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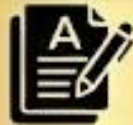
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# Gulf's geopolitical predicament cannot be solved. It can only be managed



**RAJA MANDALA**  
BY C RAJA MOHAN

**T**HE FIVE-day pause on attacking Iran's electricity plants announced Monday by US President Donald Trump has been widely welcomed. But a permanent settlement — "the complete and total resolution" in Trump's words — will remain elusive. It is hard to square the circle of power asymmetry between Iran and its Arab neighbours that lies at the root of Gulf insecurity. Iran is simply too large, and its Arab neighbours too small, for the region to find a stable equilibrium on its own. The Gulf Arabs have therefore long looked to external powers to balance Iran. That reliance — principally on the United States — has made Gulf security hostage to political mood swings in Washington.

The numbers tell the story. Iran's 90 million people dwarf the 27 million citizens of the GCC states. Persia is a unified state; the Arab Gulf is divided among several kingdoms. Iran's ambition to dominate the Gulf has endured regardless of whether Tehran was governed by a monarchy or a theocracy. For nearly 150 years, that ambition was constrained by Great Britain, the world's pre-eminent power from the early 19th to the mid-20th century, operating from the Indian Subcontinent. The Raj protected the

weaker Gulf states while maintaining a working relationship with Tehran. The decline of Britain, its withdrawal from the east of Suez, the independence granted to Gulf kingdoms in 1971, and the Islamic Revolution of 1979 together marked the demise of the old regional order.

The Islamic Republic did not invent Iranian assertiveness — it inherited it from the Shah and intensified it. Mohammad Reza Shah had already demonstrated Iran's hegemonic instincts before the revolution. He seized the islands of Abu Musa and the Trucis from the nascent UAE on the eve of the British withdrawal in 1971. He claimed Bahrain as Iran's 14th province until international pressure forced a tactical retreat. He deployed thousands of troops to Oman's Dhofar province to crush a left-wing insurgency — not out of altruism, but to establish Iran as the Gulf's indispensable security arbiter. He built the most powerful military force in the developing world, positioning Tehran as a regional gendarme with American blessing.

The Islamic theocracy has been even more vigorous in pursuing regional hegemony, but its opposition to Washington rather than in partnership with it. Both monarchy and theocracy made similar mistakes in focusing on external adventures, they exacerbated domestic unrest. A popular slogan from Iran's recent protests captures the contradiction: "No to Gaza, No to Lebanon...my life is for Iran."

When Iran transitioned from a monarchy to the Islamic republic, the underlying logic of Iranian hegemonic ambition did not change. Ayatollah Ruhollah Khomeini re-

placed Persian nationalism with Shia revolutionary ideology, but the instruments — proxy forces, interference in neighbours' affairs, projection of military power — differed little from the Shah's playbook. The difference lay in ferocity and religious fervour.

The conservative Gulf Arabs responded by establishing the Gulf Cooperation Council in 1981 to pool resources against the Islamic Republic. The GCC has barely limped along, hobbled by internal divisions. In a telling paradox, the Gulf Arabs turned to Iraq's secular dictator, Saddam Hussein, to contain revolutionary Iran. Eight years of the Iran-Iraq War kept Iran at bay, but at great cost. And the counterweight proved double-edged: The same army that bled Iran rolled into Kuwait in 1990. The Arab shield had turned on those it was meant to protect. American intervention expelled Iraq from Kuwait in 1991 but did not resolve the underlying structural imbalance. It merely replaced Iraqi protection with a direct American military presence on the Arabian Peninsula. A brief debate about a "Gulf NATO" never took off.

The Arabs also encouraged radical Sunni forces to fend off the Shia threat from Tehran. That strategy backfired spectacularly on September 11, 2001. After 9/11, the United States made the fateful decision to destroy the Iraqi state, disband the Ba'athist military, and hand Tehran the geopolitical windfall it had spent eight years fighting to prevent. Iran's Shia allies now ruled in Baghdad. The land route from Tehran to Beirut became a physical reality. Iranian proxies strutted across the region. The Gulf Arabs were left staring at an Iranian sphere of influence stretching from

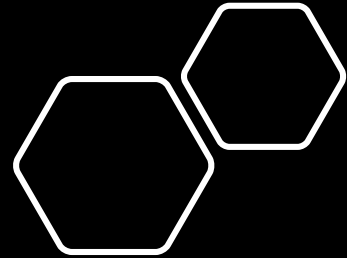
the Zagros mountains to the Mediterranean. The rise of Iranian power also drove a quiet rapprochement between Israel and the Gulf Arabs, adding a new strategic wrinkle.

Where does the regional balance go from here? The US, Israel, and the Gulf Arabs want a credible detangling of Iran's missile and nuclear capabilities. They want Iran to relinquish its proxy forces and stop meddling in Arab internal affairs. They also seek the internationalisation of the Strait of Hormuz to guarantee freedom of navigation. Iran has its own demands. It insists on its right to develop nuclear and missile technologies. It wants guarantees against future American military action, an end to US bases in Arab states, compensation for wartime damages, and a veto-over governance of the Hormuz.

This brings us back to the central problem. Iran is too strong to be ignored, but not strong enough to exercise unilateral dominance. The Gulf Arabs cannot balance Iran on their own and will continue to depend on the US for security. No other power — not Russia, not China, let alone Europe or India — can replace Washington as the ultimate security guarantor of the Gulf Arabs. Notwithstanding the flicker of hope offered by Trump's pause, the tragic cycle of the impossible balancing between Arabs and Persia is likely to continue. The Gulf's geopolitical predicament is not one that can be solved. It can only be managed — just barely, and with a great deal of luck.

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**Persia is a unified state; the Arab Gulf is divided among several kingdoms. Iran's ambition to dominate the Gulf has endured regardless of whether Tehran was governed by a monarchy or a theocracy**



- **Key Terms and Explanations**

- **Geopolitical Predicament:** A complex, persistent problem in international relations where opposing interests are so deeply entrenched that a permanent, final solution is unattainable. The focus shifts from "solving" to "managing" the situation to prevent escalation.
- **Power Asymmetry:** An imbalance of power between two or more actors in the international system. This can be measured in terms of military capability, population, economic output, and territorial size.
- **Gulf Cooperation Council (GCC):** A political and economic alliance formed in 1981 by six Arab states—Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, and the United Arab Emirates (UAE). It was created as a collective security measure to counter perceived threats from post-1979 revolutionary Iran.
- **Regional Gendarme:** A term used to describe a dominant power that acts as a police force or security arbiter within a specific region, often projecting its military and political influence to maintain a particular order. *Example:* The article describes Iran under the Shah as aspiring to be the "regional gendarme" with American backing.
- **Proxy Forces:** Armed groups, militias, or non-state actors that are funded, trained, and armed by a state to achieve its strategic objectives without direct military involvement, providing a degree of plausible deniability. *Example:* Iran's use of Hezbollah in Lebanon and various Shia militias in Iraq and Syria to extend its influence.
- **Strait of Hormuz:** A narrow, strategically vital waterway between the Persian Gulf and the Gulf of Oman, through which a significant portion of the world's crude oil passes. Its internationalization refers to proposals to ensure freedom of navigation, often implying a reduced role for Iran in controlling the strait.
- **Baathist Military:** Refers to the armed forces of Iraq under the Baath Party, particularly during the rule of Saddam Hussein. The decision by the US-led coalition after the 2003 invasion to disband this military is cited as a critical strategic error that destabilized Iraq.
- **Rapprochement:** The establishment or restoration of harmonious relations, often between former adversaries. *Example:* The article notes a quiet rapprochement between Israel and the Gulf Arab states, driven by a shared perception of the Iranian threat.

- **Main Arguments and Substantive Parts**

- **Core Thesis:** The central problem of Gulf security is an unsolvable structural asymmetry between a large, unified Iran and small, fragmented Arab Gulf states. Consequently, the geopolitical predicament can only be managed, not permanently solved.

- **Key Arguments:**

- **Structural Imbalance:** Iran's inherent advantages (population, unified state) make it impossible for the GCC states to balance it on their own. Their dependence on external powers, primarily the US, makes their security vulnerable to American domestic politics.
- **Continuity of Iranian Ambition:** Iran's hegemonic drive predates the 1979 revolution and is a constant in its foreign policy, transcending regime change. The tools (proxy forces, intervention) have been consistent, though the ideological justification has shifted from Persian nationalism to Shia revolutionary ideology.
- **Failure of Counter-Balancing Strategies:** Historical attempts by the Gulf Arabs to contain Iran have repeatedly failed or backfired.
  - **Iraqi Counterweight:** Encouraging Saddam Hussein led to the Iran-Iraq War, but the same Iraqi army later invaded Kuwait.
  - **US Intervention:** Direct US military presence replaced Iraq as a counterweight but didn't resolve the underlying issue.
  - **Sectarian Mobilization:** Encouraging Sunni radicalism to counter Shia Iran culminated in the 9/11 attacks.
  - **US Invasion of Iraq (2003):** This was a catastrophic strategic error that eliminated Iran's arch-rival (Saddam's Iraq) and handed Tehran immense geopolitical influence.
- **Inescapable External Dependency:** No other global power (Russia, China, India, Europe) can replace the US as the ultimate security guarantor for the Gulf Arabs, ensuring the region's continued reliance on Washington.
- **Supporting Evidence:** The article uses historical examples—British dominance, the Shah's actions in 1971, the Iran-Iraq war, the 1990 Kuwait invasion, and the post-2003 landscape—to build its argument. It also uses demographic and state-structure data (90 million vs. 27 million; unified Persia vs. fragmented Arab Gulf) to ground its thesis in material reality.

- **Historical Evolution of the Issue**

- **Pre-20th Century:** The Persian Gulf was a contested space, but the modern geopolitical structure began to take shape under British paramountcy.
- **Early 20th Century (British Raj Era):** Great Britain acted as the pre-eminent power from the Indian Subcontinent, providing a security umbrella for the smaller Gulf sheikhdoms while managing a working relationship with Persia (Iran). This created a managed equilibrium.
- **1971 (The Turning Point):**
  - **British Withdrawal:** Britain's decision to withdraw from "east of Suez" ended its role as the security guarantor.
  - **Creation of the UAE:** The Gulf kingdoms gained independence.
  - **Iranian Assertion:** The Shah of Iran seized the islands of Abu Musa and the Greater and Lesser Tunbs from the newly formed UAE, signaling Iran's hegemonic intentions.
- **1979 (The Islamic Revolution):** The fall of the US-backed Shah and the rise of Ayatollah Khomeini transformed Iran from a Western ally into a revolutionary, anti-Western state. The ideological driver changed from nationalism to Shia Islamism, intensifying the threat perception for Sunni Arab monarchies.
- **1980s (The Iran-Iraq War):** The war served as a containment strategy for the Gulf Arabs, who backed Saddam Hussein. The conflict ended in stalemate, leaving Iran's power structure intact.
- **1990s (The Iraqi Backlash):** Saddam Hussein's invasion of Kuwait in 1990 shattered the "Arab shield" strategy, forcing the Gulf states to invite a permanent US military presence to secure their borders.
- **2003 (The US Invasion of Iraq):** The US decision to topple Saddam Hussein and disband the Iraqi military eliminated Iran's primary regional rival and paved the way for Iranian influence to spread into Baghdad, Damascus, and Beirut via Shia proxies.
- **2010s-Present:** The rise of Iranian influence led to a Saudi-Iranian cold war, a covert rapprochement between Israel and the Gulf states (the Abraham Accords), and continued US-Iran tensions, culminating in cycles of escalation and temporary de-escalation.

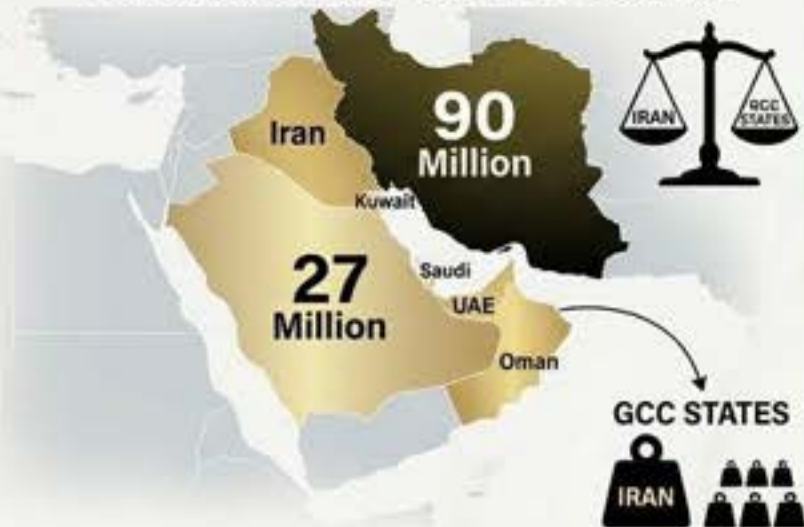
# UPSC CSE ANALYSIS: GULF GEOPOLITICAL PREDICAMENT CANNOT BE SOLVED, ONLY MANAGED.

BY C RAJA MOHAN – PRESENTED BY AXIA IAS ACADEMY.

## THE FUNDAMENTAL IMBALANCE

(Realist Power Politics)

Core Asymmetry: Power vs. Geography



### Key Points

- Iran's natural hegemonic instinct (Demography, Size)
- Man sources brandars
- Dan's smuran anitiren sithiom

- Inherent GCC vulnerability
- Inherent GCC variability
- Balance of Power (Realism) at play

## THE CRUCIAL HISTORICAL SHIFTS

Timeline of Regional Security



## THE NEW REGIONAL GEOPOLITICS

'Iranian Sphere of Influence' and Land Route



## THE FAILURE OF LOCAL BALANCING

Desperation and Dependence

GCC states trying to balance Iran



### Key Points

- Lack of cohesive local balancing
- External power dependence (realist constraint)

## UPSC GS-II LINKAGES AND THE WAY FORWARD

UPSC CSE Relevance & Strategic Implications.

UPSC Syllabus Mapping

GS-II	International Relations Neighborhood Relations Bilateral/Global Groupings	GS-III	Energy Security
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### WAY FORWARD

- **GCC:** Internal Cohesion is paramount (Build collective strength)
- **Dialogue:** Constructive, Pragmatic Regional Dialogue with Iran (Focus on shared interests)
- **Diversification:** Reduce sole reliance on US (Build multi-aligned partnerships)



- **Logical and Philosophical Base**

- **Realist Foundation:** The entire analysis is grounded in classical geopolitical realism. The primary actors are states, driven by the pursuit of power and security in an anarchic international system. The core driver is the "power asymmetry"—a material fact that dictates behavior.
- **Structural Determinism:** The argument suggests that the structure of the international system (the distribution of power) is the primary determinant of outcomes. Individual leadership, ideology, or even regime type (monarchy vs. theocracy) are secondary. As the article states, Iran's ambition "has endured regardless of whether Tehran was governed by a monarchy or a theocracy."
- **Assumption of Zero-Sum Competition:** The logic presumes that the Gulf is a zero-sum environment where one state's gain (Iran) is inherently another's (GCC) loss. The aspiration for "hegemony" is seen as the natural and permanent ambition of a power with inherent advantages.
- **Pessimism of "Management":** The philosophical conclusion is deeply pessimistic. It accepts that not all problems have solutions in international relations. The highest achievable goal is "management"—a concept rooted in the realist idea of crisis management and conflict prevention, rather than transformative peace-building.

- **Multidimensional Analysis**

- **Social:** The Sunni-Shia sectarian divide is the most potent social cleavage manipulated by both Iran (exporting the revolution) and Gulf states (countering with Sunni radicalism). This social fault line fuels proxy conflicts and undermines internal social cohesion. The domestic protests in Iran also highlight a growing disconnect between the regime's foreign adventurism and the economic needs of its population.
- **Political:** The political structure is critical. Iran's unified, centralized theocracy allows for coherent, long-term strategic planning. In contrast, the Gulf Arabs are politically fragmented across multiple monarchies with competing interests, hindering the formation of a unified front. The US domestic political cycle remains the single greatest variable affecting regional stability.
- **Legal:** International law is central to the debate. Iran's claims over the Strait of Hormuz (right to control its territorial waters) clash with the principle of freedom of navigation. The status of the disputed islands (Abu Musa and the Tunbs) remains a long-standing legal dispute between Iran and the UAE. The debate over Iran's nuclear program is also framed in legal terms (the NPT and the right to peaceful nuclear energy vs. IAEA safeguards).
- **Ethical:** The ethical dimension is fraught. The US use of military force in Iraq (2003) raises questions about the ethics of intervention and its unintended consequences. The support for proxy forces, often non-state actors who commit human rights abuses, raises questions about state responsibility. The suffering of civilian populations in Yemen, Syria, and elsewhere due to this geopolitical competition is a major ethical concern.
- **International:** This is the primary dimension. The article underscores the crucial role of the US as the external balancer. It also highlights how the conflict has restructured regional alliances, leading to a *de facto* US-Israel-GCC alignment against Iran, and a counter-alignment involving Iran, Syria, and Russia.
- **Economic:** The entire geopolitical struggle is underpinned by energy security. Control over the Strait of Hormuz, oil pricing, and the flow of hydrocarbons is the economic lifeline of the region. The economic viability of the Gulf states is entirely dependent on a stable security environment, which they are unable to provide for themselves.



- **Linkages with NCERTs**
- **Class 12, Political Science: Contemporary World Politics**
  - **Chapter 1: The Cold War Era:** Provides the foundation for understanding bipolarity, alliance systems, and the logic of "balancing" that is central to the article.
  - **Chapter 3: US Hegemony in World Politics:** Directly relevant for understanding the role of the US as a "security guarantor," the concept of "hard power," and the debates around the 2003 Iraq invasion.
  - **Chapter 4: Alternative Centres of Power:** Helps in evaluating the article's dismissal of the EU and the potential role of rising powers like China in the Gulf.
- **Class 12, History: Themes in Indian History**
  - **Theme 11: Rebels and the Raj:** While focused on India, the concept of the "Raj" as a colonial power operating from the Indian Subcontinent provides the historical context for understanding pre-1971 Gulf security.
- **Class 11, Political Science: Political Theory**
  - **Chapter 9: Peace:** Provides the philosophical counterpoint to realism. The concepts of negative peace (absence of war) vs. positive peace (addressing root causes) are directly relevant to the article's "management vs. solution" argument.



## Linkages with UPSC CSE Syllabus

### GS Paper 2:

- **International Relations:** This is the strongest linkage. The article is a case study in: India and its neighborhood (for understanding external intervention), Bilateral relations (US-Iran, US-GCC, Iran-GCC), Regional groupings (GCC), Effect of policies and politics of developed and developing countries on India's interests.
- **India's Foreign Policy:** Provides a crucial context for India's relations with Iran (Chabahar port, energy security) and the GCC states (diaspora, energy, trade), highlighting the balancing act India must perform.

### GS Paper 1:

- **History of the World:** The post-Cold War world order, the rise of Islamic fundamentalism, and the geopolitical consequences of the 2003 Iraq war.
- **Salient features of World History:** The decline of British imperialism, the rise of the US as a global power, and the politics of oil.

### GS Paper 4:

- **Ethics in International Relations:** The ethical dilemmas of intervention, the use of proxy forces, and the moral responsibility of great powers.
- **Case Studies:** The analysis provides material for a case study on the unintended consequences of political decisions (e.g., the 2003 invasion).



- **Way Forward**

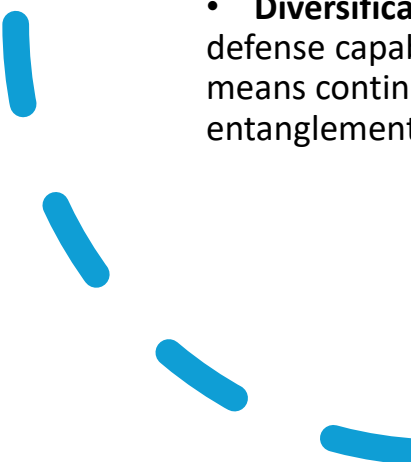
- **Accept the "Management" Paradigm:** The first step for all stakeholders is to abandon the pursuit of an elusive "final solution" and focus on building robust mechanisms for crisis management, including direct military-to-military de-escalation channels between the US and Iran.

- **Strengthen Regional Economic Integration:** As a long-term counter to zero-sum politics, efforts should focus on building economic interdependence. This could involve joint infrastructure projects, energy grids, and trade zones that make conflict economically irrational for all parties. This is a slow, liberal approach that the article might deem insufficient but is a necessary complement.

- **Institutionalize US-GCC Security:** To mitigate the impact of "Washington's mood swings," the US and GCC states should work towards a more formal, treaty-bound security framework, moving beyond *ad hoc* arrangements to a more predictable and enduring alliance structure.

- **Diplomatic Engagement without Illusions:** The US and its allies should continue to engage Iran diplomatically (on issues like the nuclear program) to manage the most dangerous aspects of the rivalry, while maintaining a clear-eyed view that diplomacy alone cannot resolve the underlying structural conflict.

- **Diversification and Resilience:** Gulf states must accelerate their economic diversification (beyond oil) and invest in indigenous defense capabilities to reduce their long-term dependency on external powers, even if they cannot replace it entirely. For India, this means continuing a multi-aligned policy, engaging with all stakeholders for energy security and diaspora welfare, while avoiding entanglement in the core conflict.



## All Previous Years' UPSC Questions

### GS Paper 2 (International Relations)

- **2023:** What is the significance of the Indo-US initiatives in the Indo-Pacific and the Gulf region? Discuss the challenges and opportunities in strengthening these partnerships.
- **2022:** Discuss the geopolitical implications of the Russia-Ukraine conflict on the Middle East.
- **2021:** The recent US-Iran conflict has brought the Strait of Hormuz back into the spotlight. Discuss its strategic importance for global energy security.
- **2019:** The USA's decision to withdraw from the Iran Nuclear Deal has created a new set of challenges for the region. Comment.
- **2018:** The growing convergence of interests between Israel and the Gulf States is a new development in West Asian geopolitics. Analyze.
- **2017:** The question of Iran's nuclear programme has been a major challenge to global non-proliferation. Discuss the factors that led to the Joint Comprehensive Plan of Action (JCPOA).
- **2015:** The relationship between the United States and the Gulf States has been a defining feature of the region's geopolitics. Examine the recent strains in this relationship.

### GS Paper 1 (World History)

- **2021:** The rise of radicalism in the Middle East is a consequence of the collapse of the Ottoman Empire. Critically analyze.
- **2015:** The end of the Cold War brought about significant shifts in the geopolitics of West Asia. Elaborate.

### GS Paper 4 (Ethics)

- **2018:** "The true test of a nation's greatness lies in how it treats its weakest members." Discuss in the context of humanitarian crises arising from geopolitical conflicts.

# Long delays, burdened courts: We need a national mission for negotiated justice



C RAJ KUMAR

IN HIS seminal work *On Crimes and Punishment*, the Italian criminologist Cesare Beccaria wrote, "Crimes are more effectually prevented by the certainty than the severity of punishment... The certainty of a small punishment will be more impressive than the fear of a more terrible one, but moderated by the hope of impunity." His perspectives on criminal justice remain important to this day. The efficacy of justice systems is not only dependent on punishment, but also on certainty, predictability, and quick resolution of disputes.

More than 5 crore cases are still open in Indian courts, the Centre told Parliament last year. About 4.76 crore are pending in district and subordinate courts, over 63 lakh in high courts, and over 92,000 in the Supreme Court. More than 80 per cent of India's judicial backlog is in district courts, where the common person interacts most directly with the justice system. The backlog reached record levels during the pandemic and has continued to rise despite reforms, such as the e-Courts project, launched to expand and digitise the judicial system, as well as institutional initiatives like fast-track courts and Lok Adalats.

We need to recognise that this is not an administrative issue, but a structural one.

For victims, long legal battles can mean a second trauma. For pre-trial detainees, delayed trials mean years of imprisonment before they are found guilty or acquitted. For individuals involved in civil disputes, such as property or divorce cases, protracted legal battles can result in substantial financial losses.

Delays are bad for the economy as well. A slow justice system makes it harder to enforce contracts, raises the cost of doing business and dissipates investor confidence. It sends the wrong signal to the investors about the country's investment climate. A slow judicial process makes the

## • PLEA BARGAINING & PENDING - COMPARING INDIA & THE WORLD

JURISDICTION	PLEA USAGE (%)	TRIAL SHARE	DISPOSAL SPEED	PENDING IMPACT
India	~0%	~85%	Years (3-10+)	Severe backlog (1-85-90%+)
United States	80-95%	2-5%	Weeks-months	Managed caseload
United Kingdom	~70%+	Low	Early-stage disposal	Controlled flow
China	High (majority cases)	Low	Weeks-months	Reduced pressure
Italy	20-30%	Moderate	Reduced trial time	Moderate relief
Germany	15-25%	Moderate	Shorter trials	Measurable relief
France	15-20%	Moderate	Faster minor case disposal	Partial relief

legal system appear weaker to citizens. This, in turn, creates a crisis of legitimacy.

Plea bargaining is a relatively new concept in India's formal criminal justice system. People traditionally thought that negotiated settlements were less fair or left room for extortion. The 2005 amendment to the Code of Criminal Procedure formally introduced plea bargaining into the Indian criminal justice system. It allowed the accused to take responsibility for the crime on their own terms, usually by agreeing to a deal that includes lower charges or a lighter sentence. When practised in a way that is fair and legal, this can serve the interests of both the state and the accused by allowing the case to proceed more quickly and efficiently.

However, after 20 years, plea bargaining has been adopted in less than one per cent of cases. The effective use of this mechanism remains impeded for several reasons, including procedural hesitation, absence of institutional incentives, and lack of understanding among prosecutors, defence lawyers, and litigants. This is unfortunate because experiences from around the world, including the US, England, Canada and Australia, show that negotiated dispute resolution mechanisms are some of the best ways to deal with large volumes of cases. In fact, more than 90 per cent of criminal cases in the US are settled through plea deals instead of full trials.

Plea bargaining comprises the core of the justice system in

several countries, with the understanding that it does not diminish the equity of the justice system. India needs to draw from these global experiences and make them work in our own constitutional and institutional setting.

The country should consider incorporating this practice for at least five good reasons.

One, given the sheer number of pending cases, it would be impossible to deal with them on an individual basis. Neither a judiciary capable of withstanding greater workloads nor improved infrastructure alone will be sufficient to have any effect.

Two, the outcome of a trial can be highly uncertain, costly, and time-consuming. Plea bargaining presents an alternative to both parties to arrive at a mutual agreement.

Three, negotiated settlements enable the police, prosecutors, and courts to carry out their jobs effectively. It allows them to devote their time and resources to complicated and serious crimes.

Four, victims are happier to settle their cases by plea bargaining than through a long legal battle. Crimes often disrupt people's lives. Victims would prefer that cases be resolved quickly with the confession of the guilty.

Five, effective plea bargaining makes the justice system work better as a whole.

In a recent speech, the Attorney General for India, K Venkatesh, observed, "There is a new

need for a national protocol for plea bargaining... which can, in a very healthy way, advise, guide and counsel practitioners as well as victims... so that the protocol can work in a more transparent and objective way."

India must plan to set up a national mission for negotiated justice to make plea bargaining and pre-trial settlement mechanisms more common. This could be called the Sahmati Samadhiya Nyaya Mission. There would be a few important parts to such a mission.

Prosecutors must be trained, and institutional readiness must be ensured. Prosecutors need to be able to negotiate fair and open plea deals that protect the public's interests while ensuring that cases are settled in a reasonable timeframe.

The way lawyers are paid should be reformed. Prosecution and defence lawyers must have a professional interest in reaching a settlement through negotiations.

Judges should encourage early settlement methods. Courts can exercise judicial discretion in deciding which cases are appropriate for plea bargaining and can encourage the setting up of structured negotiations before the trials start.

People need to be aware of how the law may be used for their benefit. Litigants need to understand that entering a plea bargain is not an admission of defeat nor an unfair deal but a wise tactical decision.

Strong protections and oversight systems need to be put in place to ensure that plea bargains are treated with the weight and gravity they deserve. Coercion, extortion and exploitation must be removed from the system.

If done right, plea bargaining can be a tool to timely justice. It frees up time for more important business in the courts. The courts can devote time to constitutional issues and serious criminal trials while routine and minor cases are settled quickly.

It's been almost 300 years since Beccaria made the compelling case that justice systems work best when results are certain, timely and predictable. Plea bargaining gives India a way to do just that, and it is finally time to let it reach its full potential.

The author is founding vice-chancellor, OP Jindal Global University

People need to be aware of how the law may be used for their benefit. Litigants need to understand that entering a plea bargain is not an admission of defeat nor an unfair deal but a wise tactical decision

- **Key Terms and Explanations**

- **Judicial Backlog:** The accumulation of pending cases in courts that have not been resolved within a reasonable timeframe. *Example:* As mentioned, over 5 crore cases pending across Indian courts, with the majority in district courts.
- **Plea Bargaining:** A pre-trial negotiation between the prosecution and the accused, where the accused agrees to plead guilty, often to a lesser charge or in exchange for a lighter sentence, avoiding a full trial. *Example:* In the US, a person accused of theft might plead guilty to a lesser charge of trespassing in exchange for a reduced sentence.
- **Pre-trial Detainee (Undertrial):** An accused person who is held in judicial custody while awaiting the completion of their trial. A large proportion of the prison population in India consists of undertrials, often for extended periods.
- **Lok Adalat:** A system of alternative dispute resolution in India where cases pending in court, or those at the pre-litigation stage, are settled or compromised amicably. They are often referred to as "People's Courts."
- **Fast Track Courts (FTCs):** Special courts established to expedite the trial of long-pending cases, particularly those involving heinous crimes, sexual offences, and cases with undertrial prisoners.
- **e-Courts Project:** A national e-governance initiative for the Indian judiciary. Its goal is to computerize and digitize court processes, making them more efficient, transparent, and accessible to litigants.
- **Negotiated Justice:** A broad concept where the resolution of a dispute is achieved through mutual agreement between the parties, rather than through a fully contested trial. Plea bargaining is a primary example.
- **Code of Criminal Procedure (CrPC), 1973:** The main legislation on the procedure for the administration of substantive criminal law in India. It was amended in 2005 to introduce plea bargaining.

- **Main Arguments and Substantive Parts**

- **Core Thesis:** India's judicial system is crippled by a structural backlog that cannot be solved through administrative fixes alone. The article posits that a paradigm shift towards "negotiated justice," with plea bargaining at its core, is essential for ensuring certainty, timeliness, and efficiency in the justice delivery system.

- **Key Supporting Points:**

- **The Scale of the Problem:** Over 5 crore pending cases create a crisis of legitimacy, eroding citizen trust and causing economic harm.
- **Failures of Current Reforms:** Despite initiatives like e-Courts and fast-track courts, the backlog continues to grow, indicating the problem is structural, not just administrative.
- **Human and Economic Costs:** Delays cause secondary trauma to victims, prolonged incarceration for undertrials, and financial ruin for those in civil disputes. Economically, it raises business costs and deters investment.
- **Underutilization of Plea Bargaining:** Introduced in 2005, plea bargaining is used in less than 1% of cases due to procedural hesitation, lack of incentives, and poor awareness.
- **Global Precedent:** Over 90% of criminal cases in the US are settled via plea deals, proving its viability as a primary mechanism for managing case volume without necessarily diminishing equity.
- **Five Key Benefits:** Plea bargaining is presented as a solution because it:
  - Addresses the sheer volume of cases.
  - Reduces uncertainty, cost, and time.
  - Allows police and courts to focus on serious crimes.
  - Provides victims with quicker closure.
  - Enhances overall system efficacy.

- **Historical Evolution of the Issue**

- **Pre-Independence Era:** The colonial legal system, established through acts like the Indian Penal Code (1860) and the Criminal Procedure Code (1861), was adversarial and trial-centric. It was designed for a different context and did not prioritize speed or alternative dispute resolution. The focus was on formal adjudication, which set the stage for the backlog culture.

- **Post-Independence (1950s-1990s):** The Constitution established the Supreme Court and High Courts. While Article 39A (Equal Justice and Free Legal Aid) was later added, the primary focus remained on the formal adversarial system. The doctrine of *stare decisis* and a strong emphasis on procedural law led to complex, lengthy trials. The backlog began to grow exponentially as litigation rates increased.

- **1990s-2005: Era of Reforms and ADR:** Recognizing the crisis, the Law Commission and the Supreme Court began advocating for Alternative Dispute Resolution (ADR).

- **1996:** The Arbitration and Conciliation Act was enacted, promoting ADR in civil disputes.

- **2002:** The Constitution (92nd Amendment) Act added Article 323A and 323B, enabling the establishment of administrative and other tribunals to reduce court burden.

- **Lok Adalats** gained statutory status under the Legal Services Authorities Act, 1987, becoming a popular mechanism for compromise settlements.

- **2005: Introduction of Plea Bargaining:** A landmark shift. The **Criminal Law (Amendment) Act, 2005**, introduced Chapter XXIA (Sections 265A to 265L) into the CrPC, formally incorporating plea bargaining for cases where the maximum punishment is imprisonment for seven years. It excluded heinous crimes against women, children, and socio-economic offences. This was a direct attempt to decongest courts and reduce undertrial populations.

- **Post-2005 to Present: Stagnation and Renewed Focus:**

- Despite the legal framework, uptake remained minimal due to lack of political will, judicial ambivalence, and lack of awareness.

- The **National Mission for Justice Delivery and Legal Reforms** was launched in 2011 with a focus on reducing pendency.

- The **e-Courts Mission Mode Project** (Phase I & II) aimed to digitize the process.

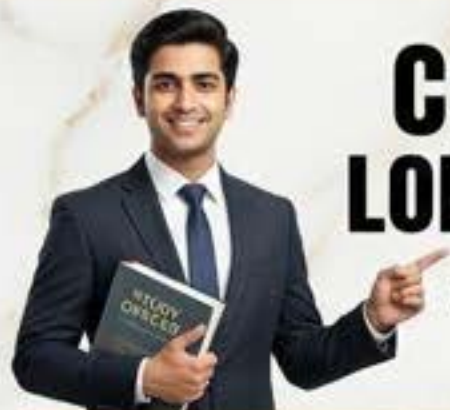
- The **COVID-19 pandemic** (2020 onwards) exacerbated the backlog, leading to record levels of pendency.

- Recent speeches by the **Attorney General** and the **Chief Justice of India** have re-ignited the conversation on plea bargaining and case management, indicating a renewed policy interest in negotiated justice.



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# COMPREHENSIVE ANALYSIS: LONG DELAYS & BURDENED COURTS

A STRATEGIC FOCUS ON PLEA BARGAINING  
& NEGOTIATED JUSTICE FOR UPSC CSE

## PENNSY IMPACT SECTION



**5 Crore**  
Cases Pending!



### THE CRISIS OF DELAY: ADVERSARIAL SYSTEM BURDENED



- Delay are bad for the economy, which an individual justice does not improved the negotiated courts are news and country and mopecomily to an is guited.

**COVID-19 PANDEMIC**  
IS A MAJOR  
A MAJOR CONTRIBUTOR

Beccaria's philosophy summary:  
**CERTAINTY & SPEED**  
ARE BETTER DETERRENENTS  
THAN SEVERITY



## GLOBAL COMPARISON & PLEA BARGAINING SECTION



JURISDICTION	PLEA USAGE (%)	TRIAL SHARE	DISPOSAL SPEED	PENDENCY IMPACT
India	-0.1%	-25%	Years (3→s)	⚠️ ⚠️
United States	90-90%	2-5%	Weeks-months	Low 🟢
United Kingdom	High (quality)	Low	Early-stage disposal	Low 🟢
China	20-20%	Moderate	Reduced rated disposal	Low 🟢
Italy	10-20%	Moderate	Shorter rials	Low 🟢
Germany	15-20%	Moderate	Shorter rials	Low ⚠️
France	15-20%	Moderate	Faster minced disposal	Partial ⚠️

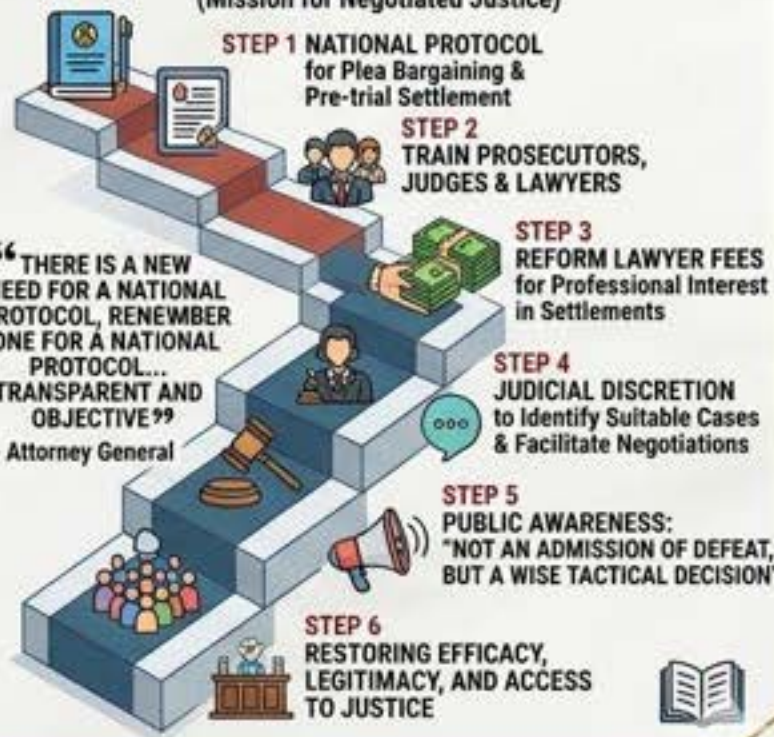


**LESS THAN 1%  
OF INDIAN CASES  
USE PLEA BARGAINING!**

## THE WAY FORWARD: NATIONS



**SAHMATI SAMADHAN NYAYA MISSION**  
(Mission for Negotiated Justice)



- **Logical and Philosophical Base**

- **Philosophical Foundation (Beccaria):** The article's logic is grounded in the classical criminological philosophy of Cesare Beccaria: the **certainty and swiftness** of punishment are more effective deterrents than its severity. A slow, uncertain system undermines this core principle, eroding both deterrence and legitimacy.

- **Utilitarianism:** The argument for plea bargaining is deeply utilitarian—it seeks to maximize the good for the greatest number. By settling a vast number of cases quickly, it reduces the aggregate suffering caused by delays (for victims, accused, and society) and allocates scarce judicial resources to serious, complex cases that demand full trial, thereby maximizing the overall efficiency of the justice system.

- **Pragmatism vs. Idealism:** The article challenges the idealistic notion that every case, no matter how minor, deserves a full adversarial trial. It argues for a pragmatic approach where justice is not only about the process but also about the timely outcome. It posits that a "good" result (plea deal) today is often better than a "perfect" result after years of delay.

- **Assumptions:** The argument assumes that with proper training, safeguards, and oversight, plea bargaining can be free from coercion. It also assumes that the state (prosecution) and the accused can operate on a level playing field, a premise that requires strong institutional checks to be valid.



<p><b>Multidimensional Analysis</b></p>	
<p><b>Social:</b></p>	<p><i>Access to Justice:</i> Plea bargaining can democratize justice by providing a faster, less expensive route to closure, especially for marginalized groups who cannot afford lengthy litigation.</p> <p><i>Undertrial Crisis:</i> It can directly address the humanitarian crisis of undertrial prisoners who outnumber convicts in Indian jails, by providing a mechanism for their release.</p> <p><i>Victim's Perspective:</i> While it offers closure, it can also disempower victims if they are not consulted or feel the deal is too lenient.</p>
<p><b>Political:</b></p>	<p><i>Political Will:</i> Requires a high level of political and judicial consensus to drive the proposed national mission.</p> <p><i>Separation of Powers:</i> It touches upon the executive's role in policy-making (the mission) and the judiciary's role in oversight and implementation, requiring careful coordination to avoid friction.</p>
<p><b>Legal:</b></p>	<p><i>Constitutional Validity:</i> Must be aligned with Articles 21 (fair trial) and 20(3) (self-incrimination).</p> <p><i>Criminal Justice System Reform:</i> A key element of the broader reform agenda, alongside the new criminal laws (BNSS, BNS, BSA).</p> <p><i>Precedent:</i> The success of ADR in civil law (Lok Adalats) provides a legal and institutional precedent for negotiated settlements in criminal law.</p>
<p><b>Ethical:</b></p>	<p><i>Justice vs. Mercy:</i> The central ethical tension is between the principle of "just deserts" (punishment proportional to crime) and the concept of mercy or efficiency.</p> <p><i>Prosecutorial Discretion:</i> Vests immense ethical responsibility in prosecutors to bargain fairly, avoiding abuse of power.</p> <p><i>Informed Consent:</i> A core ethical requirement is ensuring the accused's plea is truly informed, voluntary, and intelligent.</p>
<p><b>International:</b></p>	<p><i>Comparative Best Practices:</i> The article draws heavily on the US, UK, Canada, and Australia. India can learn from their successes in managing caseloads and their failures in preventing coercion.</p> <p><i>Global Perception:</i> A more efficient justice system improves India's international image and its ranking in global indices like the World Bank's Ease of Doing Business (which includes 'Enforcing Contracts').</p>
<p><b>Economic:</b></p>	<p><i>Cost of Litigation:</i> Reduces the direct and indirect costs of litigation for individuals and businesses.</p> <p><i>Business Climate:</i> A predictable and timely justice system lowers the cost of capital, encourages contract enforcement, and attracts foreign investment.</p> <p><i>Judicial Economy:</i> Frees up judicial time, which is a scarce and expensive public resource, allowing it to be allocated to high-impact cases.</p>

- **Linkages with NCERTs**
- **Class 12, Political Science: "Politics in India since Independence" - Chapter: 'The Crisis of Democratic Order'** (Link: The chapter discusses the relationship between the state, law, and legitimacy. Judicial delays create a crisis of legitimacy for the democratic state, which the article addresses as a core concern.)
- **Class 11, Sociology: "Understanding Society" - Chapter: 'Social Structure and Social Change'** (Link: The article discusses how a structural problem (judicial backlog) creates and perpetuates social problems like secondary trauma for victims and the marginalization of undertrials.)
- **Class 12, Sociology: "Indian Society" - Chapter: 'Social Justice'** (Link: Directly relates to the concept of access to justice as a cornerstone of social justice. The article's proposal is a means to make justice more accessible and timely for the common person.)
- **Class 9, Economics: "People as Resource"** (Link: The economic cost of a slow justice system, as discussed in the article, impacts the quality of human capital and the efficiency of economic transactions.)



- **Linkages with UPSC CSE Syllabus**
- **GS Paper 2:**
  - *Governance:* Issues relating to the development and management of social sector/services relating to the delivery of justice.
  - *Indian Constitution:* Structure, organization, and functioning of the Judiciary. Article 21.
  - *Separation of Powers:* The relationship between executive (law-making) and judiciary in judicial reforms.
  - *Government Policies and Interventions:* Analysis of policies like the e-Courts project, National Mission for Justice Delivery.
- **GS Paper 3:**
  - *Indian Economy:* Impact of judicial delays on the business environment, investment climate, and contract enforcement.
  - *Internal Security:* Linkages between crime, judicial delays, and social unrest.
- **GS Paper 4 (Ethics):**
  - *Ethical Dilemmas:* The conflict between individual rights (right to a full trial) and collective good (efficiency).
  - *Role of the State:* Ensuring justice, fairness, and rule of law.
  - *Probity in Governance:* The importance of transparency and oversight in prosecutorial discretion.



- **Way Forward**

- **Establish the "Sahmati Samadhan Nyaya Mission":** A time-bound, centrally sponsored mission with clear targets for increasing the percentage of cases settled through plea bargaining and pre-trial mechanisms.
- **Integrate with the New Criminal Laws:** Align the mission with the **Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023**. Ensure that the new procedural code explicitly supports and encourages negotiated settlements, building on the framework of the old CrPC.
- **Comprehensive Training:** Develop a mandatory, nationwide training module for Public Prosecutors, Judicial Officers, and Police Investigators on the practice of ethical and effective plea negotiation.
- **Incentive Alignment:**
  - **For Lawyers:** Establish fixed fee structures for plea-bargained cases, ensuring fair compensation for legal professionals while removing the incentive for delay.
  - **For Undertrials:** Create a presumption in favor of bail for those willing to enter plea negotiations, reducing coercive pressure.
- **Victim-Integration Protocol:** Mandate that victims be informed and consulted before a plea deal is finalized. A restorative justice component could be added, allowing for victim-impact statements and compensation as part of the agreement.
- **Transparency and Oversight:** All plea bargains must be recorded, with the reasons for the deal stated in a transparent manner. An oversight mechanism (e.g., a designated judge or a committee) should randomly audit plea deals to ensure they meet standards of fairness and voluntariness.
- **Public Awareness Campaign:** A mass media campaign to demystify plea bargaining, explain its benefits, and counter the stigma associated with it. This should be targeted at law students, young lawyers, and the general public.

# All Previous Years' UPSC and APSC Questions

## UPSC Mains:

- **2023:** Discuss the role of the judiciary in ensuring access to justice in India. (GS Paper 2)
- **2021:** What are the various methods of Alternate Dispute Resolution (ADR) available in India? Discuss their role in reducing the burden on the judiciary. (GS Paper 2)
- **2020:** Judicial Pendency is a major challenge in India. What are the causes for pendency and suggest measures to tackle it. (GS Paper 2)
- **2018:** How far do you think the introduction of Plea Bargaining in the Indian Criminal Justice System has been successful? Discuss. (GS Paper 2)
- **2017:** 'The concept of justice is not merely retributive but also distributive.' Comment in the context of the Indian legal system. (GS Paper 2/ Essay)
- **2016:** In the light of the recent initiatives of the government, evaluate the role of alternative dispute resolution mechanisms in reducing the burden on courts. (GS Paper 2)

## UPSC Prelims:

- Questions often appear on the topic of ADR (Lok Adalats, Arbitration), constitutional articles (Art. 21, 39A), and recent judicial reform schemes (e-Courts, Fast Track Courts).

## APSC Mains (Assam):

- Similar questions on judicial reforms, ADR, and access to justice appear in the APSC CCE General Studies papers, often with a focus on the state's judiciary and legal framework.

INDIA MUST ALLY WITH LIKE-MINDED NATIONS TO PREVENT A TURN TOWARDS PLURILATERALISM

# Fend off WTO watershed

**A**T A TIME when West Asia is facing unprecedented destruction, 166 members of the World Trade Organization are set to meet in Yaounde, Cameroon, during March 26-29 for the 14th Ministerial Conference of the WTO (MC14). The director general of the WTO is reported to have declared that this would be a "turning point" meeting. Why is MC14 not being postponed despite the ongoing war, what is at stake at the meeting, and what could be the likely outcomes? Let us consider these questions.

With the attention of world leaders rivetted on containing the economic consequences of the war in West Asia, the MC14 is likely to be an undesirable distraction for most countries. The prudent course would have been to postpone the meeting by at least a few months till peace and stability returns to the region. However, this could have somewhat eroded the negotiating power which the US presently enjoys on account of the success of its bilateral economic coercion and the failure of the larger developing countries to collectively confront the US. The US and its allies hope to carry over this advantage to MC14.

What are some of the key issues being pushed for outcomes at MC14? First, under the garb of reforming the WTO, the US, European Union (EU), and the UK are determined to initiate a work programme to rewrite the foundational principles of the organisation and skew the rules further in their favour. They are attempting to jettison the core non-discriminatory treatment enshrined in the "most-favoured nation" principle, doing away with the practice of decision-making by consensus, and obliterating special and differential treatment provisions in favour of developing countries.

The US and the EU have openly declared their intention to convert the

WTO from a multilateral rulemaking body, where all its members are involved in negotiating new rules, into an institution where a handful of countries would negotiate and subscribe to plurilateral rules in the future. On issues of interest to the developing countries, such as reduction in farm subsidies by developed countries, the latter could simply opt out of the negotiating club. As a result, the plurilateral mode of international rule-making would further dilute the already weak negotiating power of most developing countries at the WTO.

Second, realising that their goal of changing rules for converting WTO into an organisation mainly for negotiating plurilateral agreements would be met with resistance from some developing countries, the developed countries have adopted an alternative strategy. Shooting from the shoulders of many developing countries, they are pushing for adoption of the Investment Facilitation for Development (IFD) Agreement as a plurilateral pact at MC14. If this attempt succeeds, it will create a precedent for plurilateral agreements in future, even if those were to flout the fundamental rules of the WTO.

India, which is the sole influential country left opposing the inclusion of IFD as a plurilateral agreement, is likely to come under intense pressure at MC14

to change its stand on the issue. How India responds to this challenge will determine whether the developed countries succeed in altering the institutional architecture of the WTO to their advantage even without changing its rules.

If the developed countries have their way on plurilateral agreements and WTO reform at MC14, then the institution would be profoundly transformed. A work programme would be set in motion for replacing the rules-based system with a

power-based regime. In addition, the leverage of developing countries to influence future negotiations would be considerably diminished under a "reformed" WTO, thereby further marginalising them.

Third, another issue of particular interest to the US is likely to be the moratorium on customs duties on electronic transmissions. At MC14, the US would seek to convert the temporary moratorium into a permanent outcome and also expand its scope to include digital content transmitted electronically. A permanent moratorium would not only deprive developing countries of an important source of revenue but also prevent them from using taxation measures to regulate digitally delivered services.

Some trade experts in India have argued that a permanent moratorium would promote India's export of IT services. However, this ignores the reality

that on account of the existing commitments of the developed countries on cross-border delivery of services, even without a permanent moratorium they cannot impose customs duties on India's IT services exports. Thus, a permanent moratorium will only entail costs for India but not result in any tangible gains.

Fourth, MC14 is expected to witness tough negotiations on agriculture—a subject in which some export powerhouses are seeking a mandate to relaunch negotiations with new approaches. For India, going back to the drawing board would have far-reaching and damaging implications. The country would have to start its battle on food security afresh. It would also be hard put to defend its minimum support price scheme for rice, wheat, pulses, etc.

Further, new approaches to agriculture subsidy reduction could erode India's flexibility to provide subsidised power, fertiliser, and irrigation to its farmers, while allowing the developed countries to continue with their high farm subsidies. Finally, global agri-business in the US, the EU, and a few other countries would seek to pry open India's agriculture market by getting it to lower its bound tariffs. This would open the floodgates for cheap imports, jeopardising the livelihoods of hundreds of millions of India's resource-poor subsistence farmers. It would deal a severe blow to food security, and consequently economic security, of the country.

If India and some of the larger developing countries do not remain resolute in defence of their interests, then MC14 would certainly be a turning point to their disadvantage. The onus is on India to stand firm and create alliances with other like-minded countries, if it wants to prevent the WTO from being deformed into an institution that exclusively serves the interests of the rich and powerful countries.

## ABHIJIT DAS

The author is an international trade expert



- **Key Terms and Explanations**
- **Ministerial Conference (MC):** The WTO's highest decision-making body, composed of representatives of all member states. It meets at least once every two years and has the authority to make decisions on all matters under any of the multilateral trade agreements. MC14 refers to the 14th such conference.
- **Plurilateralism:** An approach to trade negotiations where a subset of WTO members agree to new rules or commitments among themselves, rather than all 166 members. This contrasts with the traditional **multilateral** approach, which seeks consensus among all members. The article warns against a "turn towards plurilateralism," which could marginalize countries not part of these smaller groups.
- **Most-Favoured Nation (MFN) Principle:** A foundational principle of the WTO requiring that any trade advantage (like a lower tariff) granted to one member must be extended immediately and unconditionally to all other members. The article suggests developed countries are attempting to "jettison" this core principle, which would allow for more discriminatory trade practices.
- **Special and Differential Treatment (S&DT):** A set of provisions in WTO agreements that grant developing countries special rights, such as longer timeframes for implementing agreements, measures to increase trading opportunities, and provisions to safeguard their trade interests. The article highlights efforts to "obliterate" these provisions.
- **Investment Facilitation for Development (IFD):** A plurilateral agreement pushed by developed countries aimed at creating a framework to improve the investment climate. India has been a key opponent, arguing that such issues should be negotiated multilaterally within the WTO's full membership, not through smaller, exclusive groups.
- **Moratorium on Customs Duties on Electronic Transmissions:** A temporary agreement at the WTO that members will not impose customs duties (tariffs) on electronic transmissions (e.g., software, digital content). The US is pushing to make this moratorium permanent. The article argues this is not beneficial for India, as developed countries already cannot levy such duties on Indian IT services due to their existing commitments.
- **Bound Tariffs:** The maximum tariff rate that a WTO member can apply on an imported product. Reducing bound tariffs, as the article warns agribusinesses seek, would limit a country's ability to raise tariffs to protect its domestic producers from import surges.
- **Minimum Support Price (MSP):** A form of agricultural price support implemented by the Indian government, where it announces a minimum price at which it will purchase crops from farmers, ensuring a baseline income and encouraging food production. The article frames this as a key point of conflict, as developed nations view it as a trade-distorting subsidy.

- **Main Arguments and Substantive Parts**

- The article's core thesis is that the 14th WTO Ministerial Conference (MC14) represents a critical moment where developed nations, led by the US and EU, are attempting to fundamentally reshape the WTO from a multilateral, consensus-based body into a plurilateral, power-based regime, to the detriment of developing countries like India.
- **Timing and Motives:** The article questions why MC14 is not postponed despite the West Asian conflict, suggesting that the US wishes to leverage its current position of strength—bolstered by successful bilateral economic coercion and a lack of collective resistance from developing nations—to push through its agenda.
- **WTO Reform as a Smokescreen:** It argues that the call for "reforming" the WTO is a pretext to rewrite foundational principles. The key targets are:
  - **Dismantling MFN:** To allow for more discriminatory trade practices.
  - **Ending Consensus:** To bypass the objections of developing countries.
  - **Eliminating S&DT:** To remove special protections for developing economies.
- **The IFD Challenge:** The article identifies India as the "sole influential country" opposing the IFD agreement. It posits that India will face immense pressure at MC14 to change its stance. How India responds will be pivotal in determining whether developed countries can alter the WTO's institutional architecture to their advantage without formally changing its rules.
- **The E-Commerce Moratorium Trap:** The article refutes the argument that a permanent moratorium on customs duties on electronic transmissions would benefit India. It argues that because developed countries already cannot impose duties on Indian IT services under their existing commitments, India would only bear the cost (lost policy space and revenue) without gaining any new market access. It is thus a one-sided concession.
- **Agriculture as a Battleground:** The article views the push for "new approaches" in agriculture negotiations as a direct threat to India's food security and economic sovereignty. The threats are multi-pronged:
  - **Weakening Food Security:** Forcing India to "start its battle on food security first" would undermine its public stockholding and MSP programs.
  - **Asymmetrical Subsidy Reduction:** It would erode India's ability to provide subsidized inputs to its farmers while allowing developed countries to maintain their massive, often more distortive, farm subsidies.
  - **Market Access:** It would pressure India to lower its bound tariffs, opening its markets to cheap imports that could devastate millions of small, subsistence farmers.
- **The Need for Alliances:** The concluding argument is that India and other large developing countries must remain resolute and form strong alliances with like-minded nations. Their collective action is the only bulwark against a "reformed" WTO that serves only the interests of the rich and powerful.

- **Historical Evolution of the Issue**

- **Pre-Independence Era (Pre-1947):** India's trade policies were dictated by the British colonial administration, which focused on exporting raw materials and importing manufactured goods. This period established a historical context of economic exploitation and a focus on self-reliance post-independence.
- **Post-Independence (1947-1990s):** India pursued a protectionist, import-substituting industrialization policy. This was characterized by high tariffs, quantitative restrictions, and a suspicion of multilateral trade frameworks, which were seen as tools for perpetuating global economic hierarchies.
- **Uruguay Round and WTO Formation (1986-1995):** India was a founding member of the WTO in 1995. The Uruguay Round marked a significant expansion of the global trade regime to include services (GATS), intellectual property (TRIPS), and agriculture (AoA). India's participation was reluctant, driven by the economic crisis of 1991 and the realization that it could not afford to be isolated from the global economy. The AoA, in particular, was seen as a major concession.
- **Seattle Ministerial (1999) and the Rise of the Developing Country Bloc:** The failure of the Seattle Ministerial Conference highlighted the growing discord between developed and developing countries. The formation of the G-20 (on agriculture) at the Cancun Ministerial (2003) was a watershed moment. Led by India and Brazil, developing countries collectively rejected the demands of the US and EU on agriculture, demonstrating their ability to coalesce and block outcomes.
- **Doha Development Round Stalemate (2001-Present):** The Doha Round was launched with a development mandate. However, it has been stalled for over two decades due to deep divisions on core issues like agriculture (market access, domestic subsidies) and NAMA (Non-Agricultural Market Access). The failure to conclude the Doha Round led to growing frustration, particularly among developed countries, and a search for alternative paths, such as plurilateral agreements.
- **Shift to Plurilateralism (2010s-Present):** Frustrated with the consensus-based paralysis, the US, EU, and others began promoting "joint statement initiatives" (JSIs) on issues like e-commerce, investment facilitation, and services domestic regulation. This marked a clear shift away from the multilateral framework that gave developing countries a strong voice.
- **The WTO Crisis (2017-Present):** The Trump administration's actions, including blocking appointments to the WTO's Appellate Body, led to the near-collapse of the dispute settlement mechanism. This period of crisis has been used to push for "fundamental reform" of the WTO, a term that has different meanings for different countries. For developed nations, it means moving away from the consensus-based model that the article warns against.



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# COMPREHENSIVE ANALYSIS: THE WTO MC14 & INDIA'S POSITION (FOR UPSC CSE)

## "FEND OFF WTO WATERSHED: A STRATEGIC PERSPECTIVE"

### Key Terms & Concepts



**Multilateralism** - group of flags group of clippers, consensus



**Plurilateralism** - smaller groups, rule-taking.



**MFN Principle** - balance of committed agreement to plurilaterals.

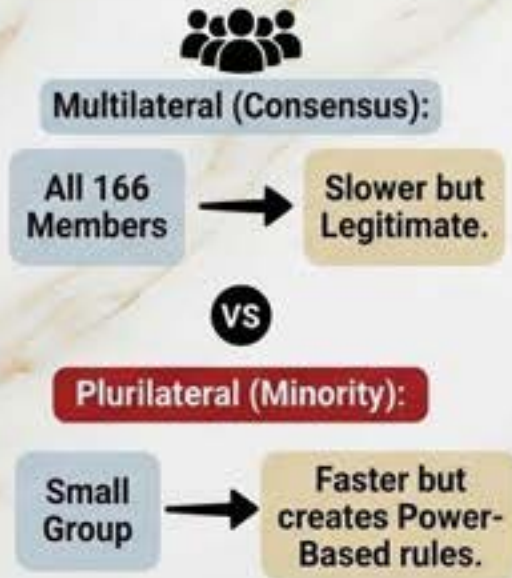


**S&DT** - lifting people and some of the best of relationship.



**E-commerce Moratorium** - e-commerce moratorium in digital technique.

### The Shift in Decision-Making



"If the developed countries have their way on plurilateral agreements, then the institution would be profoundly transformed." - (MAC8)

### India's Multi-Dimensional Analysis



**Social (Food Security)** - subsistence farmers/MSP



**Political (Political/rent)** - subsistence farmers/MSP



**Legal (Legal Security)** - corporate sector/Law



**Ethical - Ethical (Security)** - subsistence farmers/MSP



**International (Economic)** - e-commerce potential vs. etc.



**Economic (Digital Revenue)** - e-commerce potential vs. revenue.

### Major Challenges & Threats

#### Agriculture & Food Security



- Bound tariffs and bound top tariffs.
- Minimum support price - minimum support price



**E-commerce moratorium challenge** - voltames draitate to create it transfero

#### Way Forward (The Axis Strategy)



- G-90 & G-33 Coalition Building
- Accelerated Digital Framework
- Appellate Body Restoration
- Internal Farm Support Reform

- **Logical and Philosophical Base**
- **Underlying Logic:** The developed countries' approach is based on the logic of **pragmatism and efficiency**. They argue that the consensus-based, multilateral system is too slow and ineffective to address 21st-century trade issues like the digital economy. Their logic is that a smaller group of like-minded nations can make faster progress, and others can join later if they wish.
- **Assumptions:**
  - **Assumption of Developed Countries:** They assume that their trade policy priorities (e.g., digital trade, investment) are global priorities. They also assume that the WTO's primary purpose is trade liberalization, and any hindrance to that (like the interests of developing countries) should be circumvented.
  - **Assumption of the Article:** The article operates on the assumption that the WTO is fundamentally a political institution where power dynamics matter. It assumes that the rules of the game (MFN, consensus, S&DT) are the only tools that give developing countries leverage. If these are removed, the institutional balance will shift irreversibly in favor of the powerful.
- **Philosophical Foundations:**
  - **Liberalism vs. Realism:** The push for plurilateralism is rooted in a **neoliberal** economic philosophy that prioritizes absolute gains through free trade, even if it means leaving some countries behind. The article's perspective is grounded in **structural realism**, viewing the WTO as an arena where states pursue their relative power and national interests. It sees the "reform" not as a technical update but as a power play by dominant states.
  - **Egalitarianism vs. Utilitarianism:** The foundational principles of the WTO (MFN, consensus, S&DT) are based on an **egalitarian** ideal of sovereign equality among nations. The proposed shift towards plurilateralism is a **utilitarian** one, arguing that the "greatest good for the greatest number" (or for the most powerful) can be achieved by bypassing the few who obstruct progress.

- **Multidimensional Analysis**

- **Social:** The core of the issue is the livelihood and food security of millions of Indian farmers. A forced opening of the agricultural market would disproportionately impact the poorest and most vulnerable subsistence farmers, leading to potential agrarian distress, migration, and social unrest. The digital divide is also a social factor, as a permanent e-commerce moratorium could favor large tech corporations over small, domestic service providers.

- **Political:** This is a classic struggle for power and sovereignty. For India, the ability to shape global rules is a key marker of its status as a leading power. Domestically, agricultural trade policy is a hyper-sensitive political issue that can influence election outcomes. The challenge of building alliances with like-minded nations is a test of India's foreign policy and diplomatic skills. The "reform" agenda is a direct political challenge to the legitimacy of the WTO's democratic, consensus-based process.

- **Legal:** At stake is the very structure of international economic law. Replacing MFN with a system of discriminatory preferences, moving from consensus to a system where a majority can bind a minority, and creating plurilateral side agreements within a multilateral framework all represent a fundamental reshaping of the legal architecture of global trade. The article also touches on the legal aspect of policy space—the ability of a nation to legislate in its own interest without being bound by restrictive trade rules.

- **Ethical:** The debate is saturated with ethical considerations. Is it ethical for powerful nations to use their economic might to coerce smaller nations into accepting rules that benefit the powerful? Is it just to dismantle the Special and Differential Treatment provisions that were designed to correct historical inequities? The article frames the US/EU agenda as one that prioritizes corporate profits (e.g., global agri-businesses, big tech) over the fundamental rights to food security and development. It challenges the ethics of "might makes right" in global governance.

- **International:** This is the central arena of the conflict. It involves the shifting dynamics of global governance, the decline of multilateralism, and the rise of geopolitical competition. The stance India takes is a key indicator of its role in the Global South. The outcome will affect trade relations with the US, EU, China, and other major economies. It also touches upon the broader issue of reforming international institutions (like the UN, IMF, and World Bank) to make them more representative and effective.

- **Economic:** The economic dimension is the most direct. It involves tariff revenues, market access for goods and services, agricultural subsidies, investment flows, and the growth of the digital economy. For India, the economic stakes are immense: protecting its large agricultural sector, its growing IT services industry, and its ability to use trade policy as a tool for national development. The article warns that the proposed changes would skew the global economic playing field further in favor of the already rich countries.

- **Linkages with NCERTs**

- **Class 10, Economics: "Globalisation and the Indian Economy"**: This chapter explains the concept of globalization, the role of the WTO, and the impact of trade liberalization on Indian farmers, consumers, and industries. The article provides a real-world, current update on the ongoing power dynamics within the WTO that shape the very globalization processes described in the book. It deepens the understanding of "fair globalization" and the challenges faced by developing countries.
- **Class 12, Political Science: "Contemporary World Politics"**: This book covers the rise of new international actors, the role of international organizations, and the politics of globalization. The chapter on "International Organisations" discusses the WTO's functions and the criticisms leveled against it. The article directly builds on this by showing how these criticisms are manifesting in a power struggle to reform (or deform) the organization. The theme of "alternative centres of power" is also relevant as it discusses the potential for a coalition of developing nations to act as a counterweight.
- **Class 12, Economics: "Indian Economic Development"**: The chapter on "Liberalisation, Privatisation and Globalisation" provides the historical context of India's economic reforms that led to its WTO membership. The chapter on "Rural Development" and "Poverty" is directly linked to the discussion on food security, MSP, and the impact of agricultural trade rules on the livelihoods of subsistence farmers.

## Linkages with UPSC CSE Syllabus

### GS Paper 2:

- **International Relations:** *Bilateral, regional and global groupings and agreements involving India or affecting India's interests.* (WTO, G-20, groupings of developing countries).
- **International Relations:** *Important International institutions, agencies and fora- their structure, mandate.* (WTO's structure, functions, decision-making process, and the current crisis of its dispute settlement mechanism).
- **Governance:** *Government policies and interventions for development in various sectors and issues arising out of their design and implementation.* (Agricultural policies like MSP, e-commerce policy, and their interface with international commitments).

### GS Paper 3:

- **Indian Economy:** *Issues relating to planning, mobilization of resources, growth, development and employment.* (Impact of trade rules on economic growth and employment).
- **Indian Economy:** *Effects of liberalization on the economy, changes in industrial policy and their effects on industrial growth.* (The long-term impact of a shift from multilateralism to plurilateralism on India's industrial and services sector).
- **Agriculture:** *Issues related to direct and indirect farm subsidies and minimum support prices.* (The direct link between WTO negotiations on agriculture and the future of India's MSP and subsidy regime).
- **Food Processing and Food Security:** *Food security in India.* (The article argues that the WTO agenda is a direct threat to India's food security).

## Way Forward

### For India:

- **Strengthen Alliances:** India must move beyond its current role as a lone dissenter on issues like IFD. It needs to proactively build and revitalize coalitions like the G-33 (on agriculture) and the Africa Group, framing the debate not just as India's fight but as a fight for the entire Global South's policy space.
- **Proactive and Constructive Reforms:** Instead of just resisting the developed countries' reform agenda, India should put forward its own vision for WTO reform. This vision could focus on strengthening the dispute settlement mechanism, ensuring compliance with existing rules (especially on developed country subsidies), and pushing for a development-centric work program that addresses issues like food security and the needs of least-developed countries.
- **Data-Driven Diplomacy:** To counter the e-commerce moratorium, India should build a robust evidence base on the potential revenue loss and the impact on its nascent digital economy. It should argue that the moratorium is not a "development" issue but one that serves the interests of a few large multinational tech corporations.
- **Domestic Policy Coherence:** India must ensure its domestic policies, like MSP, are defensible under WTO rules. This could involve exploring alternative forms of support that are more compatible with global norms while still protecting farmers. The focus should be on delinking income support from price-distorting measures, where possible.

### For the WTO:

- **Reclaim the Middle Ground:** The only sustainable way forward is to re-establish faith in the multilateral, consensus-based process. This requires a new, realistic work program that acknowledges the diversity of its members' interests. A "single undertaking" (where everything is part of a single package) is likely impossible, but a "plurilateral only" path is institutionally destructive.
- **Revive Dispute Settlement:** Without a functioning Appellate Body, the WTO is legally crippled. The first and most critical reform must be to restore this mechanism. This is a fundamental building block that all members, developed and developing, share an interest in.



- **UPSC CSE Mains (GS Papers)**

- **GS Paper 2**

- **2023:** "What is the status of the World Trade Organization (WTO) in the contemporary global trade governance? Discuss the challenges faced by the WTO and suggest measures to strengthen its functioning."
- **2022:** "Discuss the role of G-20 in the global governance. How does India leverage its membership in G-20 to further its foreign policy objectives?"
- **2021:** "Critically examine the role of the World Trade Organization (WTO) in the promotion of free trade. How has the Doha Development Agenda fared?"
- **2020:** "The World Trade Organization (WTO) is facing an existential crisis. What are the reasons for this? What can be the possible consequences of its failure?"
- **2019:** "What are the key challenges faced by the multilateral trading system? Discuss the role of India in shaping the global trade architecture."
- **2018:** "What is the significance of the 'most-favoured-nation' (MFN) principle in the World Trade Organization? How has this principle been applied in recent years?"
- **2017:** "The issue of food security in India is inextricably linked with the negotiations at the WTO on agriculture. Comment."
- **2016:** "The future of the World Trade Organization (WTO) lies in its ability to balance the interests of its developed and developing members. Analyze."

- **GS Paper 3**

- **2023:** "Explain the rationale behind the Minimum Support Price (MSP) policy in India. Discuss the challenges in its implementation and the way forward."
- **2022:** "How does the World Trade Organization (WTO) agreement on agriculture impact India's agricultural policies? Discuss."
- **2021:** "What are the major challenges facing the Indian agriculture sector? How can trade policy help in addressing these challenges?"
- **2020:** "Discuss the impact of the e-commerce moratorium at the WTO on India's economy and its policy space."
- **2019:** "What are the issues related to the agricultural subsidies in the context of WTO? Suggest measures to make India's agricultural subsidy regime WTO-compliant."
- **2018:** "What are the implications of the digital economy for India's trade policy? Discuss."

# The judicial push for environmental CSR

India emerged as a pioneer for mandating profit-sharing for social good through the Companies Act, 2013 – a visionary move to channel corporate earnings for crucial societal objectives. However, the environment remains largely neglected, often sidelined by prevailing corporate priorities. Despite India's commitment to net zero emissions by 2070 at COP26, and escalating climate challenges from air pollution, water scarcity, and poor waste management, ecological needs continue to be underrepresented in Corporate Social Responsibility (CSR) funding.

However, recent Supreme Court observations have rebalanced environmental spending – not as mere discretionary charity, but as a constitutional mandate. By invoking Article 51A (g), the judiciary underscored that the right to conduct business is inseparably linked to the responsibility to restore our planet. The neglect of the habitats of the Great Indian Bustard by energy firms catalysed the Court to issue this mandate.

## Skewed funding

An analysis of CSR data exposes a lopsided spending pattern that favours human-centric development at the expense of the environment. Over the past seven years, funds have been overwhelmingly allocated to social sectors, with education receiving approximately 38%, healthcare 22%, and rural development 10%. Conversely, the environment averaged between 7%-9%, creating an unbalanced ledger that critically underfunds vital sustainability projects. This disparity suggests that corporations view environmental crises as distant threats compared to immediate social needs. Yet, there are commendable exceptions that prove large-scale restoration is possible.

Mahindra's 'Project Hariyali' has planted almost 25 million trees, focusing on survival rates



**Mohan Chandra Pargaien**

Former Principal Chief Commissioner of Forests, Telangana and adviser to SCC.

By invoking Article 51A (g), the judiciary underscored that the right to conduct business is inseparably linked to the responsibility to restore our planet

rather than just sapling counts. ITC's forestry program spans 1.3 million acres, integrating livelihoods with conservation; the Tata Group leads water conservation through massive watershed management; Coca-Cola and Hindustan Unilever have undertaken circular waste management projects; and JSW has advanced mangrove restoration. These initiatives demonstrate that prioritising the environment yields significant, and measurable impact. Nevertheless, most companies still pursue 'quick wins' such as one-off awareness drives, and sidestep the arduous processes of forest restoration and natural resource recovery.

## Challenges of restoration

Much needed environmental restoration, including afforestation, has been neglected in India as is evidenced in the country's report on the Bonn Challenge (a global, voluntary effort to restore 350 million hectares of degraded and deforested land by 2030). While the nation aims to restore 26 million hectares by 2030, private companies have contributed a negligible 2% to the 9.8 million hectares restored so far.

There is a massive 'restoration gap' between the damage caused by industrial activity and the investment made to fix it. Companies prefer social projects such as environmental awareness campaigns, renewable energy, or basic green initiatives. These give quick visibility, clear results, and facilitate easy reporting. In contrast, land-based projects such as forest restoration with tree planting, habitat recovery, water conservation, and waste management take a long time. In addition, they also require expert skills in tree-growing, soil health, and biodiversity checks – skills that most CSR partners don't have. Corporations often support initiatives such as the recently popular Miyawaki plantations, which offer rapid growth and look

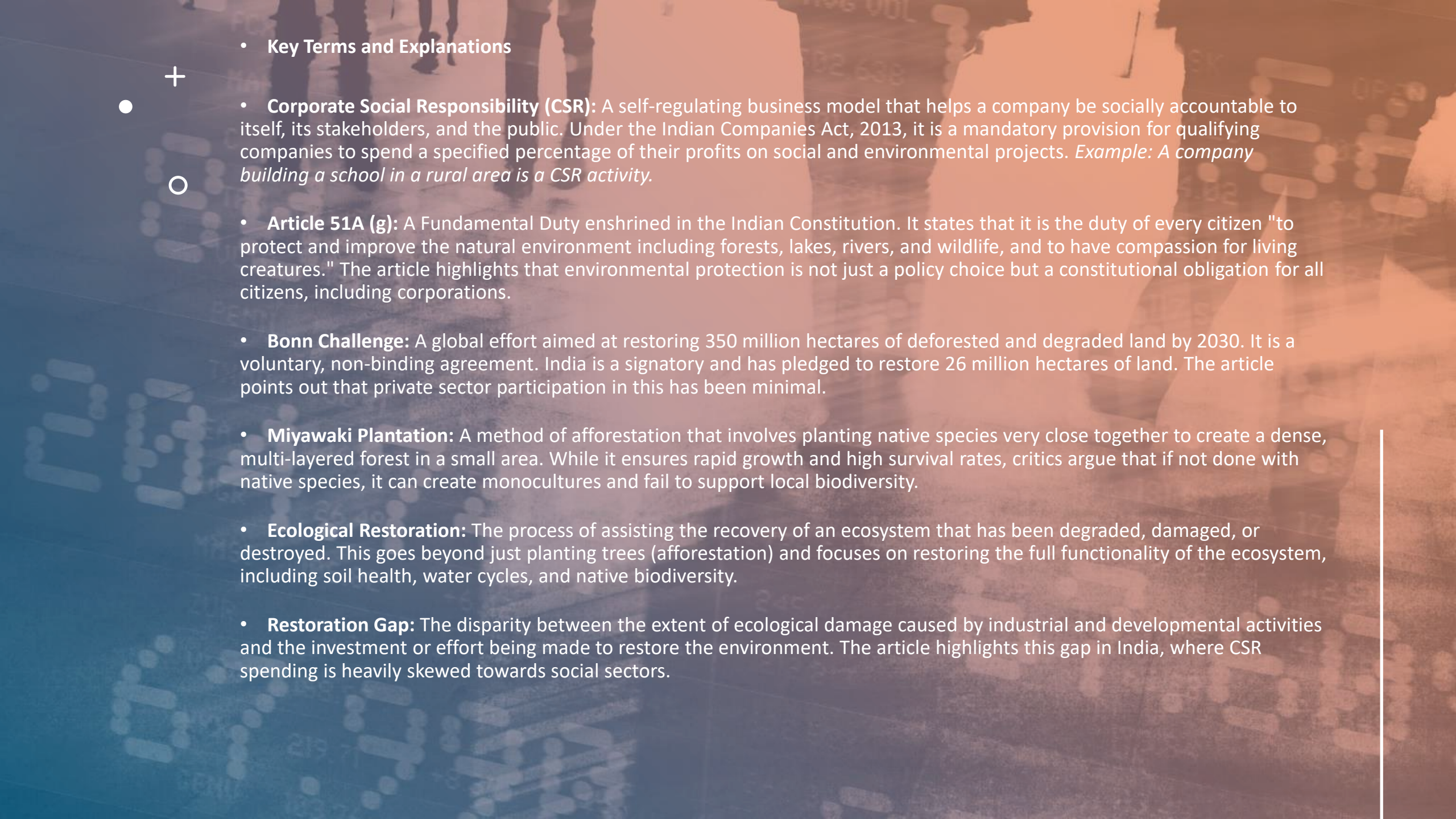
excellent in annual reports, but often compromise native ecology and biodiversity. The situation is worsened by an urban bias in the selection of the target area; a lack of practical policies for degraded lands; and poor collaboration with forest departments and other organisations.

## Need for reimagining strategy

The current judicial push demands an urgent transition to a 'ecosystem recovery' strategy. This requires reimagining corporate accountability, and replacing conventional auditing with time-bound restoration initiatives and their ecological assessments.

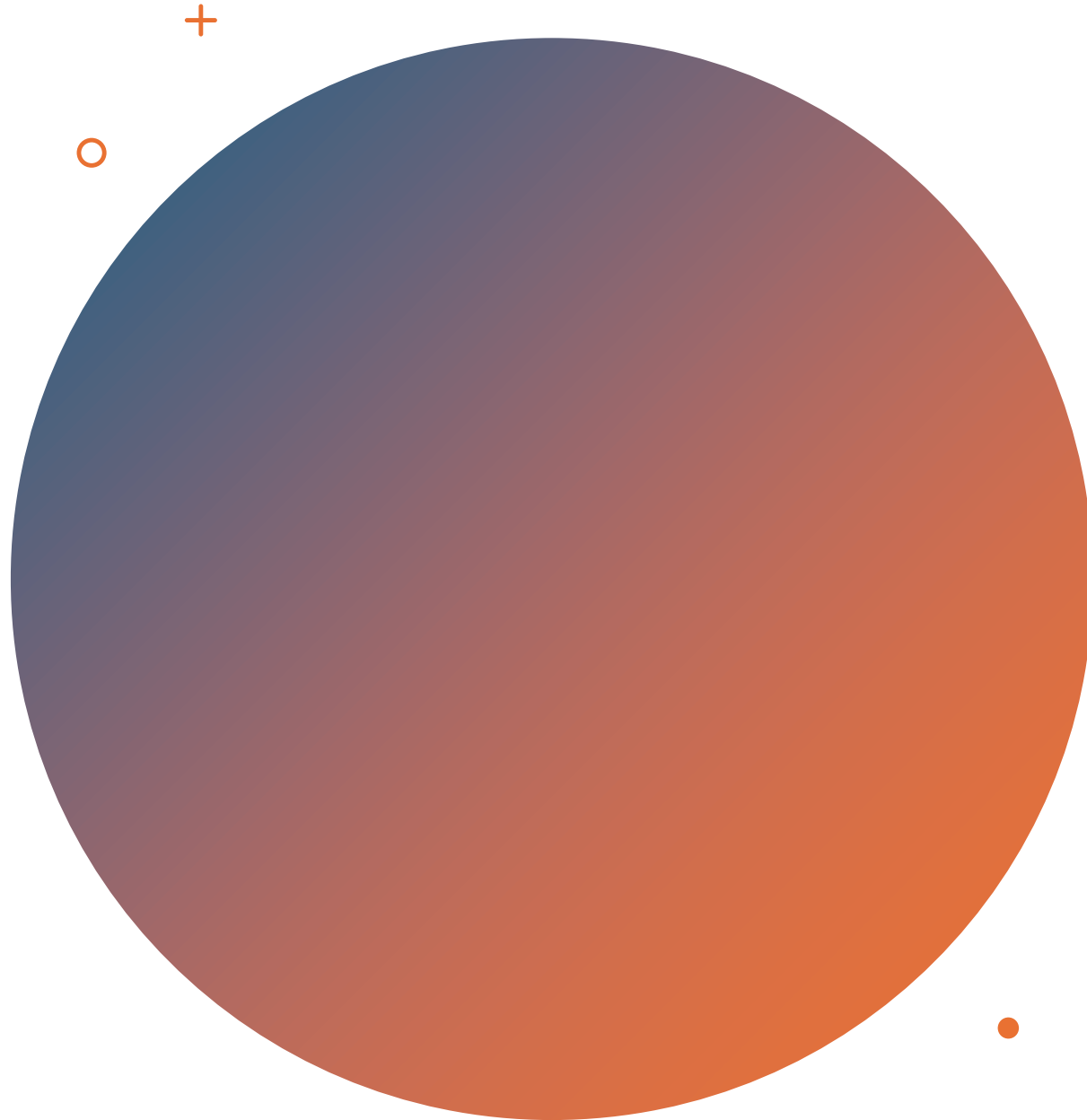
Indicators of success should be tangible ecological services such as soil carbon sequestration, water retention, and biodiversity recovery. To achieve this, India must prioritise degraded and remote forest lands lacking resources through appropriate restoration initiatives. Further, the country needs to build alliances between forest departments, universities, conservation NGOs and joint forest management committees. These partnerships can establish dedicated restoration units under scientific supervision, giving due regard to native species and ecology. Furthermore, the challenge of long-term financing for landscape-scale projects and restoration challenges can be solved by establishing a restoration trust or an escrow fund. This would guarantee continuity and provide the long-term security necessary for real ecological impact.

Corporate governance in India must evolve from being shareholder-centric to ecosystem-centric, with directors acting as fiduciaries for the environment and moving past the ease of basic compliance. When the health of our planet is treated as a mandatory, non-negotiable part of business strategy, the country moves toward a future where sustainable development becomes a lived reality.



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- **Key Terms and Explanations**

- **Corporate Social Responsibility (CSR):** A self-regulating business model that helps a company be socially accountable to itself, its stakeholders, and the public. Under the Indian Companies Act, 2013, it is a mandatory provision for qualifying companies to spend a specified percentage of their profits on social and environmental projects. *Example: A company building a school in a rural area is a CSR activity.*
- **Article 51A (g):** A Fundamental Duty enshrined in the Indian Constitution. It states that it is the duty of every citizen "to protect and improve the natural environment including forests, lakes, rivers, and wildlife, and to have compassion for living creatures." The article highlights that environmental protection is not just a policy choice but a constitutional obligation for all citizens, including corporations.
- **Bonn Challenge:** A global effort aimed at restoring 350 million hectares of deforested and degraded land by 2030. It is a voluntary, non-binding agreement. India is a signatory and has pledged to restore 26 million hectares of land. The article points out that private sector participation in this has been minimal.
- **Miyawaki Plantation:** A method of afforestation that involves planting native species very close together to create a dense, multi-layered forest in a small area. While it ensures rapid growth and high survival rates, critics argue that if not done with native species, it can create monocultures and fail to support local biodiversity.
- **Ecological Restoration:** The process of assisting the recovery of an ecosystem that has been degraded, damaged, or destroyed. This goes beyond just planting trees (afforestation) and focuses on restoring the full functionality of the ecosystem, including soil health, water cycles, and native biodiversity.
- **Restoration Gap:** The disparity between the extent of ecological damage caused by industrial and developmental activities and the investment or effort being made to restore the environment. The article highlights this gap in India, where CSR spending is heavily skewed towards social sectors.



- **Main Arguments and Substantive Parts**

- **Core Thesis:** The article argues that India's CSR framework, while progressive, has failed to adequately address environmental concerns. It posits that a recent judicial intervention by the Supreme Court is reframing environmental spending not as optional charity but as a constitutional mandate, necessitating a fundamental shift in corporate strategy from shareholder-centric to ecosystem-centric.

- **Key Supporting Evidence:**

- **Skewed Funding:** Over the past seven years, CSR funds have been overwhelmingly directed towards social sectors (education 38%, healthcare 22%, rural development 10%), while the environment sector has consistently received only 7-9% of the total.
- **Poor Participation in Restoration:** In the context of the Bonn Challenge, private companies have contributed a mere 2% to the 9.8 million hectares restored so far, revealing a massive "restoration gap."
- **Superficial Corporate Actions:** Most companies prefer "quick-win" projects like environmental awareness drives or Miyawaki plantations, which offer high visibility and easy reporting, over complex, long-term restoration projects like forest and watershed management.
- **The Great Indian Bustard Case:** The Supreme Court's observations in this case serve as a catalyst, linking the right to do business with the duty to restore the environment under Article 51A(g).

- **Historical Evolution of the Issue**

- **Pre-Independence Era:** The concept of business philanthropy was rooted in the "trusteeship" philosophy of leaders like Mahatma Gandhi, where industrialists were seen as trustees of public wealth. Environmental concerns were largely localized and not a part of corporate thinking.

- **Post-Independence & Pre-Liberalization (1947-1991):** The focus was on nation-building and industrial growth. Environmental laws were nascent (e.g., The Water (Prevention and Control of Pollution) Act, 1974; The Air Act, 1981). Corporate social engagement was paternalistic and charity-based, not structured or mandated.

- **Post-Liberalization & The Bhopal Gas Tragedy (1990s):** The Bhopal disaster of 1984 was a watershed moment, galvanizing the environmental movement in India. The 1990s saw the establishment of the Ministry of Environment, Forest and Climate Change (MoEFCC) and the Environment Protection Act, 1986. Corporate responsibility was still voluntary.

- **The Companies Act, 2013 – A Paradigm Shift:** This was a pioneering move that mandated CSR spending for qualifying companies, formalizing and codifying corporate social obligation. However, the initial focus was heavily on social development, with the environment being a minor component.

- **Post-COP26 & Recent Judicial Activism (2020s):** With India's net-zero commitment and rising climate challenges, the inadequacy of CSR for the environment became stark. The Supreme Court's recent intervention, invoking Article 51A(g) to link business rights with environmental responsibility, marks a critical shift towards a more legally enforceable and constitutionally grounded approach.



### BRIDGING THE RESTORATION GAP: REIMAGINING CORPORATE RESPONSIBILITY

#### CONSTITUTIONAL MANDATE (GS 2)



ARTICLE 51A (g) → RIGHT TO BUSINESS LINKED TO DUTY TO RESTORE



THE RESTORATION GAP: ONLY 2% CSR FROM PRIVATE COMPANIES (for 26M HA Bonn Challenge target)

#### THE "SKEWED FUNDING" CHALLENGE



38% Education



7-9% Environment

QUICK WINS VS. LONG-TERM ECOLOGICAL NEEDS

#### ECOSYSTEM RECOVERY STRATEGY (GS 3)



SCIENTIFIC SUPERVISION



SOIL SEQUESTRATION



BIODIVERSITY RECOVERY



LONG-TERM FINANCING (Restoration Trust/Escrow)

#### THE MIYAWAKI METHOD: QUICK GROWTH vs. NATIVE BIODIVERSITY



FAST-GROWING MONOCULTURE

VS.



NATIVE BIODIVERSITY

#### LANDSCAPE-SCALE FINANCING



#### MULTIDIMENSIONAL IMPACT



SOCIAL



ECONOMIC



ETHICAL

#### EVOLUTION OF CSR IN INDIA

2013



COMPANIES ACT (Mandatory 2%) - The Catalyst

2015



BONN CHALLENGE (Global Commitment)

2020s



(JUDICIAL PUSH) GREAT INDIAN BUSTARD CASE - Habitat Protection as a Mandatory Right

Present



ECOSYSTEM-CENTRIC GOVERNANCE - Directors as Trustees

- **Logical and Philosophical Base**

- **Constitutional Morality:** The core logic is that corporate actions must be guided by the constitutional morality enshrined in the Directive Principles and Fundamental Duties. Article 51A(g) provides the philosophical anchor, implying that the right to business (Article 19(1)(g)) is not absolute and is qualified by the duty to protect the environment.
- **Ecological Economics:** The argument challenges the traditional economic model that treats the environment as an externality. It posits that a business's profit is often derived from the exploitation of natural resources, and therefore, it has a fiduciary duty to restore and sustain those resources. The philosophy moves from a shareholder-primacy model to a stakeholder (including the environment) model.
- **Precautionary Principle & Polluter Pays Principle:** The article's argument aligns with these established principles of environmental law. The idea that corporations must bear the cost of restoration and that a lack of scientific certainty (about climate change impacts) should not be used as a reason to postpone action is implicit.
- **Trusteeship vs. Ownership:** There is a philosophical shift from viewing business as a profit-generating machine owned by shareholders to viewing it as a trustee of societal and ecological capital. This echoes Gandhian philosophy but applies it in a modern, legally mandated context.

- **Multidimensional Analysis**
- **Social:**
  - Positive: Integrating livelihoods with conservation (like agroforestry) can create a win-win scenario for both the environment and rural communities.
  - Potential Negative: If restoration projects are not done with community participation, they can lead to conflicts, especially if they restrict access to forest resources that local people depend on.
- **Political:**
  - The judiciary is taking a proactive role in environmental governance, which could lead to friction with the executive.
  - There is potential for political parties to leverage the issue, either by championing corporate environmental accountability or by critiquing judicial overreach.
  - The move aligns with India's international climate commitments (net-zero), which can be used as a diplomatic tool.
- **Legal:**
  - The core of the issue is the interpretation of Article 51A(g) and whether it can be used to create a legally enforceable duty for corporations beyond the statutory CSR mandate.
  - It could lead to future litigation demanding that companies be held liable for ecological damage and compelled to spend on restoration.
  - It raises questions about amending the Companies Act to mandate a minimum percentage of CSR funds for environmental restoration.
- **Ethical:**
  - **Environmental Ethics:** The issue is a classic case of Anthropocentrism (human-centric) versus Ecocentrism (nature-centric). The article argues for a shift towards ecocentrism.
  - **Corporate Ethics:** It challenges the ethical basis of profit maximization at the expense of ecological degradation. It promotes the idea of corporate accountability as an ethical imperative, not just a legal one.
- **International:**
  - Directly linked to India's commitments under the UNFCCC, the Paris Agreement, the Bonn Challenge, and the UN Sustainable Development Goals (SDGs), particularly SDG 13 (Climate Action), SDG 15 (Life on Land), and SDG 17 (Partnerships for the Goals).
  - India's approach can serve as a model for other developing nations on how to leverage domestic legal and corporate frameworks to meet international environmental goals.
- **Economic:**
  - Short-term: Shifting CSR funds could be seen as a cost. However, long-term, ecosystem restoration (e.g., watershed management) provides immense economic benefits by securing water supplies, preventing soil erosion, and supporting agriculture and allied sectors.
  - It introduces the concept of Natural Capital Accounting, where the economic value of ecosystem services is recognized.

## Linkages with NCERTs

### Class 12 Geography (India: People and Economy):

- Chapter 5: Land Resources and Agriculture – For understanding land degradation and the need for restoration.
- Chapter 12: Geographical Perspective on Selected Issues and Problems – For issues like environmental degradation and pollution.
- **Why linked:** The article discusses land restoration, watershed management, and the environmental pressures from industrial activity, which are core themes in this book.

### Class 11 Political Science (Indian Constitution at Work):

- Chapter 2: Rights in the Indian Constitution – For understanding Fundamental Rights (Right to Business) and their limitations.
- Chapter 4: Executive – For understanding the role of the executive in policy implementation.
- **Why linked:** The article's legal argument hinges on the constitutional balance between Article 19(1)(g) and Article 51A(g).

### Class 12 Biology:

- Chapter 13: Organisms and Populations – For ecological concepts.
- Chapter 14: Ecosystem – For understanding ecosystem structure, function, and services (e.g., carbon sequestration, water retention).
- **Why linked:** The article stresses the importance of restoring ecological services and native biodiversity.

- **Linkages with UPSC CSE Syllabus**
- **GS Paper 1: *Indian Society & Geography*** – Understanding the socio-economic context of environmental issues, distribution of natural resources, and the impact of climate change on society.
- **GS Paper 2: *Governance, Constitution, Polity, Social Justice*** – Strongest linkage.
  - *Constitution*: Analysis of Fundamental Duties (51A) and their interplay with Fundamental Rights.
  - *Judiciary*: Role of the Supreme Court in environmental protection and judicial activism.
  - *Government Policies*: Analysis of the Companies Act, 2013 (CSR mandate) and its effectiveness.
  - *Social Justice*: Issues of equity and intergenerational justice.
- **GS Paper 3: *Economy & Environment*** – The strongest linkage.
  - *Environment & Ecology*: Conservation, environmental impact assessment, climate change, and corporate responsibility.
  - *Indian Economy & Corporate Governance*: CSR, corporate governance reforms, and the role of the private sector in development.
  - *Science & Technology*: Role of scientific expertise in ecological restoration.
- **GS Paper 4: *Ethics, Integrity, and Aptitude*** – Very strong linkage.
  - *Ethics in Public Administration & Corporate Governance*: The ethical duty of corporations, environmental ethics, and the concept of fiduciary duty.
  - *Case Studies*: The article itself can form the basis of a case study on corporate ethics and environmental responsibility.



- **Way Forward**

- **Amend CSR Rules:** The government should consider amending Schedule VII of the Companies Act to mandate a minimum percentage (e.g., 20-25%) of CSR funds to be spent on ecological restoration and environmental sustainability projects.
- **Create a National Restoration Authority:** Establish a dedicated body, perhaps under the MoEFCC, to act as a nodal agency for large-scale landscape restoration, bringing together forest departments, corporations, and NGOs.
- **Develop Standardized Ecological Metrics:** The government and scientific bodies should collaborate to create a standardized "Ecological Impact Assessment" framework. Metrics should focus on outcomes like survival rates of native species, increase in groundwater levels, and improvement in biodiversity indices, rather than just inputs.
- **Establish a National Green Escrow Fund:** Create a fund where companies can pool their CSR resources for large, landscape-scale restoration projects. This would ensure long-term, uninterrupted financing and avoid the fragmentation of efforts.
- **Capacity Building:** Invest in training programs for CSR professionals, corporate leaders, and NGOs to build the technical expertise required for complex restoration projects. Universities should be roped in to provide scientific supervision.
- **Judicial Guidelines:** The Supreme Court can continue its proactive role by issuing detailed guidelines that define what constitutes "constitutionally mandated environmental spending," providing a clear legal framework for both companies and the government.



- **UPSC CSE Mains:**

- **2023 (GS-3):** What is the role of the private sector in environmental protection and conservation? Discuss with reference to India's commitments at COP26.
- **2022 (GS-3):** Discuss the importance of Corporate Social Responsibility (CSR) in achieving sustainable development goals in India.
- **2021 (GS-4):** 'Corporations are not merely profit-making entities but also have a role to play as trustees of the environment.' Comment.
- **2020 (GS-3):** Explain the concept of 'Restoration Ecology'. How does it differ from traditional conservation efforts?
- **2019 (GS-2):** Do you think the Fundamental Duties (Article 51A) are enforceable by law? Discuss with the help of judicial pronouncements.
- **2018 (GS-3):** The Companies Act, 2013 made Corporate Social Responsibility (CSR) mandatory. Critically examine its impact on the social and environmental landscape of India.
- **2017 (GS-3):** What are the key challenges in implementing afforestation programs in India? Suggest measures to ensure their success.

- **UPSC CSE Prelims:**

- **2023:** Questions related to the Bonn Challenge, Miyawaki method, and key provisions of the Companies Act, 2013.
- **2022:** Questions on Fundamental Duties, particularly Article 51A(g).
- **2021:** Questions on the role of the Supreme Court in environmental protection (e.g., the Great Indian Bustard case).





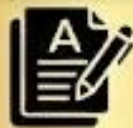
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