study and give suggestions **on all aspects of urban management**. Also several committees were appointed in different states in order to improve the municipal organizations and administration there under.
- Finally, it was the Constitution (74th Amendment) Act, 1992 that gave constitutional status to the Urban Local governance bodies.

5. 74th Constitutional Amendment Act of 1992

5.1. Main features of the act

The mandate of the Municipalities is to undertake the tasks of planning for 'economic development and social justice' and implement city/town development plans. The main features of the 74th Constitutional Amendment are as under:

- The Act stipulated three levels of municipal bodies to be set up in the country:
  - a *'nagar panchayat* (town council)*'* for transitional areas
  - a 'municipal council' for a smaller urban area
  - a 'municipal corporation' for a larger urban area.
- The term for the **ULBs was five years**. Unless there were overwhelming reasons, a municipal body was not to be superseded by the state. In case a decision in regard to dissolution was under consideration, it was made mandatory that the **ULB would be heard.** If after a hearing, the state decided to dissolve the elected body before the completion of its full term, it would necessarily have to be reconstituted within a period of **six months**.
- The Act empowered an independent **State Election Commission** for the conduct, superintendence and control of municipal elections.
- The Act also stipulated that seats be reserved for **Scheduled Castes (SCs) and Scheduled Tribes (STs) in proportion** to their population in the municipal area.
- A revolutionary feature of the enactment was the **mandatory provision of reserving one-third of every elected urban body for women representatives**. Reservations were also provided for in the position of chairpersons of municipalities.
- For the larger municipalities with populations of 300,000 and above, wards committees were made mandatory.
- For the purposes of planning, a **District Panning Committee** had to be constituted. In addition, for every metropolitan area, defined as an Urban Local Body with more than a million population, a **Metropolitan Planning Committee** had to be formed.
- A **State Finance Commission** was also made mandatory, charged with the task of reviewing the financial position of the municipalities and making recommendations for the financial health of ULBs.

5.2. Constitution of Municipalities

As per Article 243Q, every State should constitute three types of municipalities in urban areas. The constitution of three type of municipalities by every State are as under:

- **Nagar Panchayat:** Nagar Panchayat (by whatever name called) for a transitional area, that is to say, is an area in transition from a rural area to an urban area.
- **Municipal Council:** A Municipal Council is constituted for a smaller urban area
- **Municipal Corporation:** A Municipal Corporation is constituted for a larger urban area.

Student Notes:

5.3. Composition of Municipalities

Article 243R of the Constitution makes the provision for the composition of Municipalities.

- All the seats in a Municipality are filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.
- The Legislature of a State may, by law, provide the manner of election of the Chairperson of a Municipality.

5.4. Reservation of Seats

Article 243T makes the provisions for the reservation of seats.

- Seats are reserved for the Scheduled Castes and the Scheduled Tribes according to the proportion of their population.
- Not less than one-third (including the number of seats reserved for women belonging to the Scheduled Castes and the Scheduled Tribes) of the total number of seats to be filled by direct election in every Municipality are reserved for women and such seats may be allotted by rotation to different constituencies in a Municipality.
- The office of Chairpersons in the Municipalities shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide.

5.5. Duration of Municipalities

As per Article 243U of the Constitution, every Municipality, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting.

5.6. Powers, authority and responsibilities of Municipalities

As per Article 243W of the Constitution, the state legislature by law may endow:

a) the Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government and such law may contain provisions for the devolution of powers and responsibilities upon Municipalities, subject to such conditions as may be specified therein, with respect to-
   i. the preparation of plans for economic development and social justice;
   ii. the performance of functions and the implementation of schemes as may be entrusted to them including those in relation to the matters listed in the Twelfth Schedule

b) the Committees with such powers and authority as may be necessary to enable them to carry out the responsibilities conferred upon them including those in relation to the matters listed in the Twelfth Schedule.

5.7. Impact of the act on the Urban governance

- **Recognition of ULBs as the third tier of governance:** In addition to the constitutional recognition of civic bodies as the third tier of governance, the act ensured that the municipal bodies had an independent right to exist. Prior to the enactment, states could either extend the life of ULBs beyond their term or prematurely dissolve them based on political consideration. The act divested state government of this power.
- **Wider political representation:** In keeping with the spirit of inclusion and equity principles, space has been mandated for the SCs and STs in proportion to their population in the geographical area of the ULB. This has had a salutary effect in terms of political representation and effective participation in all local decision-making.
- **Gender Empowerment:** The act introduces democratic principle of gender justice. The Act acknowledged that the socio-economic prosperity of the country cannot be achieved if half

the population is bereft of a voice and denied participation in the democratic process.

- **Independent Municipal Elections:** The local electoral process was also taken out of the state's purview. An independent State Election Commission, outside the influence of states, ensues transparency and fair play in the process of civic elections. The supervision, direction and control of all elections to the municipalities were vested in this Commission.
- **Introduction of ward committees:** This laudable innovation takes take local administration as close to the people as possible. A wards committee is an administrative entity for a group of electoral wards to look after the civic affairs of their geographical area. It is a process mandated towards greater decentralisation within a city.
- **Reformation of Municipal Financial :** State Financial Commission's report on municipal finance and its mandatory tabling in the state legislature achieves two objectives:
  - First, there is now a compulsory quinquennial review of the state of the fiscal health of ULBs.
  - Second, its submission to the legislature ensured that the report would be studied and discussed.

5.8. Challenges related to ULBs

- **Use of discretionary power by states:** The act made some of its provisions mandatory and others discretionary. States have used the discretionary power in favour local political consideration, sometimes, against the spirit of the act. Since acts do not provide uniform parameters for delineation of local bodies, Very large settlements are still dubbed as villages and smaller ones are converted into towns.
- **Political patronage:** At the ward level, the Act desired the induction of individuals of knowledge and experience in local governance. However, this became a means of providing refuge to party functionaries or those who were unable to win elections.
- **Status of Mayor:** The act is silent on the status of the mayor. There is wide variation in the manner of elections of Mayors. They could be in office for one year, or two, or five; they could be directly or indirectly elected; and they could have some powers or fulfil a purely ceremonial role.
- **Lack of devolution of power:** Since, the powers and responsibilities of the ULBs are to be decided by state, states have devolved nominal functional authority to ULBs, in effect, making them dysfunctional.
- **Finances:** The recommendations of State Finance Commission's for financial devolution to municipalities, have not led to any substantive transfer of resources to ULBs. The recommendations of the SFCs have largely been ignored at the state level, as states themselves reel under severe financial crunch.
- **Passage of GST:** GST has made the financial position of ULBs even more precarious. On the one hand, GST is silent on the financial share of ULBs; on the other, it has subsumed many of the local taxes.

5.9. 2nd ARC recommendation on Urban governance

- The functions of chairing the municipal council and exercising executive authority in urban local government should be combined in the same functionary i.e. Chairperson or Mayor.
  - The Chairperson/Mayor should be directly elected by popular mandate through a city-wide election.
  - The Chairperson/Mayor will be the chief executive of the municipal body. Executive power should vest in that functionary.
- The following principles should be followed while administering all taxes:
  - The manner of determination of tax should be made totally transparent and objective;
  - As far as possible, all levies may be based on self-declaration of the tax payer but this should be accompanied by stringent penalties in case of fraud or suppression of facts by the tax payer

Student Notes:

Student Notes:

- There should be an independent unit under the Chief Executive to monitor the collection of all taxes; and

- The capacity of the municipalities to handle legal and financial requirements of responsible borrowing must be enhanced.
  - The limits of borrowings for various municipal bodies in a State may be fixed on the recommendation of the SFC.
  - Municipal bodies should be encouraged to borrow without Government Guarantees.
- Land banks available with the municipalities as well as with the development authorities should be leveraged for generating resources for the municipalities. However, such resources should be used exclusively to finance infrastructure and capital expenditure and not to meet recurring costs.
- Citizens' charters in all Urban Local Bodies should specify time limits for approvals relating to regulatory services such as licenses and permits and these should be scrupulously adhered to. The charter should also specify the relief available to the citizens in case of non-adherence.
- Municipal governments should have full autonomy over the functions/ activities devolved to them. If the State Government feels that there are circumstances that make it necessary to suspend or rescind any resolution passed by the Urban Local Bodies or to dissolve or supersede them, it should not do so unless the matter has been referred to the concerned local body Ombudsman and the Ombudsman recommends such action.

6. UPSC Previous Years Prelim Questions

1. The Government enacted the Panchayat Extension to Scheduled Areas (PESA) Act in 1996. Which one of the following is not identified as its objective?
(a) To provide self-governance
(b) To recognize traditional rights
(c) To create autonomous regions in tribal areas
(d) To free tribal people from exploitation

Answer: B

2. Consider the following statements:
1. National Development Council is an organ of the Planning Commission.
2. The Economic and Social Planning is kept in the Concurrent List in the Constitution of India.
3. The Constitution of India prescribes that Panchayats should be assigned the task of preparation of plans for economic development and social justice.

Which of the statements given above is/are correct?
(a) 1 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Answer: B

7. UPSC Previous Year Mains Questions

1. Discuss the recommendations of the 13th Finance Commission which have been a departure from the previous commissions for strengthening the local government finances. (2013)

2. In the absence of well – educated and organised local level government system, Panchayats and Samitis have remained mainly political institutions and not effective instrument of governance. Critically Discuss. (2015)

3. Khap panchayats have been in the news for functioning as extra – constitutional authorities, often delivering pronouncements amounting to human right violations. Discuss critically the actions taken by the legislative, executive and judiciary to set the things right in this regard. (2015)

Student Notes:

4. The local self-government system in India has not proved to be effective instrument of governance". Critically examine the statement and give your views to improve the situation. (2017)
5. Assess the importance of Panchayat system in India as a part of local government. Apart from government grants, what sources the Panchayats can look out for financing developmental projects. (2018)
6. "The reservation of seats for women in the institutions of local self- government has had a limited impact on the patriarchal character of the Indian Political Process." Comment. (2019)

8. Vision IAS GS Mains Test Series Questions

1. What are the different aspects of capacity building that need to be taken into account to address the capacity deficit within Panchayats and Municipal bodies?

Approach:

Capacity building is generally equated just to training of personnel and elected elements of these bodies. Other aspects include organizational development, development of institutional and legal framework, adequate staffing, special focus on women etc. Cover all these points in the answer.

Answers:

The crucial issue of capacity building in urban and rural local bodies remains a largely neglected area in decentralised self-governance. Beyond short term 'training' of personnel and elected elements of these bodies, little has so far been contemplated, and even in this sphere there has been limited initiative and fitful progress. As a result, there is capacity deficit within the Panchayat and Municipal Institutions.

Capacity building is much more than training, and has other major components, namely:

1. Individual development
2. Organisational development
3. Development of institutional and legal framework
4. Adequate staffing
5. Capacity building of women

Individual development involves the development of human resources including enhancement of an individual's knowledge, skills and access to information which enables them to improve their performance and that of their organisation.

Organisational development on the other hand is about enabling an organisation to respond to two major challenges that it has to confront:

- External adaptation and survival
- Internal integration.
    - **External adaptation and survival** has to do with how the organisation copes with its constantly changing external environment.
    - **Internal integration** is about establishing harmonious and effective working relationships in the organisation.

Development of institutional and legal framework enables the organisations to enhance their capacity to pursue their objective and goals by making the necessary legal and regulatory changes.

Adequate staffing of local bodies is a matter that requires considerable attention of the State Finance Commissions in active association with the State Governments in order to endow these bodies with greater capacities.

Student Notes:

There is also a need to give special attention to **capacity building of women** panchayat leaders and members so that they are truly equipped to carry out their envisaged role in the third tier of government.

With the responsibilities of rural and urban local government institutions expanding and with their role and reach poised for further enlargement in the foreseeable future, there is a clear need to bring about a 'networking' of the existing training institutions in various subjects like financial management, rural development, disaster management and general management to formulate compendia of training methodology and training modules to build institutional and individual capacities.

2. Though Parliament had enacted The Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, but it has been implemented very poorly across the states. Bring out the various reasons behind its poor implementation and the measures needed for its success.

Approach:

- The most significant aspects of PESA relate to definition of a Village and Gram Sabha, rules, responsibilities and powers of the Gram Sabha, Principle of Subsidiarity and consistency of other Laws with PESA. You need to write the answer in term of these factors.

Answer

- PESA has been very poorly implemented across the nine States. One major impediment in operationalisation of PESA is the absence of a proper administrative definition of the village that is in consonance with the Act. All States, without exception, have continued with their earlier revenue definitions of the village. Thereby, not only does a village at times consist of 10–12 scattered hamlets, but several revenue villages are clubbed together to form a Gram Panchayat. This effectively precludes the functioning of a 'face to face' community as envisaged in PESA and eliminates the likelihood of a functioning Gram Sabha, which could shoulder the responsibilities of a unit of self governance.
- The success of PESA hinges crucially on the effective functioning of the Gram Sabha. Today, even in tribal areas, there is no automaticity to the functioning of the Gram Sabha and there is a large measure of exclusion of women. With growing socio-economic differentiation within and across Adivasi communities, there is also exclusion of those who are poorer or whose voice is weaker.
- To ensure that Gram Sabhas actually meet and become vibrant fora of participatory democracy, as visualised under PESA, there is a need to facilitate this process by giving energy to it. This requires a *dedicated cadre of social mobilisers* at each GP level, specifically assigned with the task of mobilising the Gram Sabha and ensuring the effective participation of the marginalised, as also spreading greater awareness of laws such as PESA and Forest Rights Act (FRA) and key flagship programmes of the government.
- *Land Alienation and Land Acquisition*: A clear and categorical provision should be made in the Panchayati Raj Act or the Revenue Law to empower the Gram Sabha to restore the unlawfully alienated land to its lawful owner.
- *Community Resources*: The term 'community resources' which is used in PESA has not generally been defined. There is a need to define it as 'natural resources including land, water and forest within the area of the village'.
- *Mines and Minerals*: The mineral rules should be amended transferring all quarries with annual lease value up to `10 lakhs to the Gram Sabha and panchayats at

different levels. This dispensation should cover all minor minerals. The consent of concerned Gram Sabha before awarding a lease should be made mandatory.

- *Intoxicants*: A clear and categorical provision should be made in the Panchayati Raj Act or the excise law to empower the Gram Sabha, in all matters concerning intoxicants such as establishment of liquor shops, manufacturing units and so on, the views of women members in the Gram Sabha should be decisive, irrespective of the strength of their presence in the relevant meeting.
- *Effective Administrative Mechanism*: It is abundantly clear that the existing administrative structures have been found inadequate in the process of implementation of PESA. It may be time now to consider the setting up of a permanent empowered body in each Fifth Schedule Area to oversee and monitor compliance with PESA and FRA. The details of such a body, including its powers, its constituents and its precise relationship with and accountability towards existing constitutional bodies, would each need to be carefully worked out.
- *Institutionalised Mechanism of Conflict Resolution*: There is also need to facilitate creation of institutional mechanisms of conflict resolution in India of the kind that exist across the world in countries which have faced conflicts over use of natural resources, especially in the context of indigenous people. A conflict resolution framework designed to suit our specific circumstances, would help mitigate conflicts before they reach a point of no return.

3. Tracing the evolution of panchayati raj since independence highlight its achievements in facilitating the inclusion of vulnerable sections of society in the political process.

Approach:

- Mention efforts made to establish PRI before 73rd Constitutional amendment.
- Highlight its achievements regarding social inclusion.

Answer:

Panchayats in India have existed since Mauryan times. To further strengthen the institution it was included in DPSP through Art 40. Hence, various efforts were made in this direction by different governments.

- **Balwant Rai Mehta Committee, 1957**: It was constituted to assess the Community Development Programme. The committee recommended the need of 'democratic decentralization' through 3-tier Panchayati raj system.

After this, various states such as Rajasthan, Andhra Pradesh etc. established panchayati raj system. Other committees constituted regarding Panchayats were:

- **Ashok Mehta Committee, 1977**: Recommended 2-tier system and power of taxation with PRIs to mobilise their own resources
- **GVK Rao Committee, 1985**: Recommended elections should be held regularly.
- **LM Singhvi Committee, 1986**: Recommended constitutional status to PRIs and increased financial resources for panchayats.

Prior to 1992, many state governments had established panchayati system which differed in many aspects – number of tiers, devolution of powers, reservation system etc. With 73rd Constitution amendment, a uniform system was created. It gave constitutional status to PRIs, brought them under the purview of justiciable part of Constitution, and ensured elections at regular intervals. Above all, it played instrumental role in social inclusion of vulnerable sections of population.

- **Political Participation:** Increased political participation of women, SC and STs through reservation.

Student Notes:

Student Notes:

- **Women Empowerment:** Enabled women to come out of home and take part in developmental activities, politics and decision making.
- **Policy process:** Empowering different sections to be a part of policy process from inception to implementation**.**
- **Engendering:** Brought gender perspective to policies and programme.
- **Opportunities:** Various anti-poverty programmes implemented by PRIs helped in providing employment opportunities, housing facilities etc.
- **Improving Society**: It has helped to achieve social objectives such as caste equality, family planning, girls education, arresting girl child death, preventing dowry
- **Against social ills**: Several panchayats have also successfully restricted use of intoxicating drinks and drugs.

The process of social inclusion can be further accelerated if greater powers, funds, functions and functionaries are devolved to panchayats by the states. 13th and 14th Finance Commissions have increased the allocation of funds to panchayats. Similar steps are also being taken by states signaling greater power to poor and deprived.

4. Panchayati raj institutions (PRIs) are simultaneously a remarkable success and a staggering failure, depending on the goalposts against which they are evaluated. Discuss.

Approach:

- Write introduction about 73rd amendment and PRIs.
- Highlight the parameters where PRIs can be considered as success.
- Highlight the failures of PRIs on various parameters.
- Conclude accordingly.

Answer:

With the constitutional mandates deriving from the 73rd amendment the Panchayati Raj Institutions (PRIs) are key pillars of democratic governance in India. In more than two decades of their existence the PRIs have some impressive achievements along with unrealized potential seen as their failure.

Success:

- **Number of elected Representatives:** with nearly 3 million elected representatives at the village, intermediate and district level, the PRIs have enhanced representation
- **Empowerment of women**: A constitutional mandate of 33% reservation for women has yielded excellent results. Many states have provided for 50 percent reservation for women. Female PRI leaders are more likely to focus on issues pertinent to women.
- **Political representation at the grassroots level for marginalized**: This is the only level of government, where SC/ST candidates have a genuine voice in governance. Reports suggest that SC Sarpanchs are more likely to invest in public goods in SC hamlets.

Failures:

- **Authority and functions:** State government, meant to transfer functions listed as per 73rd AA has undertaken very little devolution of authority and functions to PRIs. Core functions like water, sanitation, maintenance of community assets, etc. continue to be in the hands of State governments.

Student Notes:

- **Finances**: The power to tax, even for subjects falling within the purview of PRIs, has to be specifically authorized by the state legislature. Though State Finance Commissions have advocated for greater devolution of funds, there has been little action by states.
- **Functionaries**: Many State Governments have not transferred the required staff to the PRIs after the devolution of powers. Government officers are not willing to work under the administrative control of elected PRIs and administrative personnel serving under Panchayats are accountable to state government and not local bodies.
- **District Planning Committee**: The mandate to establish a DPC to prepare a draft development plan has been violated and distorted in most States. Parallel bodies encroach upon the domain of Local Governments (LGs).
- **Capacity Building**: There haven't been adequate capacity building exercises for members of Panchayats belonging to weaker section. For example, women participation has been mired by challenges such as 'sarpanch patis'.
- **Parallel schemes and agencies** such as MPLAD and MLALAD continue to bypass local governments.

Hence for governance efficacy at grassroots level, the only long-term solution is to foster genuine fiscal federalism where PRIs have authority to levy, collect and appropriate taxes to augment their resources and there is adequate devolution of functions making PRIs well equipped to solve their problems.

5. Absence of a powerful and politically accountable leadership in the cities is considered as one of the primary reasons for urban woes. Do you think that direct election of mayor can help in overcoming this issue? What other alternatives can be explored for improving the working of urban local bodies?

Approach:

- In the introduction write about the urbanisation challenge in India.
- Briefly discuss the current position of the mayor.
- Examine how direct elections will help in improving the efficacy of the municipalities.
- Suggest some alternatives.

Answer:

By 2050, about 60 percent of the Indian population will reside in urban areas. This rapid speed of urbanization poses the challenge of improving the quality of urbanization, which needs to be tackled by reforming urban governance.

Position of Mayor

- The Constitution provides discretion to states in manner of election – direct or indirect of the Mayor. Thus, in most of the states, Mayors are appointed indirectly and not through direct elections.
- The Mayor has been reduced to a figurehead while most powers reside with the Municipal Commissioner appointed by the state government.

As a result, the municipal government lacks accountability to the public which is one of the important reasons for the poor performance of the municipalities.

Necessity of direct elections

Direct elections of mayors will help to address these lacunae in the following ways:

- **Responsiveness** of directly elected mayor will be greater than that of indirectly elected.

Student Notes:

- It will strengthen **grass root democracy**.
- Direct elections combined with greater executive and financial powers to the Mayor will improve his **performance**.
- Since mayor is directly elected he can be held **accountable** by people.
- The Mayor will be more attuned with problems of people.
- It will **reduce interference** of the local MPs/MLAs in municipal functioning.

However, it is also fraught with certain issues and this system has not been too encouraging in some states like Tamil Nadu, which are reverting to indirect elections. This is because of the following reasons:

- **Less Powers**: Not only direct elections but devolving financial and executive powers municipalities is also needed which states are reluctant to do.
- **Political Deadlock**: If the mayor is of different political party and majority of council members are from different parties then it leads to deadlock in decision making, which is often the case.
- Due to the party system, Mayors are still more inclined towards party than being accountable to people.

Yet, these issues are not impossible to smoothen out and strong will on the part of state governments and personality characteristics of mayors can make the system a success like that in Kolkata.

Alternative to direct elections

Since, these reforms are still far-fetched, some alternatives of improving the efficiency of the municipalities can be:

- Greater devolution of **funds, functions and functionaries** (3Fs) to local bodies.
- The Commissioner to be responsive to mayor. This will enhance accountability.
- Municipal officials and staff should be provided training and imparted skill sets needed for specialised functions like waste management, sewage treatment, city planning etc.
- Greater synergy between elected members and officials who should be brought under elected members and appointed as full time members rather than birds of passage.
- Building transparency and implementing citizen's charter.

These measures will help to improve the efficiency of the local bodies and fulfil its purpose as envisioned by constitution.