

## POLITY

**Q. The government regulation on NGOs, at a time when the country especially requires robust civil society organisations and networks, is not desirable. Critically analyse.**

### Approach

Introduce the answer by starting with the context i.e. amendments in the FCRA act.

Briefly explain the role of NGOs in India.

Discuss the key provisions of the act and the concerns emanating from these amendments.

Conclude suitably.

### Introduction

Recently, the parliament proposed some amendments to the Foreign Currency Regulation Act (FCRA), 2010. According to the government, these amendments aim to bring about transparency in the working of Non-Governmental Organisations (NGOs).

However, these new governmental regulations put onerous conditions on NGOs, educational and research institutions that have partnerships, including of a financial nature, with foreign entities.

### Body

#### Role of NGOs in India

India has nearly 3.4 million NGOs, working in a variety of fields ranging from disaster relief to advocacy for marginalised and disadvantaged communities. There the role and responsibilities are immense in developing country like India, which can listed as follows:

**Bridging The Gap:** NGOs endeavour to plug gaps in the government's programmes and reach out to sections of people often left untouched by state projects. For example, providing aid to migrant workers in Covid-19 crisis.

Also, they are engaged in diverse activities, relating to human and labour rights, gender issues, healthcare, environment, education, legal aid, and even research.

**Role of an Enabler:** Community-level outfits and self-help groups are critical for bringing any change in the ground.

**Acting as a Pressure Group:** There are political NGOs that mobilise public opinion against government's policies and actions.

#### Major Amendments in the Law

There is now a capping of the administrative expenses of NGOs at 20% of their foreign donations.

The new amendment requires them to have a State Bank of India account at a Delhi Branch.

It also prohibits the transfer of grants received under FCRA to any other outfit.

It also gives sweeping powers to the Ministry of Home Affairs to cancel the FCRA certificate of an NGO.

#### Concerns Emanating From These Amendments

The new FCRA provisions, especially the one that constrains NGOs from subgranting, threaten the spirit of collaboration in the country's development sector.

This would undermine the flow of foreign funding and development aid.

Apart from this, the proposed changes are not in sync with the ideals of environmentalism, human rights and civil liberties as these sectors receive most of the foreign contributions. These ideals are important pillars of India's soft power.

Many civil society groups question these amendments, especially at a time when the country requires robust civil society organisations and networks to deal with a range of challenges including the detrimental effects of the Covid-19 pandemic

Due to these issues, the International Commission of Jurists has said the new law was incompatible with international obligations and India's own constitutional provisions on rights.

#### Conclusion

It is important for NGOs to achieve and maintain a high degree of transparency in not just their work but also their financials. NGOs need to keep their income and expenditure open to public scrutiny. However, credibility of an NGO cannot be decided against the touchstone of the source of funds, native or foreign.

Also, the government must realise that seamless sharing of ideas and resources across national boundaries is essential to the functioning of a global community, and it should not be discouraged unless there is reason to believe the funds are being used to aid illegal activities.

**Q. The decision to go without "Question Hour" during the Monsoon Session of Parliament has evoked serious concerns about the democratic functioning of the institution and erodes constitutional mandate of parliamentary oversight over executive action. Discuss.**

#### Approach

Introduce by briefly writing about the 'Question Hour' and 'Zero Hour' and mention the significance of the same for democracy.

Write in brief the reason for cancelling the Question Hour.

Discuss in detail the concerns about the democratic functioning of parliament in light of evoking the 'Question Hour'.

Conclude by suggesting a way forward.

#### Introduction

Generally, the first hour of a parliamentary sitting is devoted to the Questions and this hour is called the Question Hour.

The zero hour starts immediately after the question hour and lasts until the agenda for the day (i.e. regular business of the House) is taken up. Under this, MPs can raise matters without any prior notice.

#### Body

##### Significance of the Question and Zero Hour for democracy

These have a special significance in the proceedings of the Parliament. Asking of questions is an inherent and unfettered parliamentary right of members.

It is during the Question Hour that the members can ask questions on every aspect of administration and Governmental activity.

Government policies in national as well as international spheres come into sharp focus as the members try to elicit pertinent information.

Sometimes questions may lead to the appointment of a Commission, a Court of Enquiry or even Legislation when matters raised by Members are grave enough to agitate the public mind and are of wide public importance.

Reason for its cancellation: In view of the Covid-19 pandemic and a truncated Monsoon Session, Parliament has said no to Question Hour and curtailed Zero Hour. Opposition MPs have criticised the move, saying they will lose the right to question the government.

##### Concerns of evoking the 'Question Hour' and Zero Hour

Question Hour is a device to criticise government policies and programmes, ventilate public grievances, expose the government's lapses, extract promises from ministers, and thereby, ensure accountability and transparency in governance. The absence of 'Question hour' will impinge on the basic right of democracy i.e. asking the question.

Government is duty bound to respond to questions on different issues such as its failure in handling the pandemic, the unprecedented decline in GDP and its impact on the economy, the New Education Policy, tensions at the border, rising unemployment, the miseries of migrant labour and so forth.

By doing away with the Question Hour, the government has opted for a face-saving measure.

Democratic rights are being denied to the elected representatives of Independent India.

The government's actions erode the constitutional mandate of parliamentary oversight over executive actions as envisaged under Article 75 (3) of the Indian Constitution.

Moreover, such actions prevent the members of Parliament from carrying out their constitutional obligations of questioning, debating, discussing and scrutinising government policies and actions.

Question and Zero Hour are the manifestation of a representative kind of democracy in operation, in the sense that representation of the people directly questions the government on matters of governance. The government is duty bound to answer the questions in the House as they relate to its people.

#### Conclusion

If questions are not permitted in the Parliament physically, the same could be started in virtual meets. MPs could be allowed to ask the question through the digital platform.

Various options for social distancing can be attempted like reserving each day for select ministries to prevent crowding by officials seeking to help their ministers.

At the same time an orderly conduct can also ensure that the questions are raised with discipline and they don't affect the safety protocol too.

The Question hour & Zero hour acts as important tools for enabling the doctrine of checks and balance. Therefore, Parliaments should not dispense with these even at the time of war.

**Q. "Sub-categorisation of reserved classes in India is needed for more inclusive affirmative actions." Discuss the statement in the light of the recent judgement of the Supreme Court.**

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#### Approach

Write in brief about affirmative actions in India.

Explain in brief the recent judgement by the Supreme Court of India on sub categorisation of reserved classes.

Discuss the need for the sub-categorisation of reserved classes.

Conclude with a way forward.

#### Introduction

In simple terms, affirmative action in India is about facilitating access to seats in the government jobs, educational institutions, and even legislatures to certain sections of the population which originated due to the age old caste system in India.

These sections have faced historical injustice due to their caste identity. As a quota based affirmative action, the reservation can also be seen as positive discrimination.

## Body

Recently, a five-judge Bench of the Supreme Court held that States can sub-classify the list of Scheduled Castes (SCs), Scheduled Tribes (STs), and Socially and Educationally Backward Classes (SEBCs) to provide preferential treatment to the “weakest out of the weak”.

The decision overruled a previous 2005 decision in *E V Chinnaiah v State of Andhra Pradesh and Others*, also by a five-judge Bench, that state governments had no power to create sub-categories of SCs for the purpose of reservation.

Need for sub categorization:

Reservation system has created inequalities within the reserved castes itself. There is a “caste struggle” within the reserved class as benefits of reservation are being usurped by a few.

If sub-classification is denied, it would defeat the right to equality by treating unequal as equal.

Among the SCs, there are some that remain grossly under-represented despite reservation in comparison to other SCs. This inequality within the Scheduled Castes is underlined in several reports, and special quotas have been framed to address it.

Justice Ramachandra Raju Commission, 1997 recommended sub-dividing the SCs into four groups and apportioning reservations separately for each. It also recommended that Creamy layer of Scheduled Castes be excluded from receiving any reservation benefits in public appointments and admission to educational institutions.

In Andhra Pradesh, Punjab, Tamil Nadu and Bihar, special quotas were introduced for the most vulnerable Dalits. In 2007, Bihar set up the Mahadalit Commission to identify the castes within SCs that were left behind. In Tamil Nadu, a 3% quota within the SC quota is accorded to the Arundhatiyar caste.

States have the competence to grant reservation benefits to SCs and STs in terms of Articles 15(4) and 16(4), and Articles 341(1) and 342(1).

Article 16 (4) provides that the State can make any provision for the reservation of appointments or posts and in matters of promotion in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the State.

Article 15(4) empowers the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society such as SC and STs.

## Conclusion

Dr B.R. Ambedkar described the Indian society as a gradation of castes forming an ascending scale of reverence and a descending scale of contempt.

As is the nature of any hierarchical structure, no two castes are equal. The ones at the bottom of the ladder, those who have been most severely ostracised and subjugated, have not yet

received the benefits of reservations as a tool to ensure their representation in society and government.

This judgement will help trickle down the benefits of reservation to the most needy and establishment of an equal society.

**Q. "A governor should be discharging his/her duty in accordance with the spirit of the Constitution, not just be an agent of the centre". Discuss the statement in the light of the role of governor in the Indian polity.**

Approach

Introduce by defining the constitutional position of governor.

Briefly mention the role and responsibility of the governor.

Discuss various issues related to the governor's role as merely an agent of the centre.

Suggest what should be the way ahead.

Conclude suitably.

Introduction

The governor is the constitutional head of the state and the chief executive head of the state whose powers are enshrined in Part VI of the constitution. The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role and forms an important part of the state executive.

Body

Roles and responsibilities:

A governor possesses executive, legislative, financial and judicial powers more or less analogous to the president of India. However, he has no diplomatic, military or emergency powers like the President.

The governor's primary responsibilities are to:

Serve as the state's chief executive officer and oversees the functions of the executive branch of government.

Appoint the leader of the majority party as Chief Minister.

Appoint the advocate general, chairman and members of the respective State Public Commission.



Appoint district Judges.

Recommend imposition of Constitutional Emergency to the President.

Recommend legislation to the Legislative Assembly.

Review and sign bills that are approved by both the Vidhan Sabha and Vishan Parishad. If a bill is vetoed, it is returned to the legislative assembly.

Give approval to the introduction of the money bill.

He also may pardon, remit and commute the sentence of a person convicted by a state court. Although he can not pardon someone who is awarded a death sentence.

Issues related to the governor's role

Abuse of power by the centre: There are numerous examples of the Governor's position being abused, usually at the behest of the ruling party at the Centre. The process of appointment has generally been the cause behind it.

Biased ideology: In several cases, politicians and former bureaucrats identifying with a particular political ideology have been appointed as the Governors by the central government. This goes against the constitutionally mandated neutral seat and has resulted in bias, as appears to have happened in Karnataka and Goa.

Puppet rulers: Recently, the Governor of Rajasthan has been charged with the violation of the model code of conduct. His support of the ruling party is against the spirit of non-partisanship that is expected from the person sitting on constitutional posts.

Due to such incidents, negative terms like an agent of the Centre, Puppet and rubber stamps are used to describe a governor of the state.

Favouring a particular political party: Governor's discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government has often been misused to favour a particular political party.

Misuse of power: The Governors Committee (1971) laid down the responsibility on the governor to see that the administration of the state does not breakdown due to political instability and he must send a regular report about the political situation of the State.

However, the imposition of President's rule (Article 356) in case of breakdown of constitutional machinery in a State has been frequently misused by the central government.

Way forward

For the smooth functioning of a democratic government, it is equally important that the governor must act judiciously, impartially and efficiently while exercising his discretion and personal judgment.

There is a need for proper checks and balances to streamline the functioning of this office.

Recommendations of Sarkaria commission and Punchhi Commission can be followed in true spirit.

The 'procedure for appointment of governors should be clearly laid down' and conditions of appointment must also be laid down and must assure a fixed tenure for the governor so that the governor is not under the constant threat of removal by the central government.

It is necessary to invest in the office of the Governor with the requisite independence of action and to rid them of the bane of 'instructions' from the Central Government.

#### Conclusion

The Supreme Court has ruled that the office of the governor is not subordinate to the central government and is an independent constitutional office.

However there are numerous cases seen since independence showing the governor making biased decisions in favour of the centre instead of discharging duties in accordance with the spirit of the constitution.

The role of the governor is indispensable for the successful working of the constitutional democracy. However, there is a strong need for reforms so that the virtue of discharging one's duty impartially is withheld to ensure a free and fair working of Democracy.

**Q. Social media freedom should not become an impediment in curbing the spread of hate speeches online. Comment.**

#### Approach

In the introduction, briefly explain the importance of freedom of social media.

Cite recent examples of hate speech on the internet leading to enmity.

Discuss issues related to social media misuse.

Give measures to effectively tackle the problem.

Conclude suitably.

#### Introduction

Social Media has become a vital communications tool through which individuals can exercise their right of freedom of expression and exchange information and ideas.

Social media treats all internet communications equally, and does not discriminate differently based on anyone's caste, religion, race, and content etc.



However, the freedom of speech and expression does not confer on the citizens the right to speak or publish without responsibility and the legislature may enact laws to impose restrictions on the right to speech and expression on the several grounds.

Body

It is alleged that hate speech on social media (esp. Facebook) has helped fuel a genocide against the Rohingya Muslims in Myanmar. Similarly, in 2019, a gunman used the social network to Livestream the mosque shootings in Christchurch, New Zealand

Misuse of Social Media freedom

Rumour Mongering: Fake narratives on online platforms have real-life implications. For example, recently in India, online rumours, regarding child traffickers, through popular messaging platform WhatsApp, led to a spate of lynchings in rural areas.

Facilitating Polarisation: It enables the communalising agents to polarise people for electoral gains.

For example, during the election campaign of recently conducted Delhi legislative assembly elections, a leader enticed crowds with the use of communalising and violence on social media platforms.

Social Media AI poorly adapted to local languages: Social media platforms' artificial intelligence-based algorithms that filter out hate speeches are not adapted to local languages.

Due to this, social media fails to stop any miscreants from disseminating hate speech which eventually lead to enmity in the society.

Measures to be Taken

Harmonising the Laws: Harmonising the regulations to check misuse of social media are scattered across multiple acts and rules.

Thus, there is a need to synchronise the relevant provisions under the Indian Penal Code, the Information Technology Act and Criminal Procedure Code.

Obeying the regulation by Supreme court: In Shreya Singhal v. Union of India (2015) case, the Supreme Court gave a verdict on the issue of online speech and intermediary liability in India.

It struck down the Section 66A of the Information Technology Act, 2000, relating to restrictions on online speech, on grounds of violating the freedom of speech guaranteed under Article 19(1)(a) of the Constitution of India.

It also gave the direction on how hate content should be regulated and the government should follow this direction, where the user reports to the intermediary and the platforms then takes it down after following due process.

Transparency obligation for digital platforms: Digital platforms can be made to publish the name and amount paid by the author in the event that content is sponsored.

For example, with regard to fake news, France has an 1881 law that defines the criteria to establish that news is fake and being disseminated deliberately on a large scale.

A legal injunction should be created to swiftly halt such news from being disseminated.

Establishing regulatory framework: Responsible broadcasting and institutional arrangements should be made with consultations between social media platforms, media industry bodies, civil society and law enforcement are an ideal regulatory framework.

Even global regulations could be made to establish baseline content, electoral integrity, privacy, and data standards.

Creating Code of Conduct: It can be framed without creating an ambiguous statutory structure that could leave avenues for potential legislative and state control.

For example, the European Union has also established a code of conduct to ensure non-proliferation of hate speech under the framework of a 'digital single market.'

Conclusion

Establishing a regulatory mechanism to control hate speech without impeding the spirit of social media freedom is the need of the hour.

It is necessary to ensure that such a regulatory mechanism not only protects the right to free speech in a democracy but equally creates safeguards and curbs against social media amplification of hate speech that can lead to real world violence.

**Q. Making it legally binding to have a fair proportion of women in the elected bodies can ensure political empowerment of women in India. Comment.**

Approach

Write an introduction highlighting the need for political empowerment of women by legally binding representation in elected bodies.

Highlighting the issue of under representation and existing legislative measures, discuss the issues associated with legally binding representation of women.

Conclude by summarising your answer and linking political empowerment of women with dimensions of development.

## Introduction

Positive discrimination has been often seen as a remedy of under-representation. In the realm of political empowerment of women, legal reservation for women in elected bodies is a viable step that India still needs to embark upon.

## Body

### Issue Of Under-Representation

Disproportionate to population: Although women are nearly half the population, they make up a mere

11.6% of the total strength of Lok Sabha and 11% of the total strength of Rajya Sabha.

### Existing legislative measures

The 73rd and 74th Amendment Act of the Constitution reserves one-third of all seats in panchayats and urban local bodies for women.

The Constitution (108th Amendment) Bill, 2008, proposed to reserve 33% of all seats in the Lok Sabha, and in all state legislative assemblies for women. The Rajya Sabha passed this bill in 2010, but it still hasn't received the Lok Sabha's assent.

A similar Bill was introduced in 1996, 1998 and 1999 but all of these lapsed after the dissolution of the respective Lok Sabhas.

### Advantages Of Legally Binding Representation Of Women

Increased Efficiency: According to a study conducted by UN,:

Assembly constituencies with women representatives show significantly higher economic growth than those under their male counterparts.

Women legislators are significantly less likely than men to be carrying criminal charges.

Women legislators are slightly younger on average and are less likely than men to exploit their office for personal financial gain.

Increase in gender sensitivity of legislatures: Greater inclusion of women broadens perspective of debates.

It also facilitates law making to become more gender equitable.

More informed decision making: Poor participation of women in Parliament has a direct impact on the priorities and assumptions of policies and legislation.

There won't be qualitative change in governance with the exclusion of women in decision-making processes.

Credibility Crisis: Without women legislators, laws cannot reflect contemporary trends in women's education and excellence in varied fields.

It could decrease the development index ratings of India like gender equality index and Indexes related to inclusion.

Some Issues with Reservation of Women in Elected Bodies

Becoming a rubber stamp: Like it has been seen in panchayats where the real power is still wielded by the husbands of the women sarpanches.

Disparity among women: It is often seen that mostly the privileged women, generally from influential and politically powerful families occupy the women quotas in elected bodies.

It hinders gender inclusion to percolation to grassroot levels of polity and prevents political inclusion of women from backward sections of society.

Conclusion

Legally binding legislation is not a panacea for all gender inequalities but indeed an important step in empowering women politically. It could create role models, improve national leadership to bring positive influence on policy making, governance and make indian polity more democratic.

Q. "Fundamental duties are not made enforceable by a writ of court like the fundamental rights, but they are fundamental to the well being of society and individuals." Examine.

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Approach

Explain fundamental duties establishing their relationship between the fundamental rights.

Write arguments for and against whether the fundamental duties should be made enforceable.

Substantiate your arguments with some of the examples where fundamental duties have been the basis for legislative and executive actions.

Write a conclusion based on the assessment of the premises of your arguments.

Introduction

Fundamental Duties of the citizens of India mentioned in Article 51A of the Indian Constitution. It has been enumerated by the 42nd Amendment of the Constitution in 1976. The balancing of Fundamental rights is a constitutional necessity as every right gives rise to a corresponding duty. Besides, in a democratic setup participation of the citizens in the process of governance and nation building is a fundamental obligation.

## Body

### Rationale for making Fundamental Duties Enforceable

Fills legal vacuum making them obligatory: If the existing laws are inadequate to enforce the needed discipline and behavioural change among citizens, the legislative vacuum needs to be filled. This could call for strategies such as making fundamental duties enforceable.

In *M.C. Mehta v. Union of India*, the Supreme Court introduced compulsory learning of lessons on protection and improvement of the natural environment in all the educational institutions of the country as a part of Fundamental duty under Article 51-A (g).

Enables judiciary to examine legislative reasonableness: There have been certain situations, where the Courts have been called upon to examine the reasonableness of any legislative restriction on the exercise of a freedom, the fundamental duties are of relevant consideration.

Guide the elected representatives: The fundamental duties enjoined on citizens under Article 51-A should also guide the legislative and executive actions of elected or non-elected institutions and organisations of the citizens including the municipal bodies.

In the case of public authorities, each and all Fundamental Duties can be enforced by suitable legislation and departmental rules of conduct. Appropriate sanctions can be provided for lapse in respect of each

Legislative potentials like DPSP: At times, Directive Principles Of State Policy (DPSP) has taken precedence over Fundamental Rights and some of them have found their way into statute books. The judiciary has been appreciative of DPSP as they promote common good. The same yardsticks need to be made applicable to Fundamental Duties.

Reinforce constitutional obligations: For example Article 51A(k) was introduced as a fundamental duty in 2002, along with Article 21A as a fundamental right. Through Article 51A(k) read with Article 21A, the State and the parents are made to share obligations with regard to education of the children in the following manner: by the State with free education by the parents with compulsory education.

Promote patriotism: The Fundamental Duties are defined as the moral obligations of all citizens to help promote a spirit of patriotism and to uphold the unity of India. These duties, set out in Part IV–A of the Constitution concern individuals and the nation. Citizens are morally obligated by the Constitution to perform these duties.

### Caveats in Making Fundamental Duties enforceable

Provides opportunity to implant political propaganda : To attain vested interests under the garb of fundamental duty like protecting the culture, tampering with curriculum is facilitated. For example omitting and tampering with school curriculum.

Redundant when suitable legislative actions are available: for example fundamental duty to protect and improve the natural environment including forests and wildlife only repeat what the existing environment protection laws prescribe for.

Futility of legal enforcement without will and aspirations of citizens: Out of the ten clauses in Article 51A, five are positive duties and the other five are negative duties.

Clauses (b), (d), (f), (h) and (j) require the citizens to perform these Fundamental Duties actively. It is said that by their nature, it is not practicable to enforce the Fundamental Duties and they must be left to the will and aspiration of the citizens.

Difficulty in determining scope: Fundamental duty such as 'to value and preserve the rich heritage of our composite culture' leaves the scope of such duties open ended. Such ambiguity enables unscrupulous elements for moral policing. Example recent lynching by cow vigilantes.

Voluntary obedience more suitable: Making fundamental duties may facilitate compulsory allegiance of citizenry obligations but that's not democratic. Even Gandhiji always believed in moral persuasion rather than forceful adherence.

Lack of adequate awareness: For the proper enforcement of duties, it is necessary that it should be known to all. This should be done by a systematic and intensive education of people that is by publicity or by making it a part of education.

#### Conclusion

As Mahatma Gandhi said that the true source of right is duty. If we all discharge our duties, rights will not be far to seek. Enforcement of Fundamental Duties are important for building nationhood and a vibrant civil society. The provisions for enforcement of fundamental duties should be made considering the multiculturalism and pluralism of India.

STUDY MASTER

**Q. Indian Constitution balances procedural norms and flexibility in adapting to changing needs of society. Discuss.**

#### Approach

In introduction highlight the basis of amenability of the constitution and what the Indian Constitution entails in that respect.

Highlight some of the rigid/procedural norms of the Indian Constitution with examples.

Highlight some of the flexible features of the Indian Constitution with examples.

Conclude by highlighting how such a balance makes the Indian Constitution a living document.

#### Introduction

Constitutions could be rigid like that of the United States of America or flexible like that of the United Kingdom based on amendability. India's Constitution is a synthesis of both,



adapting best features from prominent constitutions to suit the diverse needs of Indian pluralistic society. Such flexibility is important to keep Indian Constitution in sync with the changing social realities while retaining the basic social ideals like liberty, equality and fraternity.

Body

Rigidity/Procedural Norms in Indian Constitution

**Basic Structure:** It is a concept to retain the fundamental spirit of the Constitution. The provisions of the constitution under its ambit cannot be amended like the Parliamentary system, Judicial Independence, Fundamental Rights. This doctrine was propounded by the Supreme Court in Kesavananda Bharati case.

**Special Majority Amendment:** Certain features that have effect on federal characteristics require amendment by special majority along with state's concurrence under article 368. Like election of the President and Lists under Seventh Schedule.

**Separate Jurisdiction:** Indian polity being quasi federal, it has detailed polity and administrative principles to demarcate the roles and responsibilities of the legislature, judiciary and executive.

Such provisions for separation of powers have a rigid amendment process to avoid breach of jurisdictions.

Defiance of which could result in unconstitutional acts like prescribed age for elections, trying to subvert judicial independence leading to terming non-constitution even a majority backed law like NJAC.

Flexibility in Indian Constitution

**Simple Majority Amendment:** Most parts of the Indian Constitution can be amended, without special majority or concurrence of states, just by a simple majority in Parliament under article 368, to be able to cater to the emerging challenges of society like prohibition of triple talaq.

Flexibility allows the Constitution to adjust as per changed socio-economic circumstances. Legislative adjustments like rational abrogation of Article 370, 24th and 25th amendment acts are examples of the same.

Fluid amendment process allows for redesigning legal and constitutional measures like the reservation system according to changing socio economic status of different sections of society.

Conclusion

Thus, such a balance makes Indian Constitution a living document that responds to changing time along with making it durable to protect the basic tenet of democracy, ideals on which the country was formed like those enshrined in the Preamble.

**Q. The Jurisdiction of the Supreme court under Article 142 supersedes the executive and the legislature. Discuss.**

### Approach

Explain the provision of Article 142 highlighting the extent of jurisdiction of the Supreme Court under it.

Discuss how this article enables judicial overreach citing some examples like verdicts in the Coal block case and the Supreme Court's intervention in the conservation of Taj Mahal.

Briefly mention the pros and cons of Article 142 on the basis of the principle of check and balance.

Conclude by highlighting the need to strike a balance between three pillars of government without encroaching on each other's area.

### Introduction

Article 142 of Constitution of India deals with Enforcement of decrees and orders of the Supreme Court. It states that the Apex Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing "complete justice" in any case pending before it.

Such orders of the Supreme Court are enforceable throughout the territory of India as prescribed by any law made by Parliament or order of the President of India.

### Body

Article 142 enables superseding the executive and the legislative

From Article 142, the Supreme Court derives overarching powers to perform the functions of Executive and legislative in order to bring about complete justice.

In this pursuit, Article 142 is supplemented by the Articles 32 (Right to constitutional remedies), Article 141 (The law declared by the Supreme Court shall be binding on all courts within the territory of India) and Article 136 (Special Leave petition).

This is often termed as judicial activism. To do "complete justice" it has often overridden the laws made by Parliament such as in the following cases.

**Union Carbide Case:** In 1989, the Supreme Court invoked Article 142 to provide relief awarding the compensation of to victims affected in the Bhopal Gas Tragedy.

**Coal Block Allocation Case:** In 2014, the Supreme Court used the said provision of the constitution to cancel the allocation of coal blocks granted from 1993 onwards who were guilty of wrongdoing and imposed a penalty on coal mined illegally.

Ban on liquor sale on highways case: In 2016, under Article 142 the apex court banned the sale of alcohol within a stipulated distance of 500 metres from the outer edge of the highway. Such a decision was taken to avoid accidents due to drink and drive.

#### Merits of Article 142

Judiciary has used the powers under 142 for upholding citizens' rights and implementing constitutional principles when the executive and legislature fails to do so.

As the guardian of the constitution Article 142 provides its power to fill the statutory vacuum.

It also sets out a system of check and balance and controls to the other branches of the government. For example:

In Vishakha v State of Rajasthan case, Supreme Court laid down the guidelines to protect a woman from sexual harassment at its workplace

Bandhua Mukti Morcha Case the Hon'ble Court gave its landmark judgment on bonded labour system of India

In Olga Tellis Case where Right to livelihood was declared part and parcel of the right to life.

#### Demerits Of Article 142

Unaccountability: One of the demerits of the powers of the Supreme Court under Article 142, is that unlike the executive and legislature, it cannot be held accountable for its decisions.

For example in one of the verdicts, the apex court banned e-rickshaws in certain parts of Delhi without making provisions for alternative employment. However, it cannot be held accountable for violating the fundamental right to carry on any occupation or trade.

In the coal block allocation case, The Supreme Court did not hear individuals and their particular facts, but only their associations were heard.

Judicial under-reach: The problem of judicial under-reach arises where courts shirk its responsibilities, despite having the jurisdiction, resulting in injustice.

Like majority of the petitions/appeals filed before the Supreme Court under Article 136 of the Constitution of India are dismissed, but its judges are not liable to explain the reasons for such dismissal.

Repeated interventions of courts can diminish the faith of the people in the integrity, quality, and efficiency of the government.

#### Conclusion

Thus, there is a need to strike a balance between three pillars of government without encroaching on each other's area. The powers under Article 142 being curative in nature cannot be construed as powers which authorise the court to assume the role of executive or legislature.

In the Bar association of Supreme court vs. The Union of India Case Supreme Court itself held that the power to do complete justice under Article 142 is in a way, corrective power, which gives preference to equity over law but it cannot be used to violate substantial rights.

**Q. Water governance strategies in India need to deploy strategies of demand management, conservation and regulation. Comment.**

Approach:

Highlight the fact of the water crisis in India mention some reasons for the same.

Highlight the changes in governance strategies that ensure demand management, conservation and regulation.

Introduction

According to the Composite Water Management Index report of NITI Aayog in 2018, 21 major cities are racing to reach zero groundwater levels by 2020, affecting access for 100 million people.

Body

Issues with water governance strategies:

Several policies to farmers for providing free electricity and financial support for water extraction through tube wells and borewells have resulted in the exploitation of water.

Poor water storage: During the monsoon, the desilting operations of the water bodies, dams, etc are not done at the time affecting the water storage capacity of India.

Poor legislation on groundwater extraction, political reasons for not valuing water, etc.

Steps for demand management, conservation and regulation

India needs to reconsider the institutional processes for the dissemination of knowledge about water resource management.

There is a certain amount of danger inherent in the casual manner in which knowledge about water resources is legitimised and consumed, particularly in these days of 'viral' information.

There is a need to recognise the crisis is not as much of scarcity as of delivery.

The challenge is to ensure adequate access to quality water, more so in urban areas where inequities over space and time are acute.

With the country's rapid urbanisation, demand cannot be met by groundwater reserves alone. For instance, according to the Delhi Jal Board estimates, groundwater meets just 10% of

Delhi's drinking water needs. The rest is met by surface water sources, most of it transported from outside Delhi.

The urban needs, which underpin much reporting on 'water crises', need to be met by robust long-term planning and preparation for droughts and other contingencies.

Cities need to stop the destruction of local water bodies and local tree cover, treat its sewage properly, harvest rainwater, and stop straightening and concretizing the rivers and encroaching on their floodplain

#### Conclusion

Thus, water-based technologies should have higher support and visibility in the new structure. At the same time, public information and participation in related research and dissemination also need to be ensured.

