

UPSC 2023

Political Science and International Relations

Paper 1- B

1. (a) Imprint of the British Constitution on the Indian Constitution

Making of Constitution- Legacies of British Rule:



- Moments of rupture*
- According to **Bipin Chandra**, there is a legacy of British rule because unlike China, India did not start with a clean slate.
 - While the Indian national movement was anti-imperialist in agenda, there were a number of continuities from the British Raj.
 - Chandra and other scholars have highlighted how the Indian scenario presents a case of 'transfer of power' rather than revolutionary rupture.
 - The **Gramscian** perspective highlights continued hegemony of the British ideological institutions- in politics, society and economy. In fact, **Hamza Alawi** points to 'overdeveloped states' in South Asia as one of the legacies of the British rule in the region.
 - **S. Dasgupta** in his work on Indian Constitution argues that *colonial continuity played a central role in a nation which transitions to postcolonial constitutionalism*. Similarly, **Rohit De** argues that while the Constitution did usher in a new order, the claims that it has obliterated the past remain unconvincing.
 - While, as **S.P. Sath**e and other scholars argue, the philosophy of Constitutionalism took shape from 1885 to 1947 during the national movement, the British rule left an indelible mark in political, economic, administrative, legal and social spheres.
- Gandhi → E. Swaraj → multi-faceted*

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Distinct Features Of Constitution

Video

Borrowed features of Constitution:

Feature of Indian Constitution:	Source of inspiration:
Government of India Act 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
United Kingdom	Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
United States of America	Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice- president.
Canada	Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
Ireland	Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.

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Handwritten notes:

- ← US } Residuary powers
- 143
- 371
- III Unique feature
- IV
- V
- Schedule VII
- division of powers
- Westminster form
- PM + CoM
- ↳ derived from legislature elected
- popularity
- Authority + Integrity
- J + K

Approaches to study politics



The approaches to the study of Politics can be broadly divided into two main categories of **Traditional and Modern approaches** based on the problems being looked at and the **tools and methods** employed to study the same.

A second may be in terms of **Normative and empirical** approaches. Dyke stressed that an approach to the "criteria of selection of both the questions to consider as well as selecting the data."

Traditional approaches:

The traditional approach to the study of politics and political system was widely prevalent till the outbreak of WWII. It is primarily concerned with the study of organizations, activities of the state, principles and the ideas which underlie political organizations and activities.

Characteristics of Traditional Approaches:

- Traditional approaches are *largely normative* and stresses on the *oughts* and what ought to be.
- Emphasis is on the study of different *political structures and institutions*.
- Traditional approaches make very *little attempt to relate theory, research and practice*.
- These approaches believe that since facts and values are closely related in political science *can never be overtly scientific*.

The issue with the normativists is that while professing values which they cherish, they portray them as **universal and absolute**. They do not realize that ethical values are relative to time and space with a heavy subjective content in them.

The exponents of empirical theory take normativists to task for:

- relativity of values;
- cultural basis of ethics and norms;
- ideological content in the enterprise and;
- abstract and utopian nature of the project.

In recent times, again the old sensibility within the normative approach has emerged and the passion for good life and good society has been matched with the logical and empirical astuteness. **John Rawls' A Theory of Justice** is an attempt which attempts to anchor logical and moral political theory in empirical reality.

1. (b) Environmentalism of the poor

Environmental Movement Of India

Video

1st Phase of EM- Interloper (1960's to 1970's):

- This phase aimed for disturbing the consensus that concern for nature was a luxury only rich countries could afford.

- Guha- In the West, the environmental movement had arisen chiefly out of a desire to protect endangered animal species and natural habitats. In India, however, it arose out of the imperative of human survival- environmentalism of the poor, which combined the concern of social justice on the one hand with sustainability on the other.

Environmentalists like Chandi Prasad Bhatt, Sunderlal Bahuguna were projected as the victims of 'western imperialism' or CIA agents preventing the rise of India.

Guha argues that Chipko was representative of a wide spectrum of natural resource conflicts in the 1970s and 1980s — conflicts over forests, fish, and pasture; conflicts over the siting of large dams; conflicts about the social and environmental impacts of industrialization.

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Classification of EM in India:

As per Jayanta Bandopadhyay and Vandana Shiva ecology movements in independent India have increased against predatory exploitation of natural resources to feed the process development which is dominated by market forces.

Such a process has threatened the survival of the poor and powerless. These movements have unfolded the contradictions between 'three Indians and three economies: those revolving around the market, the household, and nature'.

Harsh Sethi classifies the struggles into three categories broadly around their ideological approach to the issue of environment.

- One, the struggles which operate in the domain of political economy, raise the issue of rights and distribution of resources.
- Second, the movements confined to a response to environmental problems and seek within existing socio-economic frameworks and technological innovations.
- Third, some environmental movements reject the dominant development paradigm 'very classification of both man and nature relationship'.



Ratna, Reddy and Mukul points out that, Chipko movement has had six demands-

- on the basis of minimum needs of the people, a reorganization of traditional rights should take place;
- arid forest should be made green with people's participation and increased tree cultivation;
- village committees should be formed to manage forests;
- forest related home-based industries should be developed and the raw materials, money and technique for it should be made available; and
- based on local conditions and requirements, local varieties should be given priority in afforestation.
- Complete stoppage of commercial cutting of trees.

Three important aspects were responsible for the success of Chipko movement

- First, the close links between the livelihoods of the local people and the nature
- Adherence to Gandhian tradition of non-violence.
- Simplicity and sincerity of local leaders and their access to national leaders.



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1.(c) Functions of District Planning Committee

P - Background Lectures • 73rd & 74th Amendment

73rd & 74th Amendment


Video

Wards Committees

District Planning Committee


- Every state constitutes at district level, a district planning committee to consolidate plans prepared by panchayats and municipalities in district, and to prepare a draft development plan for the district as a whole.
- State legislature makes provisions with respect to composition, manner of election and functions of such committees.
- Act lays down that four-fifths of members of district planning committee should be elected by the elected members of district panchayat and municipalities in the district from amongst themselves.
- Representation of members in the committee should be in proportion to the ratio between the rural and urban populations in the district.

Handwritten notes: ~~73rd AA~~ and 74th Cⁿ




5. Planning. 'Urban planning, including town planning' was listed in Schedule 12 as a municipal function. Quite clearly, the intent of the Constitution is that urban planning should be a ULB function and that the ULB should be the 'Planning Authority'.

- But most States have not even started the process to amend the Town and Country Planning Acts. Even in states where the ULBs are declared the planning authority, plans and their development control regulations require the final approval of the state government.
- Sometimes, this is done piecemeal. Besides, the states play a huge role in the designation of lands reserved for various amenities. It would be accurate to state that the planning functions of municipal bodies are effectively in the hands of the states.



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Para-statal and ULBs

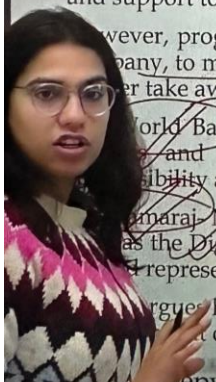
- Para-statal are semi-government organisations, companies or agencies owned or controlled wholly or partly by the government, which have their own governing boards.
- There definitely is a need for parastatals or other agencies to provide the technical data, expertise and support to elected representatives to enable them to take suitable policy decisions.

However, programme components like the creation of Special Purpose Vehicle (SPV), a limited company, to manage the implementation of the projects under the Smart Cities Mission works to take away powers from the local government.

World Bank has pushed for the creation of parastatals. Only tokenistic approvals for the creation and programmes of parastatals were obtained from elected bodies- issues of credibility and accountability.

Pararaj- Meanwhile legitimate planning bodies under the 74th Constitutional Amendment, such as the District Planning Committees and the Metropolitan Planning Committee comprising elected representatives have either not been set up or are dysfunctional.

It is argued how these were controlled by the states and they effectively usurped functions and powers that ought to have been the domain of ULBs.



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1. (d) Satyagraha and Indian Nationalism.

Political Strategies Of Indian Freedom Struggle

Video

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Awakening Toppers

Discuss Satyagraha as a Strategy in the Indian National Movement. [2015-10m]

- Satyagraha is Gandhi's supreme contribution to political thought and praxis. It is a way of *moral-political* action for attaining swaraj and for resolving basic social conflicts. As Bondurant has pointed out, satyagraha became "something more than a method of resistance to particular legal norms; it became an instrument of struggle for positive objectives and for fundamental change."
 - Mass Mobilisation* (pointing to the first part of the sentence)
 - Political* (pointing to the word 'political')
 - Moral* (pointing to the word 'moral')
- The term satyagraha means "holding fast to truth", "adherence to truth". In Hind Swaraj distinguished between body-force = brute force = the force of arms and soul force = love-force =

Elements of strategy of Satyagraha:

SATYA: According to Gandhi, although Truth is absolute, our knowledge and our truth is relative and partial (Buddha, J.S. Mill).

AHIMSA: Acting on the basis of relative truths, the satyagrahis seek to resolve conflicts and ensure social harmony through the non-violent path of vindicating truth claims.

TAPAS: Tapas or self-suffering is the test of love. Self-suffering reveals their cowardice or weakness; it is based on

Satyagraha as a strategy:

- According to Gandhi, since the "English are splendidly armed", it would take many, many years for the Indians to arm themselves in a matching or effective manner. More than this practical difficulty, Gandhi disapproved of the moral civilizational consequences of Indian Freedom Movement adopting the method of violence.
- He pointed out that to arm India on a large scale is to "Europeanize it". On the other hand Satyagraha is based on the principles of satya (truth), ahimsa (non-violence) and tapas (self-suffering) which represents India's civilizational values.
- Satyagraha is more than a political tool of resistance. It went a long way in instilling among the Indians a dignified hard labour and mutual respect, much needed in the traditional Indian society torn apart by caste and creed discriminations.
- Gandhi's emphasis on non-violence and egalitarianism thus helped build India's national movement in a mass movement. Importantly, it enabled erstwhile politically marginalised sections such as women and backward communities become a part of the freedom struggle.
- Lastly, the attempt at building a large, sustainable movement that could be continually resurged political organisational structure that was in touch with the masses- Indian National Congress provide leadership to even post-independence India and social organisational structures like the Congress became home to his social experiments.



- While Gandhi's satyagraha is often criticized for being time-taking, limited and led by elites, one can't deny its importance for creating foundations of democracy and providing means of socio-political protest across the world (Martin Luther, Mandela) even in the 21st century by emphasizing that *"if intolerance becomes a habit, we run the risk of missing the truth"*.



1. (e) National Commission for Minorities.

National Commission for Minorities (NCM) is statutory body established under **National Commission for Minorities Act (1992)**.

Composition:

- NCM consists of a Chairperson, a Vice-Chairperson and five members and all of them shall be from amongst the minority communities.
- Total of 7 persons to be nominated by the Central Government should be from amongst persons of eminence, ability and integrity.
- Tenure: Each Member holds office for a period of three years from the date of assumption of office

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Douglas Dion argues that democracies in multicultural societies may be based on "majority rule and minority rights" principle which suggests that **even governments elected by a popular majority are obliged to protect minority rights.**

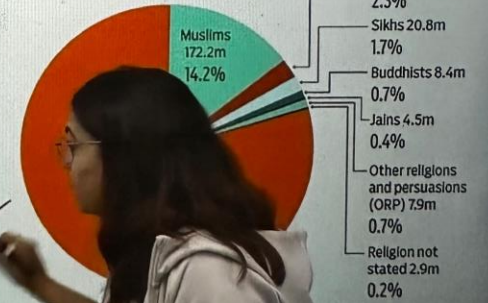
Asma Jahangir while lauding India's legal system and constitutional provisions to safeguard minorities, as well as the country's commitment to secularism, in a **UN study on 'Freedom of Religious Belief in India'**, points to the persistence of certain issues like poor state-level law enforcement and the increased attacks on minorities.

The failure of NCM to push the government to protect minorities against calls for violence is a major problem.

Despite instances of increase in crime against Minorities, NCM has failed to act swiftly on account of following factors:

CENSUS Religion in numbers

Total population 1.2 billion



Religion	Population (m)	Percentage (%)
Muslims	172.2	14.2%
Christians	27.8	2.3%
Sikhs	20.8	1.7%
Buddhists	8.4	0.7%
Jains	4.5	0.4%
Other religions and persuasions (ORP)	7.9	0.7%
Religion not stated	2.9	0.2%

Source: Census of India 2011 © Gulf News

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Functions of Commission broadly include:

- Evaluating progress of development of minorities.
- Monitoring working of safeguards for minorities provided in Constitution & in laws enacted by Parliament & State Legislatures.
- Making recommendations for effective implementation of safeguards for protection of interests of minorities.
- Looking into specific complaints regarding deprivation of rights & safeguards of minorities and such matters with appropriate authorities.
- Making periodical or special reports to Union Government on any matter pertaining to minorities.

At time of Commission's establishment, it was observed that NCM was to monitor, protect, promote tradition & promote national integration through enforcement of safeguards provided in constitution.

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Case Handling Capacity

Case processing capacity of NCM is adversely impacted as unlike Indian judicial system where there is chain of hierarchy i.e. District courts (District level), High Courts (State Level) & Supreme Court (National Level), there **is no such hierarchy between NCM & minority commissions set up by state governments.**

Although act makes it mandatory for state governments to establish State Minority Commissions, however, **in reality not all states have established Minority Commissions.**

Further, **State Minority Commissions remain understaffed & largely dysfunctional** due to absence of regular monitoring mechanism leading to overburdening of NCM.

In order to overcome challenges faced by NCM following reform measures are suggested:

Staffing Needs Assessment

- At regular intervals, **conducting staffing needs assessment** could be useful solution to address problem of vacant positions at least at NCM.
- Reporting of **assessment in media & in annual reports** could be leverage to generate political pressure in order to keep NCM actively occupied
- Further, considering volume of cases that NCM receive, **staffing needs assessment exercise** could also provide **useful data to determine whether NCM requires additional funds** or additional staff for its efficient functioning.

Segregation of Cases

Along with **establishing more State Minorities Commissions**, there is need for process regarding filtration of cases from state level Commissions to NCM with objective of reducing excessive number of pending & unheard cases.

Guiding rule could be that only following classifications of cases should be forwarded from State level commissions to NCM:

- Cases related to Union Government.
- Long standing contentious cases
- Cases of grievous discrimination

Use of technology-Technological upgrades including investment in more sophisticated information management system could help reduce the pendency rates of cases in the commission such as e-hearing.

Expansion of Powers. NCM could fulfil its duties assigned in statutory more rigorously if greater legal & constitutional authority is extended to NCM. NCM would be more effective if it has **greater authority to conduct independent enquiries** in cases of transgression of rights of the minorities & especially in cases of communal violence.

Standing Committee on Social Justice and Empowerment in its 53rd report noted that the NCM is "almost ineffective" in its current state to deal with cases of atrocities against minorities. The committee recommended **constitutional status to the body** "without any delay".

H. D. Dethlefsen recommended that "minorities commission should be replaced with or merged into **Integration-cum Human Rights commission.**"

6. (a) Discuss the main provisions of the 74th Constitutional Amendment Act. Do you think this Act is a 'unfulfilled dream'? Argue your case. (20)

Salient Features

- **Three Types of Municipalities** - Nagar panchayat for a transitional area, municipal council for a smaller urban area and municipal corporation for a larger urban area.
- Governor specifies a transitional area, a smaller urban area or a larger urban area based on
 - Population of the area.
 - Density of the population therein.
 - Revenue generated for local administration.
 - Percentage of employment in non-agricultural activities. (e) Economic importance.
- Such other factors as he may deem fit.

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- Composition
- All members of a municipality shall be elected directly. For this purpose, each municipal area is divided into territorial constituencies known as wards.
- State legislature provides the manner of election of chairperson of a municipality. It may also provide for representation of following persons -
 - Persons having special knowledge or experience in municipal administration without the right to vote in the meetings of municipality
 - Members of Lok Sabha and state legislative assembly representing constituencies that comprise wholly or partly the municipal area.
 - Members of the Rajya Sabha and the state legislative council registered as electors within the municipal area.

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Challenges of urban local bodies in India:

- **Ramayath Jha** [ORF]- Despite its impact on local governance, the 74th Amendment Act left many substantive issues unsettled.
- **Use of discretion by states**. The Amendment Act made some of its provisions mandatory and others discretionary. Wherever discretion was provided to the states, they ended up in a whole array of interpretations that suited the immediate needs of states.
 - For example, the Act indicated, inter alia, population, demographic density, revenue and non-agricultural activities as primary criteria for classification of nagar panchayats, municipal councils and municipal corporations- no uniformity in delineating an urban area.
 - In general, local rural political leaders have been reluctant to accept municipalisation on account of perceived loss of power, imposition of higher taxes, and the forfeiture of large funding that villages receive under rural programmes.
 - This has also become a means of providing refuge to party functionaries or those who were unable to win elections.
 - Amendment Act remained silent on the status of the Mayor. Even in the political sphere, experience that while elections are independently held, local politics continues to be dominated by forces from above.

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2. **Municipal Functional Domain.** In the functional domain, ULBs were left as abandoned as earlier.

"A comparison of the State legislation with central Act reveals that few State governments have availed of the opportunity presented by the 74 Constitutional Amendment to clarify municipal functions listed as 'obligatory' and 'discretionary' and overlapping institutional functional and geographic 14 jurisdictions."

Moreover, parastatals performing some of these functions are still in existence, complicating matters. Linkages between levels of urban local bodies, their capacities and allocation of functions also appear missing. In sum, the Amendment failed to spell out a well-defined functional domain for ULBs and left the states powerful as earlier in terms of allocation of functions. These remained entirely at the discretion of the States.

Way forward

According to **RAMANATH JHA**, if urban local bodies (ULBs) are to be empowered to become self-governing institutions, the state would have to perform a different role than what it is doing today as written below.

States would have to shed their supervisory and operational roles vis-a-vis municipal bodies and assume a more strategic role in envisioning the overall direction of urbanisation in the state, establishing state-wide governance mechanisms, and handholding cities wherever needed.

States would have to have well-defined and mandated functional and financial domains with the authority to exercise them without hindrance by the state.

Finally, a city government would have to be led by an empowered, autonomous chief executive whose tenure is co-terminous with the municipal body.

3. **Municipal Financial Domain.** The lack of autonomy of ULBs also extends to finances. Municipal corporations have two types of revenue bases 34 revenue and non-revenue, but property tax is the only major internal source. However, issues of undervaluation, non-availability of database of properties, low rates, low collection efficiency and lack of indexation of property values disable the ULBs from fully accessing it.

The passage of the **Goods and Services Tax (GST)**, has made the financial situation of ULBs even more precarious. On the one hand, GST is silent on the share of ULBs; on the other, it has subsumed many of the local taxes.

All forms of entry tax, including the octroi have been abolished and subsumed in GST. Taxes on advertisements also stand subsumed in GST. Many municipalities weaker than before and even more dependent on state grants, leading to a situation where they carry a large unfunded liability.

ORF report points to the need to **access market by urban local bodies** to raise funds has become both necessary and a feasible alternative in the future. In developed countries, municipal bonds are a major source of funding for urban financing.

Ahmedabad Municipal Corporation was the first to make a public offering in 1998. Since 1998, local bodies in other cities like Nashik, Nagpur, Ludhiana, and Madurai have accessed the capital markets through municipal bonds. However, the share of municipal bonds in the total debt market is still insignificant, **only 1% of urban bodies financial needs are met through municipal bonds as against 10% in the US.**

6. (b) How does NITI Aayog as a 'policy think tank with shared vision' visualize the restructuring of planning in India?(15)

Drawbacks of Planning Commission (Why it couldn't achieve desired results)

- Super-Cabinet:** The *Administrative Reforms Committee(ARC)* called the Planning Commission Super Cabinet as it despite being a non elected body started to yield more power than the elected ministers of the parliament. There was favouritism in appointments and nepotism plagued the system.
- Barring the First and the Sixth Five Year Plans, the actual rate of growth remained way below the aimed growth rates of GNP and per capita income. India's low GDP growth rate was labelled as the *Hindu rate of growth- Raj Krishna* (3.5%-5%). Accordingly, some neoliberal writers instead use the term "*Nehruvian rate of growth*" (*Arun Shourie, Sanjeev Sanyal*).
- Planning Commission was given the responsibility to distribute funds among the states. The *Rajmanna committee* also mentioned that the PC supersedes the authority of the states, undermining fiscal federalism.

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PC was a toothless body and had no power to hold the Union and State government accountable for failing to achieve their growth targets.


Top-Down Approach/Undermined Federalism- PC had no membership from the state governments. As per *K. Santhanam*, planning superseded the federation of our country, PC gave rise to centralising/ unitary trend in Indian politics.



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NITI Aayog

- To fix the shortcomings of the PC, the government in 2014 replaced the body with the NITI Aayog.
- NITI Aayog is the **premier policy think tank of the government of India**, providing both **directional and policy inputs**. It aims to inspire a **shared vision of national development facilitating cooperative federalism** with Indian characteristics.



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FEATURES OF NITI AAYOG:

Antyodaya-

- It will prioritise the upliftment of the poor, marginalised and downtrodden, as enumerated by Pt Deendayal Upadhyay's idea of Antyodaya.

Bottom-Up Approach-

- It seeks the active involvement of researcher and experts from both within and outside the government. People's participation is also a pivotal component of the design of the institution.

Team India-

- NITI Aayog unlike the PC has active membership from the states and envisages a unique model of cooperative federalism

Sustainable Development-

- NITI Aayog also focuses on making development inclusive and sustainable, it periodically releases the SDG India Baseline report ranking states on their performance in achieving the SDG targets. (Competitive Federalism)

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Bhartiya Approach to development-

- Rather than releasing periodic 5 year plans, NITI Aayog has gone for 3 year Action agenda, 7 year strategy and 15 year vision document.

Focus on Innovation-

- With schemes like Atal Innovation Mission and Atal Tinkering Labs, NITI Aayog aims to promote innovation and out of the box thinking in the country.

Bringing more accountability

- As per Rajiv Kumar NITI Aayog is also bringing about a greater level of accountability in the system. NITI Aayog has established a Development Monitoring and Evaluation Office which collects data on the performance of various Ministries on a real-time basis.
- The data are then used at the highest policymaking levels to establish accountability and improve performance. This performance- and outcome-based real-time monitoring and evaluation of government work can have a significant impact on improving the efficiency of governance.

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Conclusion:

As per Santosh Mehrotra, NITI Aayog will need to evolve into a much stronger organisation than it is.

He further argues that if NITI Aayog is to implement a strategy within a planning framework in India, two major changes in governance structures are needed.

First, planning will have to become more decentralised, but within a five-year plan framework.

Second, bureaucracy will need to change from generalist to specialist, and its accountability will have to be based on outcomes achieved, not inputs or funds spent.

NITI Aayog should spell out how these reforms will be implemented.

Bibek Debroy commented on it being a Think Tank plus something without the power of its earlier avatar.

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6. c) The Constitution of India is the 'cornerstone of a nation'. (Grenville Austin). Analyze. (15)

Nature of Indian Constitution:

- Value Document:**
 - Values and Ideas of Freedom Movement
 - Liberal ideas and concepts like right, equality, democracy etc
- Aspirational Document:**
 - Sets goals and vision for country (DPSPs)
 - Improvement for marginalised sections of society
- Legal Document:**
 - Fundamental Law of the Land
 - Judiciary as the Guardian of the Constitution
- Institutional Document:**
 - Details regarding numerous institutions
 - Ensure independence of institutions - bulwarks of democracy

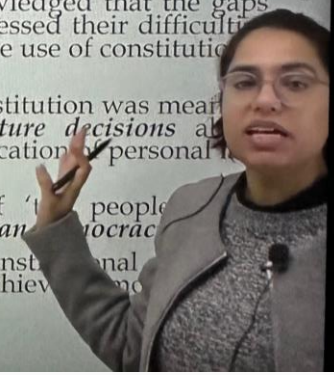
1973 Basic structure Doctrine
moral, ethical document
affirmative action



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Awakening Toppers

- Analyzing the inherent philosophical moorings of the Indian Constitution, **Austin discerns a 'seamless web'**, consisting of three strands namely:
 - protecting and enhancing national unity and integrity,
 - establishing the institutions and spirit of democracy, and
 - fostering a social revolution to better the lot of the mass of Indians.
- According to **Lerner**, members of the Assembly acknowledged that the gaps between rival perspectives were unbridgeable and addressed their difficulty by adopting an **incrementalist approach** based on creative use of constitutional language.
- The inclusion of incrementalist arrangements in the Constitution was meant to afford the political system **greater flexibility for future decisions** about controversial questions, for example concerning the unification of personal law or India's national language.
- Further, in accommodating the competing views of 'the people' the formulations promote **consensual, rather than majoritarian** democracy.
- Some observers have criticised such an incrementalist constitutionalism as an ideological compromise, or even a failure to achieve a true constitution.

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Upendra Baxi: "The Constitution was formulated by visionary individuals for an uncertain future based on **4 antinomic ideas:**



economic Hard circumstances
Philosophy
core areas
living standards
essential public goods

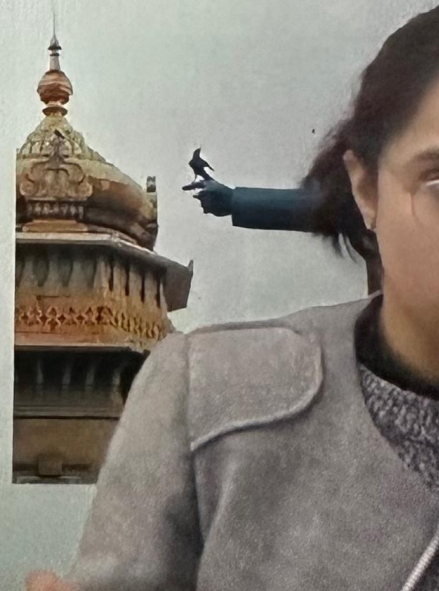
These still need to be fulfilled. Even after the commencement of Constitution, it is being made fuller through actual working, judicial interpretations and constitutional amendments."



Criticism of Indian Constitution:

- First, Rajeev Bhargava argues the Indian Constitution has a very *centralized idea of national unity*.
- Second, it appears to have glossed over some important issues of gender justice, particularly concerning matters to do with the family.
- Third, it does not have enough safeguards to ensure a minimal representation of minorities in the legislature; it too easily side-stepped the issue of political representation of minorities.
- Fourth, some of the restrictions imposed from the very beginning on liberty and rights always had the potential to generate what Upendra Baxi calls 'the rightless people'.
- Fifth, Bhargava questions why in a poor developing country, certain basic socio-economic rights were relegated to the section on Directive Principles rather than made an integral feature of our Fundamental Rights.
- Sixth, although it works with a worthwhile conception of social justice, Bhikhu Parekh argues it does not provide adequate institutional mechanisms to realize it.
- Seventh, as Gandhi argues that it is *insufficiently attentive to rural India*.

**Why is nobody
happy with our
Constitution?**



7. (a) Does the actual working of Indian federalism conform to the centralizing tendencies in Indian polity? Give reasons for your answer. (20)

2) Does the functioning of federalism in India tend to make it appear unitary in practice. [2020]

Yes. Need
 ↳ Legislative
 ↳ Administrative
 ↳ Financial
 evolution
 way forward

Approach:

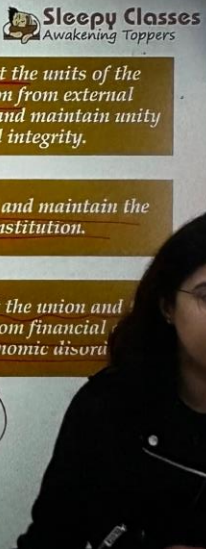
- How India fulfills all requirements of federalism;
- Need for centralising tendencies/ features;
- Centralizing tendency in legislative, administrative and financial aspects;
- Analysis of evolution of these relations;
- Conclude with way forward.



In Indian federalism, we find two broad types of centralisation of federal powers-

- Circumstantial:** Here given the past context of India, the Constitution subscribes to the theory of 'safety valve', whose objectives include:
 - To protect the units of the federation from external aggression and maintain unity and integrity.
 - To protect and maintain the Constitution.
 - To take out the union and provinces from financial and economic disorder.
- Consensual:** This consent can either come from states themselves by article 252 or on resolution by Rajya Sabha allowing Parliament to legislate on certain matter in the state list.

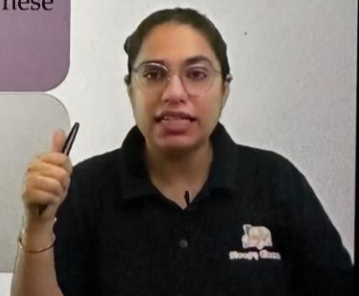
Handwritten notes: §52, 352, 365, 360, 2 or more.



As per the federal tenets India fulfills all the basics of being a federal country- it has a written and supreme Constitution, division of powers among Centre and state in terms of legislation [under VII schedule], a bicameral legislature, independent judiciary with review power.

However, KC Wheare considers, Indian Constitution as Quasi federal due to its centralizing tendency. These tendencies often make India seem unitary in practice.

These centralising tendencies were often an outcome to safeguard the unity and integrity of India which after centuries of colonial rule witnessed a violent partition, secessionist movements and an unstable neighbourhood.



Legislative

- The division of subjects are already tilted towards centre having more number of subjects, also being important ones along with the overriding power in case of concurrent list
- Under article, 249 parliament can legislate on a state list subject with resolution being passed to that effect by Rajya sabha. Under article 252, 253 parliament can legislate on laws of state subjects in time of national emergency
- Recent case under article 131 by state of Chhattisgarh and Kerala on enactment of the NIA act show how states have trespassed in terms of their power by overreach of the centre. The enactment of the now repealed farm laws were also an example which shows centralizing tendency of the union.



Administrative

- ❑ The power of administration is constitutionally tilted towards centre with its authority to enforce the administration of central laws too on state.
- ❑ Centre has the penalizing capacity under article 356 by imposing constitutional emergency in the state as was done by Indira Gandhi in 1980 by suspending the state governments of 8 states
- ❑ All India Services too symbolize how centre has a greater hand in administration over the state.
- ❑ COVID pandemic has been a grim reminder of power imbalance between centre and states where centre went for micromanaging and national containment zones along with imposition of restrictions under the Essential Commodities Act.

3GS



Financial powers:

- ❖ The state taxes have been limited by constitution along with giving more taxation powers to the Centre, a centralizing tax like GST has proved to be even more centralizing, leading to decline of the state revenue. The refusal of centre to continue with the GST compensation to the states has too come as a rude shock to the states.
- ❖ The GST council too is a centralizing body, despite claiming to be a symbol of cooperative federalism, because centre alone has 1/3 of voting share and due to lack of consensus among states the centre is the one whose will prevails
- ❖ NITI Aayog the think tank for ushering in economic progress in India, is too accused of centralising composition faults where states have lesser say.
- ❖ During Covid pandemic, the conditional fiscal deficit relaxation for states along with the exemption only PMNRF for use in Corporate social responsibility targets shows the inherent biasness against the states



Conclusion-

There is a need to improve relations between centre and states and ensure the usage of these centralising tendencies only in the most urgent circumstances that threaten India's unity and integrity. A.K. Ghosh suggests some reforms based on Punchhi Commission at institutional and political level to deepen the roots of federalism in India.

1. First, the contentious role of the governor in suppressing the states for the Centre's interest needs to be reviewed.
2. Second, proper utilisation of the institutional mechanism of the Inter-state Council must be ensured to develop political goodwill between the Centre and the states on contentious policy issues.
3. Third, the gradual widening of the fiscal capacity of the states has to be legally guaranteed without reducing the Centre's share.
4. Fourth, adequate electoral reforms for creating a level playing field for the regional political parties and regional leaders would facilitate more competitive political contest between the national and regional political forces.
5. Finally, unless the third level of Indian federalism i.e. the local self-governments, are not further politically empowered, efforts to strengthen the federal discourse will fail.



7. (b) The main goal of the Fundamental Duties in the Indian Constitution is to generate civic responsibility among the citizens. Explain. (15)

• While the original Constitution promulgated in 1950 had no mention of Fundamental Duties, 10 duties were added by the 42nd amendment in 1976 based on the recommendations of the Sardar Swaran Singh Committee. Further the chapter sits well with Article 29 (1) of the UDHR that states, "Everyone has duties to the community in which alone the free and full development of his personality is possible."

Kalyan
FR
DSP
Prasad
FD
Dharma
Duties

Article 51 A in Part IV A of the Constitution	Suggested 8 duties, but 10 were added.
Inspired by Constitution of erstwhile USSR.	Parliament can provide law penalty/punishment for non-compliance or refusal of duty which can't be questioned in courts on grounds of infringement of FRs.
One more duty added in 2002	Payment of Tax as fundamental duty
Rights need to be accompanied by duties- two sides of the same coin.	

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• Indira Gandhi- 'the moral value of fundamental duties would be not to smother rights but to establish a democratic balance by making the people conscious of their duties equally as they are conscious of their rights'.

Features of Fundamental Duties:

- Some of them are moral duties while others are civic duties.
- Included values which have been a part of the Indian tradition and Indian way of life.
- They are confined to citizens only and do not extend to foreigners
- Not directly enforceable.

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Importance of Fundamental duties

- They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
- They serve as a warning against the anti-national and antisocial activities.
- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them.
- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them.
- They are enforceable by law.

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Criticism of Fundamental Duties:

- List of duties is not exhaustive- does not include a number of important duties.
- Some of the duties are vague, ambiguous and difficult to understand.
- Merely a code of moral precepts due to non-justiciable nature.
- Superfluous- performed by people even without inclusion in Constitution.
- Should have been added in Part III and not Part IV of the Constitution.

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3. (c) Dr. Ambedkar's clarion call, "Educate, Agitate and Organize", strategizes the Dalit movement towards achieving civil liberty. Discuss. (15)

Programme of removal untouchability by B.R. Ambedkar: *Gramsci - Organic Intellectuals*

Recommended role of intellectuals- Ambedkar promoted consciousness about the evils of untouchability through his magazine "Mook Nayak" and newspaper "Bashkrit Bharat."

Adoption of satyagraha- e.g. Mahad Satyagraha in 1927. The aim of the Satyagraha was to end the restrictions on the untouchables from taking water from the well used by upper castes.

Condemnation of traditional structures and scriptures- In a conference in late 1927, he publicly condemned Manusmriti (Laws of Manu), for ideologically justifying discrimination and "untouchability", and he ceremonially burned copies of the ancient scriptures.

Propagation of new slogans- He advocated a society based on three fundamental principles: liberty, equality and fraternity. He gave the slogan: "Educate-Agitate-Organize".

Through Constitutional means-e.g. Affirmative action [reservation].

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Annihilation of Caste

Eleanor Zelliot argues Ambedkar's work on caste and untouchability till 1935 took three directions:

<p>The most visibly successful was the <u>awakening and organising of the Untouchables</u> - through newspapers of their own, social and cultural institutes, and widely attended conferences, then called 'Depressed Classes' conferences (Mahad Satyagraha, Samaj Samata Sangh and Samata Sainik Dal in 1927).</p>	<p>Ambedkar also participated in every opportunity to petition the British government for <u>political representation for Untouchables</u>, and these opportunities were many: the Southborough Committee on Franchise, the Simon Commission to evaluate the reforms and the famous Round Table Conferences at London.</p>	<p>The third direction was that of <u>encouraging education</u> among untouchable classes through various means.</p>
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8. (a) The rise of caste politics is to be attributed to both regional aspirations and electoral manifestations, Comment. (20)

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social

Why identity politics happens?

- Authors such as *Chandra, Posner, and Lacina* have developed sophisticated theories as to how social identities are formed and become politically relevant. They stress the instrumental and constructed nature of identity.
- *S. Jadhka* writes how analysing democratic political processes in terms of castes and communities has become commonplace in contemporary India.
- The processes of democratization and secularization have not made caste disappear from the public sphere. Rather, as *M.N. Srinivas* noted, that far from disappearing with the process of modernization, caste was experiencing a 'horizontal consolidation'.

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Another important development with socio-economic change is reflected in Srinivas' concept of 'dominant caste.' Dominant caste denotes the castes holding economic power, social power and political power.. They are three characteristics which make a caste, dominant caste while there may be regional variations:

- They are land owners.
- Political power and numerical majority.
- Enjoy social status.

Walze
Complex equality

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Dalits

Louis Dumont too followed Srinivas and speculated on similar lines. Castes, he argued, did not disappear with the process of economic and political change, but their logic was altered. He described the process as change from 'structure' to 'substance'- 'substantialization of caste'.

Homo Hierarchicus
The Caste System and Its Implications

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The politicization of caste involves the following processes:

horizontal
vertical

Integration Kothari argued against the popular notion that caste in politics could lead to 'disintegrative tendencies' in reality it led integration of various caste groups into alliances such as BJP/BJP in UP by Charan Singh, BJP in Gujarat by Congress and so on.

Bahujan

Consciousness: When caste enters into politics develops into new consciousness. (It is not the lower caste aware of hence for...)

in itself for itself.

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There is a lack of consensus among the scholars whether caste has strengthened Indian politics or weakened it. Many like *Yogendra Yadav, Suhas Palshikar, Nirja Jayal* argue that caste in democratic politics has led to 'deepening of democracy' and it is becoming more inclusive of social groups and categories of the Indian population.

On the other hand, *Andre Beteille, Ashutosh Varshney, C.P. Bhambri* are against the idea of caste as it weakens democracy in the long run.

Jini Kothari was the foremost scholar to talk of caste's role in electoral politics of India. He argues that caste provided the basis for the mobilization and integration of people with democracy. Kothari sought to underline that it is not politics that gets ridden with caste, it is caste that gets politicised.

Two significant developments have been responsible for this:

- First, the waning of identity politics and a shift from the desire for social justice to aspiration impacted by the twin forces of globalization and cultural modernization, creating a divide between the better-off middle class and the poorer, marginalized section of the Dalits.
- Second, the revival of the BJP under a new-generation leadership, and its promise of economic development and cultural inclusion within the saffron fold, has attracted the lower jatis (sub-castes) and created an ideological divide between the Ambedkarite or pro-BSP and Hindutvawadi or pro-BJP Dalits.



8. (b) The decade 1989–1999 has created an epochal shift in the Indian party system at the national level. Identify the major national trends in the party system during this era. (15)

The Indian party system has undergone through tremendous transformation and mutations since the country's independence. To understand these, it is important to bear in mind two issues that are of vital importance to the changing features of party system in India.

- The first concerns the two institutional variables of **electoral process and federalism** and their effect on party system.
- The second issue pertains to the role of the relationship between **social cleavages and political mobilization**.
- The Indian party system can be divided into six phases to analyse the changes taking within the Indian political and party system therein. These are:
 - 1947-1967 (One Party Dominance)
 - 1967-1975 (Transition period)
 - 1975-1989 (Emergency, Janata Party and assassination of Indira Gandhi)
 - 1989-2014 (coalition phase and rise of the Bahujan politics)
 - 2014 (resurgence of stable single party?)

Vaishnav and Hintson identify main features of this period which they refer to as the third-party system:

First, the **absence of a central pole** in national politics between 1989 and 2009 is perhaps the central feature of the third party system.

Second, the third party system was an era of **political fragmentation (Sreedharan)**. The number of parties contesting elections surged after 1989 as the Congress order broke down for good.

Third, electoral contests became markedly **more competitive** on nearly every dimension. The number of candidates winning via plurality and not majority of votes.

Fourth, the entire political system became **highly federalized**. National-level outcomes were influenced by the state-level verdicts that preceded them, but the intensity of the effects was reduced by the proximity of the two polls. Honeymoon and anti-incumbency effects at the state level were also reduced at the national polls.

Fifth, **voter turnout surged at the state level** while national political mobilization remained low.

Lastly, there was a clear change in the **social composition of the representative** in the Lok Sabha. In the 1996-1998 period, the combined share of OBC and SC legislators superseded the combined share of the intermediate castes for the very first time.

1989-2014

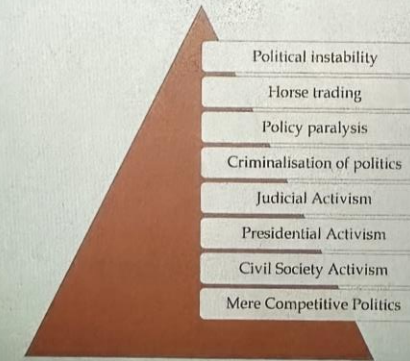
The elections of 1989 were a watershed moment both for the Indian political system and also for the institutions of parties therein. The multi-party tendency developing at the state level asserted itself on the Centre too. The fall of the Rajiv regime led to succession of minority governments. The 3 M's of this era - Mandal, Mandir and Market were to transform India.

Certain parties were inextricably linked to this new phenomenon. The first was the exponential BJP. It witnesses a rise in seats from a mere 2 in 1984 to 86 in 1989. The BJP's drive for nation was based upon an explicit appeal to Hindu Nationalism. However, it is mistaken to consider it a "fundamentalist" party, according to Balvir Arora, as while the symbols may be forged to national identity, its goals are completely secular to transform India into a modern, industrial power.

"Mandalisation" also had another impact. It was the meteoric rise of Kanshi Ram and who gave image to sectional demands. This period witnessed what Yogendra Yadav called "Democratic upsurge".

Coalition Politics and its issues:

- Bidyut Chakravarty has compared India's coalition politics with those in European countries. While he characterises coalition in European countries as 'coalition by design', those in India are called 'coalition by political calculation', still searching for design. A number of problems confront India's coalition system:



The third issue was that of the Market reforms. Throughout the eighties, the Indian state was following, somewhat surreptitiously, the program of restructuring the economy. However, it was only in 1991-1992 that bold justifications of the 'market economy' started emanating from the official discourse of the Indian state. Narsimha Rao and Manmohan Singh were its architects.

The advent of coalition governments and the support needed of these regional parties played a prominent role in this growing ascendance of state in Indian politics. Some states like Andhra Pradesh, Tamil Nadu, Assam, Odisha had witnessed regional parties gaining predominance. Now the North Indian states came within this grip too.

While the format of political competition underwent a radical change, there was little corresponding change in the nature and range of choices available to the citizen. According to S Palshikar, "the transition from Congress hegemony to Congress-BJP oscillation was the least promising transition involved no reshuffling of the political furniture with little change in the range or nature of choices available to the citizen".

8. (c) Do you agree that over the years the Supreme Court has become a forum for policy evolution? Justify your answer. (15)

Third Phase- emergence of era of judicial activism:

- Kalpana Kannabiran asserts that since the late 1970's it has been witnessed that era of 'pedantic legalism' is over and we are living in the age of judicial activism.
- Two main factors contributed to the Judiciary becoming extremely powerful:
 - The expansion of Article 21 thereby allowing laws to be tested on the grounds of procedural and substantive fairness further widened the power of the Judiciary.
 - The second broad trend discernible in this phase of a truly powerful judiciary has been the movement towards self-selection of judges in the higher courts through collegium. This was further strengthened with the striking down of the NJAC.



Judicial activism in India:

- ❑ Judicial activism refers to a "philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions."
 - ❑ Historian Arthur Schlesinger, Jr. coined this term in 1947, and its foundation in India was laid down by Justice V.R Krishna Iyer, Justice P.N Bhagwati, Justice O.Chinnappa Reddy, and Justice D.A Desai.
 - ❑ Justice Bhagwati held the opinion that- those days are gone where the judiciary was expected to stay in its mandate, now if the judiciary is not active, it is seen to escape from its responsibilities.
- Judicial activism is guided by the following two theories:
- ❑ Theory of vacuum filling: According to this theory inactivity, incompetence, indifference, lack of integrity, corruption, greed and disrespect of law by the legislature and/or the executive create a power vacuum.
 - ❑ Theory of Social Want: This theory affirms that when the current legislation fails to address the problems of the society and cannot provide alleviation, the judiciary has to undertake the task.



To undo the damages made during the national emergency, the court in Maneka Gandhi vs. Union of India and subsequent decisions widened the scope of Article 21 to give a wide meaning to "Right to Life".

Adoption of due process of law-In the Maneka Gandhi case, the judiciary opened up a new dimension of to life and personal liberty when it laid down that Article 21 encompasses within itself all such actions that make life meaningful, and provided a new meaning to the procedure established by law to include fairness, justness, and non-arbitrariness.

Starting of PIL era- in landmark S.P. Gupta vs. President of India and other workers, residents, the general public, and NGOs the right to appeal to the courts against violation of rights.

Creation of collegium system-The Supreme Court in the third judges case in 1998 created a collegium system where other judges also are actively consulted for appointments,

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Judiciary as a paradoxical institution:

- P.B. Mehta writes how Indian Supreme Court's undeniable contributions to democracy and the rule of law are shadowed by three profound ironies which make it a paradoxical institution:
 - First, even as the nation's most senior judicial panel engages in high-profile PIL interventions, routine access to justice remains extremely difficult with increasing **judicial backlog and overload**.
 - The second irony is that even as the Supreme Court has established itself as a forum for resolving public-policy problems, the principles informing its actions have become less clear.
 - The third irony is that the Court has helped itself to so much power—usurping executive functions, **marginalizing the representative process**—without explaining from whence its own authority is supposed to come. Mehta sheds light on the widely observed trend toward “post- democracy,” according to which representative institutions are losing power to nonelected centres of decision making the world over.

- As George Gadbois notes, political, social, and economic questions, not usually presented to judges in other countries, are decided as a matter of course by the Indian Supreme Court.
- Pratap Bhanu Mehta, in his writings on the judiciary, argues that jurisprudence is '**completely moribund**' in India and that many judges engage in what he characterizes as the 'jurisprudence of exasperation'—where the function of law is to express frustration with the state of affairs leading to impatient orders.
- Desai and Myvalidhar point out the numerous arguments raised against raised at the repeated judicial incursions into the arena of policy-making. As Dworkin and Vile note, each branch of the government is best confined to the exercise of its own function and policy is a function of the legislature.
- Rajamani and Sengupta argue that in the case of the judiciary, lack of institutional competence and democratic accountability would suggest that it exercise caution in entering into the policy-making arena.

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