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Preface

Indian Polity & Governance

Dear Learner,

Polity is considered to be one of the pillars of UPSC examination, be it Prelims or Mains. As civil servants, aspirants are expected to understand the constitution and constitutional spirit, observe the laws of the land and their rules. They are also expected to review these laws and rules to make them more contemporary and address emerging situations.

In the present volume of our Prelims Compass, we have tried to embrace this spirit of polity. We have tried to cover the most topical issues of constitutional and legal developments, which to us are most important from the perspective of the coming exam. Usually fifteen percent of questions asked in the Prelims are related to the polity section with most questions directly from the Constitution itself. Thus, we have added a quick overview of the constitution for fast revision.

The magazines also comes with 100 practice MCQs which will help students to test their knowledge and understand their level of preparation for upcoming exam.

We would recommend students to use the booklet along the RAUs IAS QUALITY IMPROVEMENT PROGRAM to get best coverage and understanding about these topics. We hope that this book will be a handy tool for learning and revising and ultimately your success.

We hope for your success.

Regards,

Rau's IAS Study Circle.

Themes asked in Prelims Exam in the last Three Years

INDIAN POLITY & GOVERNANCE		
PRELIMS 2021 - TOPICS	PRELIMS 2020 - TOPICS	PRELIMS 2019 - TOPICS
1. Indian Parliament VS British parliament	1. Parliamentary system of government	1. Sarkaria commission
2. Right to Privacy	2. DPSP / Part IV (3 questions)	2. Functions of Parliamentary Committees
3. Election - Candidates can contest	3. Basic Structure, Judicial review	3. Judicial review
4. Article 14	4. Bureaucracy	4. Definition of liberty
5. Federalism - Features	5. Preamble	5. Article 142 - Supreme Court
6. State - Definition, Characteristics	6. RPA - 1951	6. Legislative assembly of state
7. Judiciary - Appointment	7. Functioning of Parliament	7. Article 21
8. Citizenship	8. Rajya Sabha vs Lok Sabha	8. Amendments - 44th, 99th
9. Liberty	9. Fundamental Rights	9. Impeachment of Judges
10. DPSP	10. Definition - Constitutional government	10. Ninth Schedule
11. Right to Property	11. Universal declaration of Human Rights	11. Office of profit
12. Republic		12. Fifth schedule
13. Constitutional Government		
14. Prisoner parole		
15. Bharat Ratna		
16. Judicial Custody		

POLITICAL THEORY

TERMS	MEANING
ABSOLUTISM	Political doctrine & practice of unlimited centralized authority & absolute sovereignty , as vested especially in a monarch or dictator. Ruling power is not subject to regularized challenge or check by any other agency, be it judicial, legislative, religious, economic, or electoral. Like Divine Rights Theory that a King has absolute right over his subjects.
ANARCHISM	Having no government; Equality and justice are to be sought through the abolition of state & substitution of free agreements between individuals ; Society is natural but is corrupted by artificial institutions. Also central in anarchism are the belief in individual freedom and denial of any authority, particularly that of state, that hinders human development.
ARISTOCRACY	Government by a social elite typically comprising people of noble birth holding hereditary titles and offices. In the West, political concept of aristocracy derives from Plato's formulation in the Republic where he argues for rule by a ' Philosopher King '.
AUTONOMY	Limited self-government or self-rule short of independence of a political state or a subdivision. Autonomy within empires has frequently been a prelude to independence, as in case of evolution of British Empire into Commonwealth of Nations, containing both autonomous and completely sovereign states.
BICAMERAL SYSTEM	Governmental system dividing legislative function between two chambers, an upper chamber, such as the U.S. Senate, British House of Lords, Rajya Sabha for India & a lower chamber such as U.S. House of Representatives, British House of Commons, Lok Sabha etc.
CAPITALISM	Also called Free Market Economy in which most means of production are privately owned and production is guided and income distributed based on market operations. Capitalists often see State as inefficient and argue to minimal state (Libertarians).
CITIZENSHIP	Relationship between an individual and state to which individual owes allegiance and in turn is entitled to its protection. Citizenship implies status of freedom along with responsibilities.
CIVIL SOCIETY	The broad arena which lies beyond private domain of the family, but outside the domain of both state and market . Civil society is the non-state and non-market part of public domain in which individuals get together voluntarily to create institutions & organisations.
COLONIALISM	Practice or policy of control by one people or power over other people or areas, often by establishing colonies and generally with aim of economic dominance.
COMMUNISM	Political & economic doctrine aiming to replace private property & profit-based economy with

	<p>public ownership & community control of major means of production (e.g., mines, mills & factories) & natural resources of a society. Communist thought also believes that violence is a legitimate means to create a just society. Karl Marx is believed to be founder of this ideology.</p> <p>Karl Marx: He believed that production relations in a society form the base of all dimension of society. There was anti-thetical relationship between owners of capital and owners of labour. This mutual conflict between led to alienation of laboring classes. State to was a product of this conflict and wanted to extract surplus from labour for the benefit of Capital (Bourgeoisie).</p> <p>Marx proposed that society moves from one structure to other depending on the changes in production relations: Primitive Communism (Tribal Society, collective ownership), Slavery, feudalism, Capitalism, Communism (Communism for him was a stateless and classless society, with no provision for private property.)</p>
COMMUNITY IDENTITY	Community identity is based on birth and 'belonging' rather than on some form of acquired qualifications or 'accomplishment'.
DEMOCRACY	Democracy originated in ancient Greece to designate a government where people share in directing activities of state, as distinct from governments controlled by a single class, select group, or autocrat. The word comes from demos '(common) people' and kratos 'strength'.
STATE	As a community of persons, permanently occupying a definite territory, legally independent of external control, and possessing an organized government which create and administrates law over all persons and group within its jurisdiction is 'State'. Important 4 Elements of State – Territory, Population, Government & Sovereignty.
DIRECT DEMOCRACY	<p>Direct democracy or pure democracy is a form of democracy where citizens participate directly in the decision-making process through voting – for example referendum on any issue. For ex. Decision for BREXIT was taken by the government of UK based on voting by the citizens. Tools of Direct Democracy:</p> <p>Recall: Citizens can vote remove an elected official before the end of their term.</p> <p>Referendum: Citizens can vote on important policy decisions.</p> <p>Plebiscite: a vote by which the people of an entire country or district express an opinion for or against a proposal especially on a choice of government or ruler</p> <p>Initiative: Citizens could propose.</p>
INDIRECT OR REPRESENTATIVE DEMOCRACY	Representative democracy, also known as indirect democracy, is a type of democracy founded on the principle of elected persons representing a group of people, as opposed to direct democracy. Elections to Lok Sabha and State Assemblies are example of Indirect Democracy. Whereas decision taken by Gram Sabha is an example of direct democracy.
DELIBERATIVE DEMOCRACY	Deliberative democracy or discursive democracy is a form of democracy in which deliberation is central to decision-making. It adopts elements of both consensual decision-making & majority rule. Deliberative democracy differs from traditional democratic theory in that authentic deliberation, not mere voting, is the primary source of legitimacy for the law.
DESPOTISM	Government by an absolute ruler unchecked by effective constitutional limits to his power. In Greek usage, a despot was ruler of a household and master of its slaves.
DOMINION	The term Dominion was used from 1907 to 1948 to refer to one of several self-governing colonies of the British Empire.
EMBARGO	Prohibition by a country of the departure of ships or certain types of goods from its ports.
EXILE	Removal of a national from his or her country, or civilized parts of it, for a long period of time or for life. Exile may be a forceful expulsion by government or a voluntary removal by citizen, sometimes to escape punishment.
EXPATRIATION	Voluntary departure from one's native country to another country to live there permanently or

	for an extended period. A person who does this can be called an expatriate. An expatriate can also be an individual who has relinquished citizenship in their home country to become a citizen of another.
HECKLER'S VETO	A process by which socially powerful groups can shut down critical or inconvenient speech by threatening public disorder or disturbance.
IMPERIALISM	Extension of rule or influence by one government, nation, or society over another through colonization, use of military force, or other means.
PRESSURE GROUPS/ INTEREST GROUP	Pressure groups are organisations that attempt to influence government policies without actively being part of political party or process. These organisations are formed when people with common occupation, interest, aspirations or opinions come together in order to achieve a common objective. They want to influence policies in their favour.
MOVEMENT	Like an interest group, a movement also attempts to influence politics rather than directly take part in electoral competition. But unlike the interest groups, movements have a loose organisation. Their decision making is more informal and flexible. They depend much more on spontaneous mass participation than an interest group.
NATION	Large body of people united by common descent, history, culture, or language, inhabiting a particular country or territory.
REVOLUTION	Fundamental & violent change in the values, political institutions, social structure, leadership, and policies of a society.
SOCIALISM	<p>A political & economic theory of social organization which advocates that means of production, distribution & exchange should be owned or regulated by community as a whole. As per socialism, everything that people produce is in some sense a social product, and everyone who contributes to the production of a good is entitled to a share in it. Society, therefore, should own or at least control property for the benefit of all its members. Marxism and Communism is a sub-school of socialism. However, classical socialism believes that democratic processes can be invoked to create a just society.</p> <p>Congress in Avadi Session in Chennai (1955) under the chairmanship of UN Dhebar decided to establish a socialistic pattern of society.</p> <p>Fabian Socialism: It was a British socialist organization whose purpose is to advance principles of democratic socialism via gradualist and reformist effort in democracies, rather than by revolutionary overthrow.</p> <p>The term 'socialist' was included in the PREAMBLE by the 42nd Constitutional Amendment.</p>
KAUTILYA'S THEORY	<p>Saptanga Theory: State is understood with 7 pillars. They are (a) Swami (King); (b) Amatya (Ministers or Bureaucracy); (c) Janapada (Territory); (d) Durga (Fort); (e) Kosha (Finances); (f) Danda (Military Power); (g) Mitra (Allies of State).</p> <p>The king is the most important pillar of the State. Kautilya believed that if the King was effective, he could pull the state together. He gave an example of a cart with broken wheels, with the King akin to a Bullock. If the bullock was strong, it can pull the cart even if the cart was broken. If the state was not well-functioning it will lead to Matsya-Nyaya where a larger fish eats a smaller fish i.e., rule of the powerful and not rule of law.</p> <p>Mandala Theory: This theory is based on geographical assumption that immediate neighbor state of a given state is most likely to be an enemy & a state next to immediate neighbor is likely to be one's friend.</p>
IDEAS OF	Oceanic Circle: It highlights Gandhiji's belief of social organization. Oceanic Circle reflects his

MAHATMA GANDHI	<p>emphasis on decentralization and empowerment of Panchayats.</p> <p>Trusteeship: Owners of capital are trustees of capital and not owners. They manage the affairs of enterprise for the collective benefit of all.</p> <p>Anarchism: Gandhiji believed that in an ideal situation state was not required as state's basis was violence. Thus, he wanted a stateless society.</p> <p>Swaraj: Swaraj is not just freedom but liberation in redeeming one's self-respect, self-responsibility, and capacities for self-realisation from institutions of dehumanisation. (Not merely freedom but freedom at internal level and emancipation as well)</p>
FEDERALISM	<p>Symmetric Federalism: Powers and position of all constituting units are similar.</p> <p>Asymmetric Federalism: Powers and positions of all constituting units are not similar. For ex in India, different states have different position in Lok Sabha and Rajya Sabha. Concept of Union Territories. Concept of Special powers such as in Article 371 (A to K) display asymmetric nature of Indian federalism</p> <p>Quasi-federalism: A term used by K C Wheare for Indian federalism. This meant that Indian federalism has features of Unitary Government (UK) and Federalism (USA).</p>
CONSOCIATIONALISM	<p>Refers to power sharing in a democracy. A consociational state is one which has major internal divisions along ethnic, religious, or linguistic lines, with none of the divisions large enough to form a majority group, but which remains stable due to consultation among the elites of these groups. Leads to formation of coalitions in democracies.</p>
SOCIAL CONTRACT THEORY	<p>According to the Social Contract Theory, man lived in a state of nature initially. However, to give structure to life and political arena, people came together and negotiated between them certain rules for orderly functioning of society based on moral arguments.</p> <p>In the Preamble of Indian Constitution, We the people of India reflects that the Indian Constitution was a product of a Social Contract.</p>
EQUALITY	<p>Right of different social groups of people to have a similar social position and receive same treatment. Absence of Privileges.</p>
LIBERTY OR FREEDOM	<p>Freedom as the absence of external constraints, and freedom as the expansion of opportunities to express oneself.</p> <p>Two concepts of Liberty</p> <p>Positive Liberty It is concerned with looking at the conditions and nature of the relationship between the individual and society and of improving these conditions such that there are fewer constraints to the development of the individual personality. The individual to develop his or her capability must get the benefit of enabling positive conditions in material, political and social domains.</p> <p>Negative liberty seeks to define and defend an area in which the individual would be inviolable, in which he or she could 'do, be or become' whatever he or she wished to 'do, be or become'. This is an area in which no external authority can interfere.</p>
RIGHTS	<p>Rights are state recognized claims that every individual regards necessary for his social, economic and political development. Rights are given to individuals to protect them from excesses of state power being abused.</p> <p>Types of Rights:</p> <p>Natural Rights: Rights are endowed to individuals which are recognized because it is considered natural for individuals to have those.</p> <p>Human Rights: Rights an individual's get by virtue of being humans. (Ex. UDHR)</p> <p>Fundamental Rights: Rights endowed as fundamental rights by the constitution.</p>

REPUBLIC	A republic is a form of government in which power is held by people & their elected representatives. In republics, the country is considered a public matter, not private concern or property of rulers.
RULE OF LAW	<p>Rule of law means absolute supremacy or predominance of regular law as opposed to influence of arbitrary power & excludes existence of arbitrariness or even of wide discretionary authority on part of government.</p> <p>Procedural aspects:</p> <ol style="list-style-type: none"> 1. Independent and impartial courts to settle disputes. 2. Right to representation by counsel. 3. Supremacy of Law: Nobody can be punished else for breach of law. <p>However, in a constitutional democracy, the laws enacted should just, fair & reasonable. In India, Doctrine of Basic Structure ensures that judiciary can overturn enacted legislation including constitutional amendments if they are not just, fair & reasonable.</p> <p>AV Dicey's Theory of Rule of law:</p> <ol style="list-style-type: none"> 1. Law is Supreme or Supremacy of the Law. 2. Equality before the Law. 3. Predominance of Legal Spirit.
SECULARISM	<p>Secularism deals with relationship of state with religious identity of its citizens.</p> <p>Secularism in the Western World is thought to be as separation between State and religious affairs. Indian model of secularism despite maintaining a separation from religious affairs maintains a positive relationship with religious aspects. Thus, Indian Constitution allows State to positively engage with religious aspects which is called theory of principled distance.</p> <p>Principled Distance: A secular state may keep a principled distance from religion to promote peace between communities & it may also intervene to protect rights of specific communities.</p>

CURRENT AFFAIRS

UNION, STATES & UT

► ADMINISTRATION OF DELHI

- Delhi was categorised as a Part C state (Chief Commissioners Province).
- Delhi State Legislative Assembly having a Chief Minister came into being in 1952 under **Government of Part-C States Act, 1951**.
- Delhi became a UT to be administered by an Administrator appointed by President, after passing of State Reorganisation Act, 1957.
- **Delhi Administration Act, 1966** provided for limited representative Government through a Metropolitan Council comprising elected & nominated members.
- **Balakrishnan Committee**: On repeated demand for statehood for Delhi, government constituted Balakrishnan Committee in 1987 which recommended for Delhi to continue as UT with a Legislative Assembly and incorporate special arrangements for Delhi in the Constitution. Constitution (69th) Amendment Act & Government of National Capital Territory of Delhi (GNCT) Act, 1991 was enacted based on recommendations.
- **Constitution 69th Amendment added Article 239AA & Article 239A** to give constitutional status to National Capital Territory of Delhi.
- **Election Commission** under Article 324 conducts elections to Legislative Assembly of Delhi.
- Legislative Assembly of Delhi can legislate on matters in State & Concurrent List except for following in entries in State list (i) [Entry 1 – Public Order](#) (ii) [Entry 2 – Police](#) (iii) [Entry 18 – Land](#). Delhi also cannot legislate on Entries 64, 65 and 66 of State List so far as they relate to Entry 1, 2 and 18.

ARTICLE 239AA - SPECIAL PROVISIONS WITH RESPECT TO DELHI

Provides for Legislative Assembly of Delhi that can legislate on matters in State & Concurrent List except – **State List: [Entry 1–Public Order](#); [Entry 2 – Police](#); [Entry 18 – Land](#)**. Delhi also cannot legislate on Entries 64, 65 and 66 of State List so far as they relate to Entry 1, 2 and 18.

ARTICLE 239AB - PROVISION IN CASE OF FAILURE OF CONSTITUTIONAL MACHINERY IN NCT OF DELHI

President after receiving report of LG may suspend the operation of Article 239AA or any law made under Article 239AA for one year.

DELHI HIGH COURT JUDGMENT - 2016

- LG is the administrative head of NCT of Delhi and not CM – as Delhi is a UT and not a full fledged state.
- LG enjoys discretionary power and has greater role in administration of NCT.
- This judgment tilted the balance in favour of Central Government by emphasizing on the discretionary power of LG.

SC JUDGMENT - 2018

- Article 239AA has envisaged a REPRESENTATIVE FORM OF GOVERNMENT for Delhi.
- Article 239AA provides for legislative powers over matters falling within State and Concurrent List, (except police, land and public order).
- LG to act on aid and advice of Council of Ministers except when he refers matter to the President.
- In case of difference of opinion, LG to immediately send file to the President without delay.
- LG must try to resolve the difference through dialogue and discussion with Council or CM.

- LG cannot refer every matter to the President as Article 239AA (4) mentions about “any matter”.

SALIENT FEATURES OF GOVT. OF NCT DELHI ACT, 1991

This Act supplements provisions of Constitution relating to Legislative Assembly & Council of Ministers for National Capital Territory of Delhi.

- Most provisions of this Act are like Part VI of the Constitution with powers of Governor exercised by Lieutenant Governor in Government of NCT of Delhi.
- **Special address by Lieutenant Governor:** (i) commencement of the first session after election of LA (ii) at the commencement of first session of each year.
- **Matters in which Lieutenant Governor to act in his discretion** which falls outside purview of powers of Legislative Assembly; matters in which powers or functions are entrusted or delegated to LG by the President; where LG under any law is required to act in his discretion, where LG is to exercise any judicial or quasi-judicial functions.
- **President shall make rules for procedure to be adopted in the case of a difference of opinion** between the Lieutenant Governor and the Council of Ministers or a Minister.
- **All executive action of the Lieutenant Governor** whether taken on advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.
- **Duties of Chief Minister:** To communicate to LG all decisions of Council of Ministers relating to administration of the Capital and proposals for legislation, to furnish such information relating to the administration of the Capital and proposals for legislation as LG may call for & if the Lieutenant Governor so requires, to submit for the consideration of Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.
- **Provision in case of failure of constitutional machinery:** President's order under Article 239AB shall expire at the end of one year from the date of issue of the order and the provisions of clauses (2) and (3) of Article 356 shall apply to such order as they apply to a Proclamation issued under clause (1) of article 356.
- **Article 356(2):** Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- **Article 356(3):** Every Proclamation issued under Article 356 shall be laid before each House of Parliament and

shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

GOVERNMENT OF NCT DELHI AMENDMENT (2021)

- The term “government” referred in any law made by Legislative Assembly will imply LG of Delhi.
- Rules regulating procedure and conduct of business in Delhi Assembly to be consistent with Rules of Procedure and Conduct of Business in Lok Sabha.
- Prohibits Delhi Assembly from making any rule to enable itself or its committees to: (i) consider matters of day-to-day administration of NCT of Delhi (ii) conduct any inquiry in relation to administrative decisions.
- The 1991 Act specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG. The Amendment adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.

► DEMAND FOR 6TH SCHEDULE

MP from Ladakh has demanded inclusion of Ladakh in the Sixth Schedule as it will allow constituting Autonomous District Council which is elected for a period of five years.

REASONS FOR DEMAND FOR 6TH SCHEDULE

- The demand has been made keeping in view of previous demand of statehood for Ladakh.
- The government in 2019 made Ladakh a UT without a legislative assembly of its own. This alienated the local population from participative democracy at ground level as administration is mostly run by bureaucrats.
- Changed domicile policy in UT of J&K has raised fears in the region about its own land, employment, demography, and cultural identity.
- UT of Ladakh has two Hill councils in Leh & Kargil, but neither is under the 6th Schedule. Their powers are limited to collection of local taxes such as parking fees, allotment and use of land vested by the Centre.

SIXTH SCHEDULE

- **Article 244(2) under PART X:** Provisions of Sixth Schedule shall apply to administration of tribal areas in States of Assam, Meghalaya, Tripura & Mizoram.
- Schedule VI of the Indian Constitution provides for the **SCHEDULED AND TRIBAL AREAS.**

- **Autonomous districts:** Tribal areas in the states of Assam, Meghalaya, Tripura & Mizoram shall be declared as Autonomous districts.
- **Autonomous Regions:** If there are different Scheduled Tribes in an autonomous district, the Governor may, by public notification, divide the area or areas inhabited by them into autonomous regions.
- **District Council:** There shall be a District Council for each autonomous district consisting of not more than 30 members, of whom not more than 4 persons shall be nominated by the Governor and the rest shall be elected based on adult suffrage.
- **Regional Council:** A separate Regional Council for each area constituted an autonomous region.
- **Restricted Powers of District Council:** In an Autonomous District with Regional Councils, District Council shall have only such powers with respect to areas under authority of Regional Council as may be delegated to it by Regional Council in addition to powers conferred on it by this Schedule.

POWERS OF DISTRICT COUNCIL/REGIONAL COUNCIL TO MAKE LAWS

- Allotment, occupation or use, or setting apart, of land, other than any land which is a reserved forest.
- Management of any forest not being a reserved forest.
- Use of any canal or watercourse for agriculture.
- Regulation of shifting cultivation (JHUM).
- Establishment of village or town committees or councils and their powers.
- Any other matter relating to village or town administration, including village or town police and public health and sanitation.
- Appointment or succession of Chiefs or Headmen.
- Inheritance of property of Marriage & divorce according to Social Customs
- Establish, construct, or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads, road transport and waterways in the district.
- Make regulations for control of money lending and trading by non-tribals.

ADMINISTRATION OF JUSTICE IN AUTONOMOUS DISTRICTS AND AUTONOMOUS REGIONS

- **Constitute Village Court/Council:** District Council/Regional Council may constitute Village Councils or Courts for trial of suits & cases between parties all of whom belong to STs within such areas.

- **Power of Appeal:** District Council/Regional Council shall exercise powers of a court of appeal in respect of all suits and cases triable by a village council or court constituted by the Council.
- **DC/RC with prior approval of Governor may** regulate the procedure of functioning of village Council.

POWERS OF DISTRICT COUNCILS/REGIONAL COUNCILS

- **Powers to assess and collect land revenue and to impose taxes by DC/RC**
 - Tax on professions, trades, callings & employments.
 - Tax on animals, vehicles and boats.
 - Tax on entry of goods into a market for sale therein, and tolls on passengers and goods carried in ferries.
 - Tax for maintenance of schools, dispensaries, roads.
 - Tax on entertainment and amusements.
- **Share of royalties accruing each year from licenses or leases for purpose of prospecting for or extraction of minerals granted** as agreed upon between State Government & District Council.
- **Disputes on sharing of royalties** shall be determined by Governor in his discretion and his decision will be final.

POWER OF DISTRICT COUNCIL TO CONTROL MONEY-LENDING & TRADING WITHIN DISTRICT BY PERSONS OTHER THAN SCHEDULED TRIBES RESIDENT

- No one except the holder of license issued in that behalf shall carry on the business of money lending.
- Prescribe the maximum rate of interest which may be charged or be recovered by a moneylender
- Inspection of Accounts maintained by moneylenders
- **No Trade without License:** A person who is not a member of ST resident in the district, shall not carry-on wholesale or retail business in any commodity except under a license issued by District Council.
- Regulations to be made on above grounds by District Council must be passed by a majority of not less than **three-fourths of total membership of District Council.**

► PRESIDENT'S RULE IN PUDUCHERRY

President's rule was imposed in UT of Puducherry and the Legislative Assembly was placed under suspended

animation as per the notification of Ministry of Home Affairs.

ABOUT PUDUCHERRY

- Puducherry is a UT of India formed out of four territories of former French India, namely Pondicherry, Karaikal, Mahé and Yanam (Yanam). Pondicherry and Karaikal is surrounded by Tamil Nadu, Mahe is surrounded by Kerala and Yanam is surrounded by Andhra Pradesh. They were erstwhile French colonies.
- **14th Constitution Amendment Act** in 1962 added Article 239A which enabled Parliament to create by law Legislature having Council of Minister for Pondicherry.
- Parliament enacted **Government of Union Territories Act, 1963** to provide for Legislative Assemblies and Councils of Ministers for certain Union territories (apart from UT of National Capital Territory of Delhi).

PRESIDENT RULE UNDER ARTICLE 356 IS APPLICABLE ONLY FOR STATES AND NOT FOR UNION TERRITORY

- **For NCT of Delhi:** Constitutional failure is dealt as per Article 239AB which was added by Constitution (Sixty-ninth Amendment) Act, 1991.
- **For UT of Puducherry:** Section 51 of Government of Union Territories Act, 1963 provides for failure of constitutional machinery in the UT: If President on Administrator's report or otherwise is satisfied that administration of UT cannot be carried as per provisions of Govt. of Union Territories Act, then President may suspend provisions of 1963 Act and make such provisions for administration of the UT in accordance with Article 239.

► MERGER OF UNION TERRITORIES

Government has merged UTs of Dadra & Nagar Haveli and Daman & Diu into one UT. The merged UT has been named as UT of Dadra and Nagar Haveli and Daman and Diu. This has been done under Article 3(a) of the Indian Constitution as state also includes UT.

ARTICLE 3 - PARLIAMENT MAY BY LAW

- Form a new State (or UT) by separation of territory from any State or by uniting two or more States (or UT) or parts of States or by uniting any territory to a part of any State (or UT).
- Increase the area of any State
- Diminish the area of any State
- Alter the boundaries of any State
- Alter the name of any State

In this article, in clauses (a) to (e), State includes a UT. However, for UTs, President does not need to solicit opinion of Legislative Assembly before altering territorial boundaries.

IMPORTANT CHANGES MADE IN CONSTITUTION

- **Amendment of Article 240:** Article 240 deals with Power of President to make regulations for certain UTs. So, the name of new UT has been added.
- **Amendment to First Schedule of the Indian Constitution:** First Schedule provides for LIST OF STATES & UTs as per Article 1 and 4 of Constitution. Entry 4 under List of UTs shall be replaced by Dadra and Nagar Haveli and Daman and Diu.
- **Two Seats allotted in Lok Sabha to the new UT of Dadra and Nagar Haveli and Daman and Diu:** For this, FIRST SCHEDULE of the Representation of People Act, 1950 was amended.
- **Jurisdiction of the High Court of Bombay** will continue to extend to the merged UT.

► INTER-STATE BOUNDARY DISPUTES

Union Home Ministry has informed that 11 States and one UT have boundary disputes between them.

VARIOUS MECHANISMS TO SETTLE DISPUTES

- As per **National Commission to Review the Working of Constitution**, Constitution contemplates a variety of mechanisms for the settlement of inter-State disputes. The mechanisms include –
 - (a) **Judicial Mechanism under Article 131 (Original jurisdiction of SC)**
 - (b) **Solving dispute through Inter-State Council under Article 263**
 - (c) **Parliament altering the boundary under Article 3**

JUDICIAL MECHANISM – ARTICLE 131

- Article 131 confers on Supreme Court **exclusive jurisdiction (Original Jurisdiction)** to deal with disputes involving legal rights. This article covers any dispute
 - (a) between Union Government and one or more States.
 - (b) between Union Government and any or more States on one side & one or more other States on the other.
 - (c) between two or more States

Requirement for invoking of Article 131

- It must involve dispute between Centre and a state; Centre and a state on one side and another state on

other side; and two or more states. It cannot be used to resolve dispute which involves a private party and a government on the other side.

- It must involve a question of law or fact on which existence of a legal right of state or Centre depends. It cannot be used to settle political differences.
- Jurisdiction under Article 131 does not extend to the dispute arising out of any treaty, agreement, covenant, engagement or other similar instruments which India entered before commencement of Constitution, which continues in operation after commencement of Constitution. If such dispute arises, it is the exclusive domain of union executive.
- Interstate river water disputes fall within the jurisdiction of Art 262 (not 131).

INTER-STATE COUNCIL – ARTICLE 263

- **Under Article 263** of Constitution, there is provision for the formation of an inter-State Council. Although this Council has several functions, it is also competent to tender advice regarding resolution of inter-State disputes including boundary disputes.
- **One of the functions to be discharged by the Council is that of inquiring into and advising upon disputes which may have arisen between States.**
- **However, this power has not been given by the Presidential notification by which Inter-State Council has been constituted. (ISC can have that power, but president has not conferred that power).**

ARTICLE 263 - PROVISIONS WITH RESPECT TO AN INTER-STATE COUNCIL

- If at any time it appears to the President those public interests would be served by establishment of a Council charged with the duty of:
 - (a) *Inquiring into and advising upon disputes which may have arisen between States.*
 - (b) *Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States, have a common interest.*
 - (c) *Making recommendations upon any such subject and recommendations for the better co-ordination of policy and action with respect to that subject.*
- It shall be lawful for the **President by order to establish such a Council** and define the nature of duties to be performed by it and its organization and procedure.

SARKARIA COMMISSION REPORT

- Commission on Centre-State Relations headed by Justice Sarkaria in its report in 1988 recommended:

(a) *A permanent Inter-State Council called Inter-Governmental Council (IGC) should be set up under Article 263.*

(b) *The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263, other than socio-economic planning and development.*

- Government of India accepted recommendations of Sarkaria Commission to set-up an Inter-State Council and notified establishment of Inter-State Council by Presidential Order in 1990 headed by Prime Minister.
- **Establishment Inter-State Council Secretariat in 1991 headed by a Secretary to the Government of India.**

COMPOSITION OF THE INTER-STATE COUNCIL

- **Prime Minister – Chairman**
- Chief Ministers of all States
- Chief Ministers of UTs having a Legislative Assembly & Administrators of UTs not having a Legislative Assembly
- Six Ministers of Cabinet rank in Union Council of Ministers to be nominated by Prime Minister

Presidential Order of 1990 has been amended twice providing for Governor of a State under President's rule to attend meeting of Council and nomination by Chairman of permanent invitees from amongst other Union Ministers, respectively.

► KRISHNA RIVER WATER SHARING

Andhra Pradesh government has alleged that Telangana has been drawing Krishna water from four projects, *Jurala, Srisailem, Nagarjuna Sagar and Pulichintala*, for hydropower generation without approvals from Krishna River Management Board. KRMB along with Godavari River Management Board (GRMB) was constituted under Section 85 of Andhra Pradesh Reorganisation Act, 2014 to regulate supply of water from the projects to successor States.

KRISHNA RIVER MANAGEMENT BOARD & GODAVARI RIVER MANAGEMENT BOARD

- Section 84 of Reorganisation Act constituted an **Apex Council** for supervision of functioning of Godavari River Management Board and Krishna River Management Board.
- **Apex Council consist of Minister of Water Resources, Government of India as Chairperson and Chief Minister of State of Andhra Pradesh & Chief Minister of State of Telangana as members.**

FUNCTIONS OF THE APEX COUNCIL INCLUDES:

- (i) Supervision of functioning of GRMB and KRMB.
- (ii) Planning and approval of proposals for construction of new projects, if any, based on Godavari or

Krishna Rivers, after getting proposal appraised and recommended by River Management Boards and by Central Water Commission, wherever required.

- (iii) Resolution of any dispute amicably arising out of sharing of river waters through negotiations & mutual agreement between successor States.
- (iv) Reference of any disputes not covered under Krishna Water Disputes Tribunal to a Tribunal to be constituted under Inter-State River Water Disputes Act, 1956.

CONSTITUTIONAL PROVISIONS ON ADJUDICATING RIVER-WATER DISPUTES

- **Article 262** of Constitution provides for adjudication of inter-state water disputes. It makes two provisions:
 - i. **Parliament may by law provide** for the adjudication of any dispute with respect to the use, distribution and control of waters of any inter-state river.
 - ii. Parliament may also provide that **neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such disputes.**
- So, this means that till the dispute is being heard by the Tribunal, party to disputes (states) cannot approach Supreme Court for any intervention or final hearing.

WATER UNDER CONSTITUTION

- Water is included in **Entry 17 of State List under 7th Schedule**. It can be subject to Centre's arbitration if, and only if, it involves a clear case of conflict or dispute as mentioned under **Entry 56 of Union List**.
- As per **Entry 17 of State List**, States have competence over water supplies, irrigation and canals, drainage and embankments, water storage & waterpower subject to provisions of entry 56 of Union List.
- **Entry 56 of Union List** relates to **regulation and development of Inter-state rivers and river valleys** to the extent to which such regulation and development under control of the Union is declared by Parliament by law.
- Based on Article 262, Parliament has enacted **Inter-State River Water Disputes Act (1956) & River Boards Act (1956)**.

SALIENT FEATURES - INTERSTATE RIVER WATER DISPUTES ACT

- **Interstate River Water Disputes Act, 1956** under **Article 262** of Constitution to resolve water disputes that would arise in use, control and distribution of an interstate river or river valley.
- Any dispute relating to sharing of river water shall be adjudged by a Tribunal constituted under Section 4 of

Interstate River Water Disputes Act, 1956. The Award of the tribunal is final.

- **Decision of Tribunal Binding:** Decision of Tribunal, after its publication in the Official Gazette by the Central Government shall have the same force as an order or decree of the Supreme Court.
- **Scheme based on Tribunal's Decisions:** After the Tribunal has given its Award, Central Government may by notification in Official Gazette, frame a scheme to give effect to decision of Tribunal.

CURRENT RIVER WATER DISPUTES IN INDIA

- Mahadayi river sharing dispute between Goa, Maharashtra and Karnataka.
- Mahanadi river water sharing dispute between Odisha and Chhattisgarh
- Vansadhara Water dispute tribunal between Andhra Pradesh and Odisha.
- Krishna Water Disputes Tribunal Telangana, Karnataka and Andhra Pradesh.

► NATIONAL WATER DEVELOPMENT AGENCY

An autonomous body, registered as society under the **Ministry of Jal Shakti**. NWDA was established in 1982 to carry out detailed studies and surveys for the Peninsular Component under National Perspective Plan (NPP).

Ministry of Jal Shakti has proposed to constitute a new organization called **National Interlinking of River Authority (NIRA)** by restructuring the National Water Development Agency.

FUNCTIONS

- Carry out surveys, investigations work and prepare DPRs of river link proposals under the **NPP for Water Resources Development** and thereafter approach concerned States for obtaining concurrence for implementation of the projects.
- Undertake/Construct/Repair/Renovate/Rehabilitate/Implement projects forming part of Interlinking of rivers & under **Pradhan Mantri Krishi Sinchai Yojana**.
- **Act as a repository of borrowed funds or money received on deposit or loan given on interest to secure repayment** of any such borrowed funds/money/deposit/loan etc. for execution of projects.

CITIZENSHIP

► DENOUNCING CITIZENSHIP

Over six lakh Indians have given up their citizenship over the last five years as per the data available with Ministry of External Affairs. Citizenship Rules, 2009 has framed in exercise of power conferred by Citizenship Act, 1955.

Citizenship Rules 2009 provides for the following

- Application for Citizenship by Registration, Naturalisation.
- Issue of Certificate of Citizenship & Maintenance of Registers.
- Provision for Citizenship for Persons covered under Assam Accord.
- Renunciation, Deprivation & Resumption of Indian Citizenship.
- Registration, Renunciation & Cancellation of citizenship for Overseas Citizen of India.

CITIZENSHIP ACT, 1955

Parliament in its exercise of power under Article 11 enacted Citizenship Act, 1955 which regulates modes of acquiring and terminating Indian Citizenship.

ACQUIRING CITIZENSHIP

- Citizenship Act, 1955 provides for acquiring Citizenship of India through the following ways:
 - Citizenship by birth
 - Citizenship by descent
 - Citizenship by registration
 - Citizenship by naturalisation
 - Special provisions as to citizenship of persons covered by Assam Accord
 - Citizenship by incorporation of territory

TERMINATING CITIZENSHIP

Citizenship Act, 1955 terminates Indian Citizenship through Renunciation, Termination and Deprivation.

RENUNCIATION OF CITIZENSHIP

- Indian citizens including Overseas Citizen of India must surrender Indian Passport immediately after they gain nationality of the other country.
- When a person ceases to be Indian citizen, every minor child of that person also ceases to be Indian citizen.
- Such minor children within 1 year of attaining age of 18 years can resume their Indian citizenship.
- All existing Persons of Indian Origins shall be deemed to be Overseas Citizens of India Cardholder.

TERMINATION OF CITIZENSHIP VS. RENUNCIATION

- Any citizen of India:
 - Who by naturalisation, registration or otherwise voluntary acquires citizenship of another country.
 - Has at any time between 26th January 1950 and commencement of Citizenship Act, 1955 had voluntarily acquired citizenship of another country.

shall cease to be citizen of India upon acquisition of foreign citizenship.

- Termination of citizenship operates as per law because Indian Constitution does not allow for dual citizenship.

DEPRIVATION OF CITIZENSHIP

- If any person has acquired citizenship of India by fraudulent means, Union Government is empowered to deprive the person of Indian citizenship if:
 - Registration/naturalisation certificate was obtained by fraud.
 - Citizen through his act/speech has shown disloyalty or disaffection towards Indian Constitution.
 - During any war, such citizen helped enemy country through unlawful trade or communication.
 - Citizen within five years of naturalisation or registration has been sentenced to imprisonment in another country for a term of not less than 2 years.
- If such citizen has not registered annually at an Indian consulate with an intention to retain Indian citizenship.

► CHAKMA-HAJONG CENSUS

Prime Minister's Office had registered a complaint filed by Chakma Development Foundation of India (CDFI) against racial profiling of Chakmas & Hajongs in Arunachal Pradesh through an exclusive census of both the communities.

CHAKMAS AND HAJONGS

- Chakmas and Hajongs, originally residents of Chittagong Hill Tracts of former East Pakistan, had to flee when their land was submerged by Kaptai dam project in the 1960s.
- Chakmas are Buddhist & Hajongs Hindus by faith. They faced religious persecution in East Pakistan.
- Out of those who reached India, most were Chakmas and only 2,000 were Hajong. The groups entered India through what was then Lushai Hills district of Assam (today's Mizoram).

- While some stayed back with Chakmas already living in Lushai Hills, the Indian government moved a majority of the refugees to Arunachal Pradesh.

LOCALS AGAINST GRANTING CITIZENSHIP TO CHAKMA & HAJONGS

- Locals of Arunachal Pradesh & Mizoram were protesting Citizenship (Amendment) Act, 2019. According to the locals, it would serve as a legal basis for legitimizing the claims of Chakma & Hajong refugees as the indigenous people of state.

SUPREME COURT JUDGMENTS

- **1996:** SC directed Central Government to grant citizenship to Chakma & Hajongs as per provisions of Citizenship Act, 1955.
- **2015:** SC directed Centre to process pending citizenship applications of 4,627 Chakma & Hajongs within three months.

UN REFUGEE CONVENTION, 1951 & 1967 PROTOCOL

- 1951 Convention relating to Status of Refugees and its 1967 Protocol together are the most comprehensive instruments which have been adopted to safeguard fundamental rights of refugees and to regulate their status in countries of asylum.
- **India is not party to the 1951 Refugee Convention or its 1967 Protocol** and does not have a national refugee protection framework or law.

• **Definition of Refugee (UN):** *As a result of events occurring before 1 January 1951 and owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country; or who, not having a nationality and being outside the country of his former habitual residence as a result of such events, is unable or, owing to such fear, is unwilling to return to it.*

- India is not a signatory because, borders in South Asia are extremely porous and any conflict can result in a mass movement of people.
- However, India became a signatory to the **New York Declaration for Refugees and Migrants**, which was adopted in 2016. **This declaration is Not Legally Binding on the signatories.** Salient features:
 - **Global compact for Migration:** Calls for shared international responsibilities in dealing with protracted refugee situations by supporting countries that shelter them (since only few developing countries are bearing refugee burden).

- Global Compact affirms the sovereign right of States to determine their national migration policy.
- It is a non-binding document that respects states' sovereign right to determine who enters & stays in their territory.

REFUGEE VS ILLEGAL MIGRANT

- According to UN Convention on Refugees (1951), 'Refugee' pertains to any person who is outside their country of origin and unable or unwilling to return owing to well-founded fear of persecution for reasons of race, religion, nationality, membership of a particular social group or political opinion
- Being a non-signatory of this convention, India's options are open regarding the question of 'Refugee'. It can declare any set of refugees as Illegal Migrants and deport them under **Foreigners Act, 1946**.

► CITIZENSHIP AMENDMENT ACT, 2019

The Citizenship (Amendment) Act, 2019 came into force in 2020. The Rules under the Citizenship (Amendment) Act, 2019 (CAA) are under preparation.

CHANGE OF DEFINITION OF "ILLEGAL MIGRANT"

- CAA primarily changes the definition of "**illegal migrant**" as provided in Citizenship Act, 1955 by providing a condition or stipulation for persons belonging to 3 countries and 6 religions.
- **Prior to amendment**, Citizenship Act, 1955 defined **illegal migrant as a foreigner who has entered India:**
 - (i) Without a valid passport or other documents/ authority as prescribed by law in that behalf.
 - (ii) With a valid passport or other documents /authority as prescribed by law but remains therein beyond the permitted period of time.
- But 2019 amendment has changed above mentioned definition by adding a condition:
- **Condition as per 2019 Amendment:** Any person belonging to Hindu, Sikh, Buddhist, Jain, Parsi or Christian communities from Afghanistan, Bangladesh or Pakistan, shall not be treated as illegal migrant for the purposes of this Act. If,
 - They entered into India on or before the 31st day of December 2014
 - They have been exempted by Central Government under
 - Passport (Entry into India) Act, 1920

- from the application of the provisions of the Foreigners Act, 1946 or any rule or order made under the Foreigners Act, 1946,
- **Citizenship granted through Naturalization:** Government in India has reduced the period of residency from "not less than 11 years" to "not less than 5 years."
- **Exception:** If the applicant has rendered distinguished service to the cause of science, philosophy, art, literature, world peace or human progress, then the central government may waive all or any of the conditions specified in the Third Schedule.
- **CAA shall not apply to the following:** The provisions of CAA shall not apply to **tribal area of Assam, Meghalaya, Mizoram or Tripura as included in the Sixth Schedule** to Constitution and the area covered under "**The Inner Line**" notified under Bengal Eastern Frontier Regulation, 1873.

CHANGES MADE FOR OVERSEAS CITIZENS OF INDIA UNDER CAA

- CAA has added new provisions under section 7D of Citizenship Act, 1955 which deals with cancellation of registration as overseas citizen of India on certain grounds.
- The new provision says that Central government may cancel the registration of overseas citizen of India if such person has violated any of the provisions of CAA or any other law for time being in force as may be specified by the Central Government.
- Further, no order for cancellation of registration of OCI shall be passed unless the Overseas Citizen of India Cardholder has been given a reasonable opportunity of being heard.

RELATION BETWEEN CITIZENSHIP AMENDMENT ACT, 2019 & INNER LINE PERMIT

- According to Section 3 of Citizenship Amendment Act, provisions of CAA shall not apply to tribal area of **Assam, Meghalaya, Mizoram or Tripura** as included in the Sixth Schedule to the Constitution and the area covered under "**The Inner Line**" notified under the Bengal Eastern Frontier Regulation, 1873.

ABOUT INNER LINE PERMIT & RECENT DEVELOPMENTS

- The Inner Line Permit was established by the British government under **The Bengal Eastern Frontier Regulations, 1873** to safeguard tribals of

eastern part of Bengal. The 1873 regulation is also known as Inner Line Regulation (ILR) or Inner Line Permit (ILP).

- The system requires outsiders to obtain a permit from the government to enter the designated territory.
- It can be issued for travel purposes solely.
- The main objective of the ILP system is to provide a special protection of the distinct identity and safeguard for the peaceful existence of the indigenous people of the state where it is applicable.
- System of ILP is applicable in Arunachal Pradesh, Nagaland, Manipur and Mizoram. State of Manipur was added in the Inner Line Permit System in December, 2019.

Note: How citizenship can be lost?

- Renunciation
- Termination
- Deprivation

► DISTRICT COLLECTOR GRANTING CITIZENSHIP CERTIFICATE

Ministry of Home Affairs has empowered 13 District Collectors in Gujarat, Chhattisgarh, Rajasthan, Haryana and Punjab to grant Citizenship Certificates under Citizenship Act, 1955 to applicants belonging to six minority communities from Pakistan, Bangladesh and Afghanistan.

- The notification was issued under existing provisions of the Citizenship Act, 1955, as rules for Citizenship Amendment Act 2019 have not been framed so far.
- Citizenship is a Central subject and Home Ministry periodically delegates powers to States under Section 16 of Citizenship Act, 1955.
- Similar powers have been given to home secretaries of Haryana and Punjab.

ISSUING LONG TERM VISAS (LTV)

In 2011, government decided to give **Long Term Visas** to hundreds of Hindus and Sikhs who came to India claiming religious persecution in Pakistan.

- LTV for five years at a time may be granted to persons covered below. However, on compassionate grounds, initial LTV will be granted only for one year.
- According to Ministry of Home Affairs, following categories of Pakistan/ Bangladesh/ Afghanistan nationals shall be eligible for grant of LTV:

- Members of minority communities in Pakistan/ Bangladesh/ Afghanistan (Hindus, Sikhs, Buddhists, Jains, Parsis and Christians).
 - Pakistan/Bangladesh women married to Indian nationals & staying in India and Afghanistan nationals married to Indian nationals in India & staying in India.
 - Indian origin women holding Pakistan/Bangladesh/ Afghanistan nationality married to Pakistan/ Bangladesh/Afghanistan nationals and returning to India due to widowhood/divorce & having no male members to support them in there.
 - Cases involving extreme compassion.
- Post-independence, **Registration of Births and Death Act was enacted in 1969** to promote uniformity and comparability in registration of Births & Deaths across India and compilation of vital statistics.
 - **Registration of birth, death & still birth is mandatory.**
 - **Registrar General, India at Union Government coordinates and unifies activities of registrations.**
 - **Implementation of RBD Act is vested with State Governments.**
 - Registration of births and deaths is done by functionaries appointed by State Governments.
 - **Directorate of Census Operations** are sub-ordinate offices of Office of Registrar General, India and these offices are responsible of monitoring of the Act in their concerned State/UT.

► DATABASE FOR BIRTH & DEATHS

Centre has proposed amendments to Registration of Births and Death Act, 1969 as it will enable them to “maintain database of registered births and deaths at national level. Presently, registration of births and deaths is done by local registrar appointed by States. It is proposed that Chief Registrar (appointed by States) would maintain a unified database at State level and integrate it with data at “national level,” maintained by Registrar General of India (RGI).

PROPOSED USES OF DATABASE

Registrar General, India shall maintain the database of registered births and deaths at national level, that may be used, with approval of the Central government, to update

- Population Register prepared under Citizenship Act, 1955.
- Electoral registers or electoral rolls prepared under Representation of People Act, 1951.
- Aadhaar database prepared under Aadhaar Act, 2016.
- Ration card database prepared under National Food Security Act, 2013.
- Passport database prepared under Passport Act
- Driving license database under Motor Vehicles (Amendment) Act, 2019.
- Other databases at the national level.

ABOUT BIRTH AND DEATH REGISTRATION IN INDIA

- History of Civil Registration System (CRS) in India dates to the middle of 19th century. In 1886, a Central Births, Deaths and Marriages Registration Act was promulgated to provide for voluntary registration throughout British India.

► OVERSEAS CITIZENS OF INDIA

Ministry of Home Affairs has issued guidelines for Overseas Citizens of India (OCI) cardholders in the backdrop of Judgment of Karnataka High Court. Section 7 of Citizenship Act, 1955 provides for Overseas Citizens of India.

NOTIFICATION OF MHA FOR OCI CARD HOLDERS

- OCI cardholders **can lay claim to “only NRI (Non-Resident Indian) quota seats”** in educational institutions based on **All-India entrance tests** such as NEET, JEE-Mains, JEE-Advanced or other such all-India professional tests.
- **Special Permission to be taken:** OCI cardholder shall be required to obtain a “special permission or a special permit” from competent authority or Foreigners Regional Registration Officer (FRRO) or Indian Mission “to undertake research, Missionary or Tabligh or Mountaineering or Journalistic activities, undertake internship in any foreign diplomatic missions or foreign Government organisations in India or employment in any foreign diplomatic missions in India and visit any place which falls within the Protected or Restricted or prohibited areas as notified by the Central Government or competent authority”.

IMPORTANT HIGHLIGHTS

- Citizenship Act, 1955 provides for registration of people as OCI. OCIs are however not citizens of India.
- If the applicant had ever been a citizen of Pakistan or Bangladesh, he/she will not be eligible to be registered as OCI. Rest of the citizens can apply for OCI if they fulfill the eligibility criteria as provided by the government.

- OCIs have been granted all rights in economic, financial and education fields in parity with NRIs - except right to acquisition of agricultural or plantation properties.
- They do not have political rights to contest election and right to vote. OCI do not enjoy all the rights provided under Article 15 and 16 of the Constitution of India.
- OCI is not to be misconstrued as 'dual citizenship' as OCI does not confer political rights.

ABOUT OVERSEAS CITIZENS OF INDIA (OCI)

- In response to demands for "dual citizenship" particularly from Diaspora in developed countries and keeping in view Government's commitment towards fulfilling aspirations of Overseas Indians, Overseas Citizenship of India (OCI) Scheme was introduced by amending Citizenship Act, 1955 in 2005.
- OCI status provides for registration as Overseas Citizen of India of all Persons of Indian Origin who were citizens of India on 26th January 1950 or thereafter or were eligible to become citizens of India on 26th January, 1950 except who is or had been a citizen of Pakistan, Bangladesh or such other country as the Central Government may, by notification in the Official Gazette, specify.
- OCI is not to be misconstrued as 'dual citizenship'. OCI does not confer political rights. The registered Overseas Citizens of India shall not be entitled to the rights conferred on a citizen of India under article 16 of the Constitution with regard to equality of opportunity in matters of public employment.

RIGHTS NOT ENJOYED BY OCI

- OCIs do not enjoy employment rights in Government of India services, nor can they hold any constitutional office in Government of India.
- They need prior permission for undertaking mountaineering, missionary activities, research work and to visit restricted areas in India.
- They cannot run for office of President or Vice-President of India as per Section 7B of CITIZENSHIP ACT, 1955.
- They cannot be appointed as Judge of High Court or Supreme Court.
- Cannot be registered as voter under Representation of People Act, 1951
- Cannot become member of Legislative Assembly or Legislative Council.

► CENSUS 2021 & SECC 2011

The Government has decided to conduct Census 2021 under the Census Act, 1948 in two phases along with updation of National Population Register. The forthcoming Census is to be the first digital Census.

DECEMBER 2021 NOTIFICATION OF GOVERNMENT

- Census 2021 will be conducted in two phases - (a) Houselisting & Housing Census during April-September, 2020 and (b) Population Enumeration during 9th to 28th February, 2021.
- It was also decided to update the National Population Register (NPR) under Citizenship Act, 1955 along with the first phase of Census.
- The names of mother tongue and two other languages known in order of proficiency are to be recorded by enumerator in forthcoming Census as responded by each person.

CENSUS – HISTORY

1872 CENSUS

- A systematic and modern population census, in its present form was conducted **non-synchronously** (Not at a single time across the country) between 1865 and 1872 in different parts of the country.
- First population census of India. It did not cover all territories possessed or controlled by the British.

1881 CENSUS

- However, **first synchronous census** in India was held in 1881. W.C. Plowden was the Census Commissioner of India for 1881 Census.
- Since then, censuses have been undertaken uninterruptedly once every ten years.
- 1931 census enumerated OBCs which formed the basis of recommendation of Mandal Commission.

POST INDEPENDENCE

- First census of Independent India was conducted in 1951, which was seventh census in its continuous series.
- M W M Yeatts was appointed as Census Commissioner for 1951 Census. But he was replaced by Mr. R. A. Gopaldaswami due to death of Mr. Yeatts.

CENSUS – IMPORTANT HIGHLIGHTS

- **Nature of Exercise:** Census provides information on size, distribution, socio-economic, demographic and other characteristics of the country's population.
- **Use of Data:** Data collected through census are used for administration, planning and policy making as well as management and evaluation of various programs

by government, NGOs, researchers, commercial and private enterprises, etc.

- **Confidentiality:** All information collected under Census is confidential and will not be shared with any agency, Government or private.
- In Census, castes and tribes which are specifically notified as Scheduled Castes and Scheduled Tribes as per the Constitution (Scheduled Castes) Order 1950 and the Constitution (Scheduled Tribes) Order, 1950 are enumerated separately. **OBCs are not enumerated separately as part of Census.**
- Government of India has not enumerated caste wise population other than SCs and STs in Census since independence. 1931 was the last census when caste wise enumeration was done.
- **Data on NPR:** Certain information collected under NPR will be published in local area for public scrutiny and invitation of objections. Like electoral roll or telephone directory. After NPR has been finalised, database will be used only within Government.

CONDUCT OF CENSUS

- Responsibility of conducting decennial Census rests with **Office of Registrar General and Census Commissioner** under Ministry of Home Affairs.
- **Census Act, 1948** provides statutory framework to it.

CENSUS MANAGEMENT & MONITORING SYSTEM - CMMS

- Census 2021 is using mobile based data collection. A system for real time Monitoring and Management mechanism was envisaged.
- This led to the advent of **Census Management and Monitoring System (CMMS)** in the Office of Registrar General, India. Later, with decision to update National Population Register (NPR), an NPR module was also incorporated in CMMS.

BENEFITS OF CMMS

- Ascertain progress of Houselisting Operations/NPR Operations & Population Enumeration for each Enumerator and Supervisor.
- Training Batches can be created, Trainers can be assigned, Status of data collection in mobile mode can be viewed and finally payments can be made directly using CMMS as a payment gateway.
- Creation of sub-Enumeration Blocks & allocation of Households in Population Enumeration Phase of Census 2021 will be carried out in CMMS.

SOCIO ECONOMIC AND CASTE CENSUS (SECC) 2011

- Conducted by Ministry of Rural Development and the then Ministry of Housing and Urban Poverty Alleviation in rural and urban areas respectively.
- SECC 2011 data excluding caste data have been finalized and published by MoRD and HUPA.
- Office of Registrar General, India provided logistics and technical support in conducting SECC-2011.
- Raw Caste Data has been provided to Ministry of Social Justice and Empowerment for classification & categorization of data. There is no proposal to release the caste data at this stage.

► NPR & NRIC

- National Population Register is a comprehensive identity database maintained by Registrar General & Census Commissioner of India under Ministry of Home Affairs.
- It is a Register of **"usual residents of the country"**. It will be prepared at local, sub-district, district, state and national level.
- It is being prepared under **Citizenship Act 1955 and Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.**
- As per Citizenship Act 1955, **it is compulsory for every citizen of the country to register in the National Register of Indian Citizens (NRIC).** The creation of NPR is the first step towards preparations of NRIC.

1st STEP - NPR

2nd STEP - NRIC

- According to Ministry of Home Affairs, **"usual resident of country"** is one who has been **residing in a local area for at least the last 6 months** or **intends to stay in a particular location for the next six months.**
- **Citizens & Foreigners:** Unlike NRIC, NPR will not only include citizens but also foreigners as it would record even a foreigner staying in a locality for more than six months. The NPR database would contain demographic as well as biometric details.

OBJECTIVES & BENEFITS OF NPR

- Create a comprehensive identity database of every usual resident in the country.
- Help in better utilization and implementation of the benefits and services under the government schemes,
- Improve planning and security in the country.

- Help in efficient delivery of welfare schemes - MGNREGS, food security and nutrition campaigns etc.
- Track criminal activities.

CONNECTION BETWEEN NPR & AADHAAR

- A person who has register under Aadhaar still has to register under NPR. In NPR, certain processes like collection of data at doorstep of individual by authorized persons, collection of biometrics after following a certain process, authentication through social audit, verification by authorities etc is mandatory.
- The government plans to seed Aadhaar database with the updated NPR. This updated NPR database along

with Aadhaar Number will become the mother database and can be used by various government departments for selection of beneficiaries under their respective schemes.

- Data collected in NPR will be sent to Unique Identification Authority of India (UIDAI) for de-duplication and issue of Aadhaar number.
- So, the NPR will contain three elements of data:
 1. Demographic Data,
 2. Biometric Data
 3. Aadhaar – UID Number

FUNDAMENTAL RIGHTS, DPSP & FD

► RIGHTS VS. DUTIES

Supreme Court in February 2022 has issued notice to Centre and states seeking enforcement of fundamental duties of citizens by a writ petition.

ARGUMENTS IN SUPPORT OF FUNDAMENTAL DUTIES

- Citizens have a duty to uphold ideals of the country and to contribute to its growth and betterment.
- Not carrying out fundamental duties by citizen has a direct bearing on fundamental rights guaranteed under Articles 14, 19 and 21 of Indian Constitution.
- Petitioner asked SC to frame guidelines for effective regulation and implementation of fundamental duties under Article 32 and 142.
- Fundamental duties should serve as a constant reminder to every citizen that, while constitution conferred on them certain fundamental rights specifically, it also requires citizens to observe certain basic norms of democratic conduct and behaviour because rights and duties are correlative. **Mahatma Gandhi opined that only when we perform our duties, we deserve to enjoy our rights.**
- Petition asked SC to constitute independent committee to scrutinise and review entire legal framework relating to effective implementation of Fundamental Duties.

ABOUT FUNDAMENTAL DUTIES

- Fundamental Duties were added in Constitution by Constitution 42nd Amendment on recommendation of **Swaran Singh Committee**. This brought Indian Constitution in line with Article 29(1) of **Universal Declaration of Human Rights (UDHR)**.
- Accordingly, **Part IV-A** was added to Constitution which **inserted Article 51A**. Initially, Article 51A provided for 10 fundamental duties of every citizen of India from Article 51A (a) to (j).
- **11th Fundamental Duty was added by Constitution 86th Amendment in 2002 – which added Article 51A (k).**

RECOMMENDATIONS OF SWARAN SINGH COMMITTEE WHICH WERE NOT ACCEPTED

- Parliament can make a law to penalise or punish non-compliance or refusal to observe Fundamental duties.
- Duty to pay taxes to be a Fundamental Duty.

- Such penal provisions shall be beyond scope of judicial review on following grounds (a) Infringement of Fundamental Right (b) Repugnancy or Inconsistency with other constitutional provisions

RECOMMENDATIONS OF JUSTICE J.S. VERMA COMMITTEE ON FUNDAMENTAL DUTIES

- Fundamental Duties will raise standards of the citizen in public life. Therefore, every individual should obey and promote these duties.
- Organizing advocacy and sensitization programs.
- Preamble & Fundamental Duties to be appropriately displayed on all government publications, diaries, calendars and at public places so that they always remain in the focus of the citizens.
- Radio & video spots, highlighting important messages related to Fundamental Duties, in background of proper music and National Flag, to be commissioned by All India Radio, Doordarshan etc.
- January 3 to be observed as Fundamental Duties Day.
- Need to set up an autonomous body to act like ombudsman on Citizenship Values which could create a mechanism to act as catalyst towards overseeing operationalisation of Fundamental Duties.
- Environment issues need to get more space in media.

RELATION BETWEEN RIGHTS AND DUTIES

- Rights and duties are the two sides of the same coin.
- For every right, there is a corresponding duty.
- Rights flow only from duties well performed.
- Duty is an inalienable part of right.
- If a person has right, other person has corresponding duty related to that right. If one enjoys right, it becomes duty of other not to prove an obstacle in enjoyment of his right. Ex. If A has a right to life and personal liberty, then other citizen B or C has a corresponding duty not to cause harm as so to put A's life in danger.
- According to Jurist Austin, there are four types of Absolute Duties:
 - Duties not regarding persons
 - Duties owed to persons indefinitely
 - Self-regarding duties
 - Duties owed to the sovereign

ABOUT DUTIES

- A duty is roughly speaking an act which should be done. The term act and duty however, are not

identical. So, all acts which a person ought to do are not Duties.

- A duty is owed to others by virtue of one's position. Ex., an employee has a duty to work as per their master.
- Every "citizen" has certain duties towards its Nation as per Article 51A of the Constitution.
- Duties also create obligations. So, duties can be classified as – **Moral Duty & Legal Duty.** **Moral Duty and Legal Duty** are partly coincident and partly distinct. So, when a law recognises an act as duty, it commonly enforces the performance of it or punishes its disregard.

TYPES OF DUTIES

- **Positive Duty:** Implies some act on part of person on whom it is imposed. If a person owes money to another, former is under a duty to pay money to latter.
- **Negative Duty:** Implies restraint on part of person on whom it is imposed. Ex. if a person owns lands, others are under a duty not to make any interference with that person's use of the land.
- **Primary Duty:** Any duty which exists independently of any other duty. Ex. Duty not to cause hurt to any person is a primary duty.
- **Secondary Duty:** Its purpose is only to enforce some other duty. If a person causes injury to another, former is under a duty to pay damages to the latter.

ENFORCEABILITY OF FUNDAMENTAL DUTIES

- **Some Fundamental Duties are legally enforceable, and their disregard is punishable.**
- Ex. Article 51A (a) *It shall be the duty of every citizen of India (a) to abide by Constitution and respect its ideals and institutions, National Flag and National Anthem.* This duty is legally enforceable as Union Government has legislated **PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971** which highlights that any insult to National Flag or Constitution of India is punishable with imprisonment for a term which may extend to three years along with fine or both.
- Further, whoever intentionally prevents the singing of Indian National Anthem or causes disturbances to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.
- **There are other Fundamental Duties which are not legally enforceable.** Ex. Article 51A (b) *to cherish and follow noble ideals which inspired our national struggle for freedom.*

PROVISIONS FOR ENFORCING FUNDAMENTAL DUTIES

Justice Verma Committee listed some legal provisions available to enforce of Fundamental Duties:

- To ensure that no disrespect is shown to National Flag, Constitution of India and National anthem, **Prevention of Insults to National Honour Act, 1971** was enacted.
- **Emblems and Names (Prevention of Improper Use) Act 1950** was enacted soon after independence to prevent improper use of National Flag and National Anthem.
- **Flag Code of India** embodies correct usage and display of National Flag.
- **Section 153A of Indian Penal Code:** Promoting enmity between different groups on grounds of religion, race, place of birth, residence. language, etc., and doing acts prejudicial to maintenance of harmony.
- **Section 153B of IPC:** Imputations & assertions prejudicial to national integration constitute a punishable offence.
- **Unlawful Activities (Prevention) Act 1967:** Communal organization can be declared unlawful association
- **Sections 295-298 of IPC:** Offences related to religion
- **Protection of Civil Rights Act, 1955** punishes untouchability
- **Sections 123(3) and 123(3A) of the Representation of People Act, 1951** declares that soliciting of vote on ground of religion, promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on grounds of religion, race, caste, community or language is a corrupt practice.
- **Section 8A of the Representation of People Act, 1951:** A person indulging in a corrupt practice can be disqualified for being a MP or a MLA.

► RIGHT TO EDUCATION

Former Chief Justice of India Dipak Misra while addressing a webinar mentioned that development of scientific temper and spirit of enquiry by education is important and right to education is more than a right.

RIGHT OF CHILDREN TO FREE AND COMPULSORY EDUCATION (RTE) ACT, 2009

- **Article 21A** was added to Indian Constitution through **86th Amendment.** This led to enactment of RTE Act.
- RTE provides for **free and compulsory education to all children of the age of 6-14 years in a neighbourhood school till the completion of his or her elementary education.**

- 'Compulsory education' casts an obligation on appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.
- With this, India has moved forward to a rights-based framework that casts a legal obligation on Central and State Governments to implement fundamental rights of child in age group of 6-14 years as enshrined in Article 21A of Constitution, in accordance with provisions of the RTE Act.
- 'Free' means that no child shall be liable to pay any kind of fee or charges or expenses which may prevent him from pursuing and completing elementary education.
- It specifies duties & responsibilities of appropriate Governments, local authority and parents in providing free & compulsory education, sharing of financial & other responsibilities between Central & State Governments.
- Lays norms and standards relating to Pupil Teacher Ratios, buildings & infrastructure, school-working days, teacher-working hours.
- Prohibits (a) Physical punishment & mental harassment (b) Screening procedures for admission of children (c) capitation fee (d) private tuition by teachers and (e) running of schools without recognition.
- Provides for development of curriculum in consonance with the values enshrined in the Constitution.
- Central and State Governments shall have concurrent responsibility for providing funds for imparting free and compulsory elementary education to children.
- There shall be a National Advisory Council and respective State Advisory Council to advise Central and State Government respectively on implementation of provisions of the RTE Act in an effective manner.

► RIGHT TO HEALTH

Ayushman Bharat Pradhan Mantri Jan Arogya Yojana provides a cover of up to Rs. 5 lakhs per family per year, for secondary & tertiary care hospitalization. So, making "Right to Health" as part of fundamental rights will further strengthen the claim under PMJAY.

CONSTITUTIONAL PROVISIONS RELATED TO HEALTH

PART - III (Fundamental Rights)

- Article 23 - Prohibition of traffic in human beings and forced labour: Indirectly protects physical & mental health of people trapped in trafficking.
- Article 24 - Prohibition of employment of children in factories, etc: No child below age of 14 years shall be employed to work in any factory or mine or engaged in any other hazardous employment, also protects health of children working in hazardous environment.

PART IV (Directive Principles of State Policy)

- Article 39(e) - The State shall direct its policy towards securing health and strength of workers, men and women, and tender age of children are not abused and that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength.
- Article 42 - Provision for just and humane conditions of work and maternity relief
- Article 47 - Duty of State to raise the level of nutrition and standard of living and to improve public health including endeavour by state to prohibit consumption of intoxicating drinks and of drugs which are injurious to health except for medicinal purposes.

11th & 12th Schedule (LOCAL BODIES)

- The 11th and 12th Schedules, as subjects within the jurisdictions of Panchayats and Municipalities, respectively deals with issues of health. These include duty to provide clean drinking water, adequate healthcare and sanitation (including hospitals, primary health care centers and dispensaries), promotion of family welfare, development of women and children, promotion of social welfare, etc.

Supreme Court on Right to Health as Part of Article 21

- Constitution of India does not expressly recognize Right to Health as a fundamental right under Part III of the Constitution.
- However, through judicial interpretation, this has been read into fundamental right of life & personal liberty (Article 21) and is now considered an inseparable part of Right to Life.
- Article 23 of Constitution also indirectly contributes to protecting Right to Health as it prohibits human trafficking and child labour.

► BAN ON HIJAB IN SCHOOLS

Karnataka High Court has upheld ban on wearing of hijab (head scarf) by students in schools and colleges in the State.

HC JUDGMENT

- HC held that wearing hijab is not an **essential religious practice in Islam** and is not, therefore, protected under by right to freedom of religion guaranteed by Article 25 of Constitution. Therefore, it was a reasonable restriction that was constitutionally permissible.
- Upheld Karnataka government's order prescribing guidelines for uniforms in schools & pre-university colleges under Karnataka Education Act, 1983.
- The court held that if Hijab will be allowed in schools, then there will be two categories of girl students viz., those who wear uniform with hijab and those who do it without. That would establish a sense of 'social-separateness', which is not desirable.
- Hijab offends feeling of uniformity which dress-code is designed to bring about amongst all students regardless of their religion & faiths.
- Objective of prescribing uniform will be defeated if there is non-uniformity in the matter of uniforms.
- The regulation aims to create a 'safe space' where such divisive lines should have no place and ideals of egalitarianism should be readily apparent to all students alike.

TEST FOR ESSENTIAL PRACTICES OF RELIGION (ACHARYA JAGADISH WARAN & A AVADHUTA)

- What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion.
- Essential part of a religion means core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief.
- It is cornerstone of essential parts or practices on which superstructure of a religion is built, without which a religion will be no religion.
- Test to determine whether a part/practice is essential to a religion is to find out whether nature of religion will be changed without that part or practice.
- If the taking away of that part or practice could result in a fundamental change in character of that religion or in its belief, then such part could be treated as an essential or integral part.
- Such permanent essential parts which are protected by the Constitution.

RESTRICTIONS UNDER ARTICLE 25

- **Article 25(1):** All persons are entitled to freedom of conscience & right freely to profess, practise and

propagate religion. State can regulate such practice on grounds of public order, morality and health.

- **Article 25 (2)(a):** State can regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice.

► DECLARATION ON EUROPEAN DIGITAL RIGHTS AND PRINCIPLES

European Commission, in a global first, proposed a set of digital rights and principles that aim to protect people's rights, support democracy and ensure a fair and safe online environment.

Principles are shaped around 6 themes:

- Putting people & their rights at Centre of digital transformation
- Supporting solidarity and inclusion
- Ensuring freedom of choice online
- Fostering participation in the digital public space
- Increasing safety, security & empowerment of individuals
- Promoting the sustainability of digital future

AIM OF DECLARATION

- Complement existing rights, such as data protection, ePrivacy, and Charter of Fundamental Rights.
- **What is illegal offline should also be illegal online:** It aims to make all that is illegal in the physical world to also be illegal in the digital world.
- Cover digital devices, ensuring that products support EU's sustainability and green transition goals.
- Wants to make sure that **"technological solutions respect people's rights, enable their exercise and promote inclusion"**.
- Commits to **"ensuring access to excellent connectivity for everyone"**, **"protecting a neutral and open internet"**, promoting digital education, and promote a safe and inclusive online environment.
- Ensure **"that everyone shall be able to disconnect"** to protect work-life balance.
- Accessible, secure and trusted **digital identity for all Europeans**. Data does not predetermine people's choices in education, health, and private life.
- Ensure **transparency about use of algorithms & artificial intelligence**, defending from data breaches & cyberattacks and to protect freedom of expression.

► **CONSTITUTIONAL RIGHT TO PROTEST: SC**

Supreme Court held that farmers have a constitutional right to continue with their “absolutely perfect” protest as long as their dissent against controversial agricultural laws did not slip into violence.

HIGHLIGHTS OF JUDGEMENT

- SC recognised fundamental right to protest against a law but held that fundamental right to protest cannot affect others fundamental rights of others. SC will not interfere with farmer’s protest as right to protest is part of a fundamental right and can be exercised subject to public order. Protests can continue in non-violent manner and police cannot use violent means to end or disturb a non-violent protest.
- Note: Right to strike is not a Fundamental Right according to Supreme Court.
- State cannot impose any impediment in exercise right to protest if it is non-violent and does not result in damage to life and properties of other citizens and is in accordance with law.
- Article 19(1)(b) - Right to assemble peaceably and without arm.

Constitution (First Amendment) Act, 1951	Added the term “reasonable” before restrictions and also added “public order” as ground to restrict fundamental right.
Constitution (Sixteenth Amendment) Act, 1963	Reasonable Restrictions in interest of <u>sovereignty and integrity of India</u> was added to Article 19 (2).
Constitution (Forty-fourth Amendment) Act, 1978	Removed Article 19(1)(f) - Right to hold, acquire and dispose property.
Constitution (Ninety-seventh Amendment) Act, 2011	Added “co-operative societies” in Article 19(1)(c).

► **JUDICIAL & POLICE CUSTODY**

The word 'custody' means apprehending someone for protective care. The words "custody" and "arrest" are not synonymous. So, in every arrest there is custody, but every custody does not amount to arrest. Arrest, remand and bail are components related to investigation. Arrest directly curtails personal liberty of an individual affecting his/her freedom.

CONSTITUTIONAL & LEGAL RIGHTS OF THE ACCUSED

- Protection of life and liberty have been given a pre-eminent position in our Constitution by enacting Article 21 as a fundamental right and imposing a duty on the State to protect life and personal liberty of every citizen.
- Any deprivation or breach of this valuable right is not permissible unless the procedure established by law for that purpose is just, fair and reasonable.
- As per Article 20 -
 - A person shall be convicted only for violation of a law which is in force at the time of the commission of crime and penalised accordingly.
 - It means that he shall not be penalised more for any crime committed by the person.
 - Further, No person shall be prosecuted and punished for the same offence more than once and no person accused of any offence shall be compelled to be a witness against himself.
 - Article 20(3) - No person accused of any offence shall be compelled to be a witness against himself.
- Section 161(2) of Code of Criminal Procedure - Implements the constitutional right against self-incrimination: “Every person who the police is authorised to examine orally, is bound to answer truly all questions relating to such case put to him by the police officer legally authorised to examine him, other than questions the answers to which would have a tendency to expose him to a criminal charge or to a penalty or forfeiture.”
- Under Article 22, constitution also provides for protection against arrest and detention in certain cases - Every person who is arrested shall be informed of the grounds of arrest and shall have a right to consult and to be defended by, a legal practitioner of his choice.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest - However, these provisions under Article 22 shall not be applicable to -
 - any person who for the time being is an enemy alien
 - any person who is arrested or detained under any law providing for preventive detention.

UNDERSTANDING POLICE CUSTODY

- Based on First Information Report (FIR), complaint or any information, an accused is arrested by the police and is locked in the police station to prevent him from committing further crime. Such an accused is said to be in Police Custody.

- *It is actually the custody of a suspect with the police in a jail at the police station*, to detain the suspect.
- During this detention, the police officer in charge of the case, may interrogate the suspect and this detention is not supposed to be longer than 24 hours. (Article 22)
- The officer in charge of the case is required to produce the suspect before the appropriate judge within 24 hours, these 24 hours exclude the time of necessary journey from the police station to the Court. (Article 22)

POLICE CUSTODY & JUDICIAL CUSTODY

- Police Custody means that police has the physical custody of the accused while Judicial Custody means an accused is in the custody of the concerned Magistrate.
- In Police Custody, the accused is locked in police station, while in judicial custody, the accused is sent to jail by an order of the Judicial Magistrate.
- Once the accused is presented before a Judicial Magistrate, then the Magistrate can either
 - release him on bail or
 - send the accused to judicial custody (jail) or
 - send the accused back to police custody.

WHEN A PERSON CAN BE SENT BACK TO POLICE CUSTODY BY THE JUDICIAL MAGISTRATE?

- **Section 167 of CR.PC** allows that a person may be held in the custody of the police for a period of 15 days on the orders of a Magistrate.
- A person may be send to judicial custody for a period of 90 days or 60 days.
- **Crime for which an accused can be sent to judicial custody of 90 days** - crime which entails a punishment of death, life imprisonment or period of imprisonment exceeding 10 years and 60 days
- **Crime for which an accused can be sent to judicial custody of 60 days** - all other crimes
- **Release on Bail** - If the Magistrate is convinced that sufficient reasons exist, then the accused or suspect can be released on bail.

INTERROGATION BY POLICE DURING JUDICIAL CUSTODY

- During Judicial Custody, the police officer in charge of the case is not allowed to interrogate the suspect.
- However, the court may allow the interrogations to be conducted if it is of the opinion that the interrogation is necessary for further investigation.

► BAIL

- Bail, in law, means release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority.
- The monetary value of the security, known also as the bail, or, more accurately, the bail bond, is set by the court having jurisdiction over the prisoner.
- The security may be cash, the papers giving title to property, or the bond of private persons of means or of a professional bondsman or bonding company.
- Failure of the person released on bail to surrender himself/herself at the appointed time results in forfeiture of the security.
- Courts have greater discretion to grant or deny bail in the case of persons under criminal arrest.

KINDS OF BAIL

1. Bail for Bailable Offence

- According to section 436 of Criminal Procedure Code, if the offence alleged is bailable, then the accused is entitled for bail as a matter of right either before the police or when presented before the Magistrate Court.
- In bailable offences bail is a right and not a favour. In such offences there is no question of any discretion in granting bail.
- Bail can be claimed as of right and there is a statutory duty imposed upon the Police Officer as well as the Court to release a person on bail if he is prepared to give bail.
- It is only where the accused is unable to furnish bail then he should be kept in detention.

2. Bail for Non-bailable Offence

- Section 437 of Cr.PC empower two authorities to consider the question of bail, namely (1) a court and (2) an officer-in-charge of the police station who has arrested or detained without warrant a person accused or suspected of the commission of a non-bailable offence.
- The power of police officer-in-charge of the police station to grant bail is permissive and not obligatory. Hence, it has to be exercised with great caution because of the risk and stakes involved.
- Before exercising his power, a station officer should satisfy himself that release on bail of such accused would not prejudice the prosecution or affect investigation in any manner.

- For the purpose of bail in non-bailable offence, the Legislature has classified them under two heads:
 1. Offence which are punishable with death or imprisonment for life
 2. Offence which are not punishable with death or imprisonment for life
- **In case of an offence punishable with death or imprisonment for life**, station police officer cannot release a person on bail, if there appears reasonable grounds for believing that he has been guilty of such offence.
- If it appears to the Court that there are not reasonable grounds for believing that the accused has committed a non-bailable offence, but that there are sufficient grounds for further inquiry into his guilt, then the accused (pending enquiry) can be released on bail.

3. Anticipatory Bail

- Anticipatory Bail granted to a person in anticipation and apprehending arrest. It may be granted under a few circumstances:
 1. A special case is made out that would suggest that there are ample grounds to assume that the applicant may be detained for unreasonable grounds.
 2. The allegations were made with a false intent or to cause the claimant to be injured/humiliated and arrested.
 3. The arguments against the claimant are ambiguous or generic.
 4. The name of the accused is not mentioned in the FIR.
 5. The applicant satisfies the Court that he is from a respectable family, has deep roots in society, and is not likely to abscond from or avoid the Court's proceedings or to hinder the investigation in any way.
 6. A plaintiff is an influential individual against the defendant who is a weak person or if a case is brought against a political rival.

When can Anticipatory Bail be refused?

1. The risk of the applicant absconding if cognizance is taken by the trial court or the trial court has issued a warrant of arrest.
2. The applicant has previously been imprisoned for any cognizable offense on conviction.
3. Where the applicant can influence the investigation to his advantage.

4. When the evidence produced suggests that the accused is guilty of crime or wrong doings.

4. Mandatory Bail or Statutory Bail

- Under Section 167, magistrate can either allow for **police custody or judicial custody**.
- Magistrate may allow for police custody for a period of 15 days.
- However, the accused can also be send to judicial custody for a period of 90 days or 60 days.
- **Crime for which an accused can be sent to judicial custody of 90 days** - crime which entails a punishment of death, life imprisonment or period of imprisonment exceeding 10 years and 60 days
- **Crime for which an accused can be sent to judicial custody of 60 days** - all other crimes
- Section 167(2) further provides that if at the end of the period (60 or 90 days) of judicial custody, if the investigation is not completed by the police, the court shall release the person "if he fulfill bail conditions". This is referred as statutory Bail.
- Thus, a magistrate according to law or a statute (section 167 of CRPC) cannot authorise a person's judicial remand beyond the 60-or 90-day limit.
- The stipulated period within which the charge sheet has to be filed begins from the day the accused is remanded for the first time. It includes days undergone in both police and judicial custody, but not days spent in house-arrest.

MAXIMUM PERIOD OF JUDICIAL CUSTODY MAY DIFFER FOR DIFFERENT LAWS

The 60- or 90-day limit for judicial custody is only for ordinary penal law as special enactments allow greater latitude to the police for completing the probe.

NDPS ACT

- In the Narcotic Drugs and Psychotropic Substances Act, the maximum period of judicial custody is 180 days.
- Further, in cases involving substances in commercial quantity, the period may be extended up to one year.
- This extension beyond 180 days can be granted only on a report by the Public Prosecutor indicating the progress made in the investigation and giving reasons to keep the accused in continued detention.

UAPA

- In the Unlawful Activities (Prevention) Act, the default limit for completing police investigation is 90 days only.

- However, the court may grant an extension of another 90 days provided that the court is satisfied with the report of the public prosecutor.
- The report should indicate the progress of the investigation and the specific reasons for the detention of the accused beyond the said period of 90 days.
- These provisions show that the extension of time is not automatic but requires a judicial order.

► **FURLOUGH VS. PAROLE**

Furlough	Parole
<ul style="list-style-type: none"> • Furlough means granting leave of absence for a specified period to a convict from prison. It is a conditional release and is granted as good conduct remission. • Right to be released on furlough is a substantial and a legal right of prisoner and he cannot be denied it if it is permissible under law. • Every State has formulated its own set of rules/guidelines for getting furlough. • Whilst rules/guidelines of various States remain the same in spirit, it is only the procedure for obtaining furlough which varies from State to State. • Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough. • The grant of furlough must be balanced against the public interest and can be 	<ul style="list-style-type: none"> • Parole is conditional release of prisoners i.e., an early release of a prisoner, conditional on good behavior and regular reporting to authorities for a set period. <p>Object behind parole is to grant some relief to the prisoners in certain exigencies which may be as follows:</p> <ul style="list-style-type: none"> • A member of the prisoner’s family has died or is seriously ill or the prisoner himself is seriously ill. • The marriage of the prisoner himself, his son, daughter, grandson, granddaughter, brother, sister, sister’s son or daughter is to be celebrated. • The temporary release of the prisoner is necessary for ploughing, sowing or harvesting or carrying on any other agricultural operation of his land or his father’s undivided land actually in possession of the prisoner.

refused to certain categories of prisoners.	• It is desirable to do so for any other sufficient cause.
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Difference between Parole & Furlough

- (i) Parole can be granted in case of short-term imprisonment whereas furlough is granted in case of long-term imprisonment.
- (ii) Duration of parole extends to one month whereas in case of furlough it extends to 14 days maximum.
- (iii) For parole a specific reason is required, whereas furlough is meant for breaking monotony of imprisonment.
- (iv) Term of imprisonment is not included in computation of term parole, whereas it is vice-versa in furlough.
- (v) Parole can be granted number of times whereas there is a limitation in the case of furlough.

► **SC ON INTERNET SHUTDOWNS**

In Anuradha Bhasin v Union of India & Others and Ghulam Nabi Azad v Union of India & Others, Supreme Court has declared that the fundamental right to freedom of speech and expression and the right to carry on trade or business using the Internet are constitutionally protected. The recent SC verdict has laid down a framework of how the Internet can be suspended, and what rights and legal recourses a citizen has when it is suspended.

PROCEDURE FOLLOWED BY THE GOVERNMENT TO SUSPEND INTERNET SERVICES

The **Information Technology Act, 2000**, the **Criminal Procedure Code (Cr.PC), 1973** and the **Telegraph Act, 1885** are the three laws that deal with suspension of Internet services.

SECTION 144

- Before 2017, Internet suspension orders were issued under Section 144 of the Cr.PC.
- The use of Section 144 to suspend mobile internet was challenged before the Gujarat High Court in 2015 but the court upheld the power of the magistrate to issue such orders.

SUSPENSION RULES

- In 2017, the central government notified the **Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules** under the **Telegraph Act** to govern suspension of Internet.
- These Rules derive their powers from **Section 5(2) of the Indian Telegraph Act** (Interests of the sovereignty and integrity of India).

VERDICT OF THE COURT

- In its judgment on the five-month-long Internet shutdown in Kashmir, the SC declared that the **fundamental right to freedom of speech and expression** and the **right to carry on trade or business using the Internet** are constitutionally protected.
- Although the court stopped short of ruling that **access to Internet is a fundamental right**, it said that the Internet as a medium is used to exercise other fundamental rights.
- **Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules, 2017 is the only procedure for internet shutdown.**
- **Internet Suspension orders given by Review Committee of the Centre subject to Judicial Review.**
- Orders suspending the Internet would have to necessarily state how the action was justified and proportionate to the imminent threat to law and order.
- **Internet cannot be shutdown indefinitely and can be done only for temporary purpose.**
- **Principle of Proportionality (K.S. Puttaswamy Judgment) must be applied** for internet suspension orders.
- Quoting from the 2017 Rules, the verdict reiterated that the **competent authority** to issue an order under the Suspension Rules, in ordinary circumstances, would be the **Secretary to the Ministry of Home Affairs.**

► PUTTASWAMY CASE ON PRIVACY

- **Right to Privacy** as an integral part of Right to Life and Personal Liberty as guaranteed under **Article 21** of the Indian Constitution.
- Privacy is the constitutional core of human dignity.
- Privacy has both a normative and descriptive function.
- **At Normative Level** - privacy sub-serves those eternal values upon which the guarantees of life, liberty and freedom are founded.
- **At Descriptive Level** - privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.
- Privacy includes - preservation of personal intimacies, the sanctity of family life, marriage, procreation, sexual orientation and right to be left alone.
- Privacy protects **heterogeneity** and recognises the **plurality and diversity** of our culture.

ASPECTS OF RESTRICTIONS

- Right to Privacy is **not an absolute right** like other fundamental rights and subject to reasonable restrictions.
- **Invasion of Privacy (under Article 21)** must be justified on the basis of a law which stipulates a procedure which is fair, just and reasonable.
- An invasion of life or personal liberty must meet the three-fold requirement of
 1. **Legality**, which postulates the existence of law;
 2. **Need**, defined in terms of a legitimate state aim; and
 3. **Proportionality** which ensures a rational nexus between the objects and the means adopted to achieve them
- **Positive Aspects of Privacy** - imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.
- **Negative Aspects of Privacy** - restrains the state from committing an intrusion upon the life and personal liberty of a citizen.

► TRANSPERSON: RIGHT TO MARRY

The Madurai Bench of Madras High Court has directed the authorities to register a marriage solemnized between a man and a transwoman.

MADRAS HC JUDGMENT

- The Court declared that the expression "**bride**" occurring in Section 5 of the Hindu Marriage Act, 1955 **will include not only woman but also transwoman or intersex person/transgender person who identifies herself as a woman.**
- **Marriage between Man and Transwoman to be valid** under Section 5 of Hindu Marriage Act 1955. High Court invoked **Article 14, 21 and 25** of Indian Constitution to validate the rights for transgenders.
- HC also relied on the 2018 Supreme Court verdict which **decriminalized homosexuality.**
- **Right to privacy & dignity violated (Article 21)** - HC held that gender identity falls within the domain of her personal autonomy and involves her right to privacy and dignity.
- **Infringement of Article 25** - HC held the petitioners' marriage was solemnized in a temple. Therefore, their fundamental right under Article 25 was infringed.

► COPARCENARY RIGHTS FOR DAUGHTERS

Three Judge Bench of Supreme Court in *Vineeta Sharma v Rakesh Sharma* has held that a daughter will have a share after Hindu Succession (Amendment) Act, 2005, irrespective of whether her father was alive or not at the time of the amendment.

- **Coparcener** is a person who has a birthright to parental property. Earlier, as per Hindu Succession Act, 1955, only son was considered as coparcener having birthright to parental property and daughters did not have this right.
- The **Hindu Succession (Amendment) Act, 2005** included daughters to be coparceners to parental property in Joint Hindu Family.
- This judgment ensures **Article 14 & 21** for daughters under Hindu Succession Act.

► DEFAMATION & SEXUAL HARASSMENT

Delhi High Court in Priya Ramani case held that women cannot be punished for raising voice against sexual abuse in the pretext of complaint of defamation.

RIGHTS INVOLVED

Article 21 - Sexual abuse takes away dignity and self-confidence. Right of reputation cannot be protected at the cost of the right of a woman's reputation guaranteed under Article 21.

- **Importance of Vishakha Guidelines** – Court said that the society must understand the impact of sexual abuse and harassment on its victims in the absence of Vishakha Guidelines at relevant time.
- **Article 14 & Article 21** is guaranteed under the Constitution and the defendant has full right to put up her case in any platform of her choice.

VISHAKHA GUIDELINES

- Supreme Court in **Vishakha Judgment** had laid down certain guidelines to be followed at workplace for prevention of sexual harassment of women at workplace.
- These guidelines led to the enactment of **The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013**.
- The Act mandates creation of **Internal Complaints Committee** for every employer of a workplace having ten or more employees.

- The Act also provides for constitution of **Local Complaints Committee** for every district to receive complaints of sexual harassment from such establishments where Internal Complaints Committee has not been constituted due to having less than 10 workers.

Grounds of Reasonable Restrictions under Article 19(2) - sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

DEFAMATION

- The main ingredients of defamation include – intending to harm the reputation of another person. This can be done orally, through visible representation or even publication.
- Defamation is a ground of reasonable restrictions on freedom of speech and expression under Article 19(2).
- Defamation has been defined as criminal and civil wrong in Indian laws.
- Under civil wrong, monetary compensation is provided as damages. IPC provides for simple imprisonment upto 2 years along with fine.

SEDITION

- Sedition has been defined under Section 124A of IPC. Sedition was not part of original IPC Draft.
- **Important ingredients of Sedition include** – attempt to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law.
- **Punishment** – Sedition shall be punished with imprisonment for life, or with imprisonment which may extend to three years or with fine.
- **Romesh Thapar v State of Madras** - Unless the freedom of speech and expression threaten the security of or tend to overthrow the State, any law imposing restriction upon the same would not fall within the purview of Article 19(2) of the Constitution.
- **KedarNath Singh vs State of Bihar, 1962** - Constitution Bench had ruled in favour of the constitutional validity of Section 124A (sedition) in the IPC. The Court held that a person can be prosecuted for sedition only - if his acts caused "incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace". Unless an act of a person does not incite violence or disturb public order cannot be booked under the dangerous section of sedition.

► JS MILL ON FREEDOM & LIBERTY

- Freedom of speech is the bulwark of democratic government. This freedom is essential for the proper functioning of the democratic process.
- Freedom of speech and expression is regarded as the first condition on liberty.
- Constitution of India has provided both positive and negative aspects within Right to Freedom as it contains five important fundamental rights namely –
 - A – 19 - Protection of certain rights regarding freedom of speech, etc.
 - A – 20 - Protection in respect of conviction for offences
 - A – 21 - Protection of life and personal liberty
 - A – 21A - Right to education
 - A – 22 - Protection against arrest and detention in certain cases
- The harm principle of J.S. Mill says that people should be free to act however they wish unless their actions cause harm to somebody else.
- Mill distinguishes between 'self-regarding' actions, i.e., those actions that have consequences only for the individual actor and nobody else, and 'other regarding' actions, i.e., those actions that also have consequences for others.
- Mill argues that with respect to actions or choices that affect only oneself, self-regarding actions, the state (or any other external authority) has no business to interfere.
- SC in Maneka Gandhi Judgment held that Article 14, 19 and 21 are not mutually exclusive.
- So, law prescribing a procedure for depriving a person of personal liberty has to meet the requirement of Article 19. Also the procedure established by law in Article 21 must confirm with the requirements of Article 14 as well.
- The Court also held that the expression "personal liberty" under Article 21 should not to be read in a way to exclude those attributes of personal liberty which are specifically dealt with in Article 19.

► PRINCIPLES TO PROTECT HUMAN RIGHTS OF PRIVACY

- UDHR - Article 12 - No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the

protection of the law against such interference or attacks.

- International Covenant on Civil and Political Rights – ICCPR - Article 17 - No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- 2014 Annual report of the United Nations High Commissioner for Human Rights (UNHCHR) – Digital Communications Technologies offers promise of improved enjoyment of human rights by amplifying the voices of human rights defenders and providing them with new tools to document and expose abuses.
- Resolution 68/167 adopted by UN General Assembly - The Resolution expressed "deep concerns" at the negative impact that surveillance and/or interception of communications, including extraterritorial surveillance and/or interception of communications, as well as the collection of personal data, in particular when carried out on a mass scale, may have on the exercise and enjoyment of human rights. Based on the deep concerns against invasion of right to privacy, the Resolution reaffirmed the following:
 - Reaffirmed the right to privacy, according to which no one shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, and the right to the protection of the law against such interference, as set out in article 12 of the Universal Declaration of Human Rights¹ and article 17 of the International Covenant on Civil and Political Rights.
 - Affirmed that the same rights that people have offline must also be protected online, including the right to privacy.
 - Call upon member states to respect and protect the right to privacy, including in the context of digital communication and take measures to put an end to violations of those rights and to create the conditions to prevent such violations, including by ensuring that relevant national legislation complies with their obligations under international human rights law.
 - To establish or maintain existing independent, effective domestic oversight mechanisms capable of ensuring transparency, as appropriate, and accountability for State surveillance of communications, their interception and the collection of personal data.

RESERVATION

► SC EMPHASISES ASKS GOVERNMENT TO RECONSIDER CRITERIA FOR EWS

While considering a challenge on implementing 27% reservation for the Other Backward Classes and 10% for the Economically Weaker Section (EWS) under the All-India Quota for Medical Admission, the Supreme Court questioned central government for its reasons or logic to arrive at the income limit of Rs. 8 lakh per annum for family members to be determined as EWS.

Based on Supreme Court's observation, Centre has decided to reconsider the criteria to determine Economically Weaker Section (EWS) especially the income criteria of Rs. 8 lakhs.

Supreme Court in the case of Jarnail Singh v Lachmi Narain Gupta held that state will have to provide quantifiable data to prove inadequate representation of a class of people including Scheduled Caste and Scheduled Tribes.

CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019

- The reservation of 10% will be over and above the existing 50 per cent reservation enjoyed by the members of Scheduled Castes, Scheduled Tribes and the Other Backward Classes. This will take the total reservation to 60 per cent.
- The reservations intends to include such members who do not avail the benefits of reservation, This includes members in the general category as well as members of the minority communities including Muslims, Sikhs, Buddhists, Christian and other communities who do not enjoy any kind of reservation.
- The following are the criteria to avail the benefits of reservation of 10 per cent:
 - Persons whose family has gross annual income of less than Rs. 8 lakh per annum.
 - Persons possess less than 5 acres land.
 - Have agricultural land of less than 5 acres.
 - Have a house smaller than 1,000 square feet.
 - In a municipality – a residential plot smaller than 100 yards.
 - In a non-notified municipality – a residential plot of less than 200 yards.

Note* "Economically Weaker Sections" shall be notified by the State from time to time on the basis of family income and other indicators of economic disadvantage.'

► OBC RESERVATION IN LOCAL BODIES

Supreme Court in *Rahul Ramesh Wagh v. State of Maharashtra & Others* read down the provision of the *Maharashtra ZillaParishads and Panchayat Samitis Act, 1961*, which mandated for 27% reservation to OBCs in local bodies and asked the state government to comply with triple conditions as held mandatory by five judge constitution bench judgment *K. Krishnamurthy (Dr.) v. Union of India of 2010* for providing reservation to OBCs in local bodies across India.

Maharashtra is not the only state where OBC reservation in local bodies was stayed. In December 2021, the top court passed a similar order for the Madhya Pradesh government, directing the OBC seats to be notified as general category for failing to comply with the three-test criteria. Likewise, the Madhya Pradesh government has filed a similar application, claiming to have 51% OBC population in the state.

SC JUDGMENT

- **Reservation for OBC different from reservation for SC/ST** - The court observed that the reservation for OBCs was just a "statutory dispensation to be provided by the State legislations" and is different from the "constitutional" provisions which mandate reservation to the Scheduled Castes and Tribes (SC/ST)
- **Linking of Reservation not Possible** - The Supreme Court held that the reservation policy as under Article 243-D and 243-T is distinct from that of reservation policies under article 15 (4) and 16(4) and hence both kinds of reservations cannot be linked.

Constitutional provisions – Reservation for OBC in Local Bodies

- **Article 243 D (6)** - *Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens.*
- **Article 243 T (6)** - *Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Municipality or offices of Chairpersons in the Municipalities in favour of backward*

class of citizens.

- **Article 15(4)** - *Nothing in this article or in clause (2) of Article 29 shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes*
- **Article 16(4)** - *Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the state.*
- **Socio-Economic Backwardness different from Political Backwardness** - The Court further held that backwardness in the socio and economic sense does not imply political backwardness. For reservation under Article 15(4) and 16(4), due regard is given to merit but the same criteria cannot be applied for reservation in local bodies. This is because the voters are not influenced by merit but rather by a candidate's ability to canvass support, ideologies, affiliation to any group and past records of achievements.
- **Creamy Layer cannot be Excluded** - The exclusion of the creamy layer concept in the reservation policy of Local Self-Government may not be feasible like that of Article 15(4) 16(4). As at the level of Panchayat and Municipality, the objective of representation is only to put forward the interest of weaker sections and hence it would be counter-intuitive to exclude better off reserved category people from the representation.
- **Determination of Reservation to OBC in local bodies based on three following conditions:**
 - To set up a dedicated commission for collecting empirical data on the OBC population.
 - To specify the proportion of reservation required to be provisioned local body-wise in light of recommendations of the Commission, so as not to fall foul of over breadth.
 - To ensure that the cumulative share of reserved seats don't breach 50 per cent of total seats.

► SC UPHOLDS RESERVATION IN AIQS

Government of India had extended the All India Quota (AIQ) Scheme to state run medical/dental colleges where it also allowed for providing 27% reservation for OBCs and 10% reservation for Economically Weaker Section (EWS) under AIQ Scheme for admissions to medical colleges through NEET.

Supreme Court while upholding the validity of reservations in All India Quota Scheme has recognised the idea of 'substantive equality', which sees affirmative action not as an exception to the equality rule, but as a facet of the equality norm.

ALL INDIA QUOTA (AIQ) SCHEME

- The All India Quota (AIQ) Scheme was introduced in 1986 under the directions of the Hon'ble Supreme Court to provide for domicile-free merit based opportunities to students from any State to aspire to study in a good medical college located in another State.
- All India Quota consists of 15% of total available UG seats and 50% of total available PG seats in government medical colleges.
- The other 85% UG seats and 50% PG seats in these colleges are set aside for the applicants from respective states.

SUBSTANTIVE EQUALITY

- Substantive equality is concerned with equitable outcomes and equal opportunities for disadvantaged and marginalized people and groups in society.
- It as an output or outcome of the policies, procedures, and practices used by nation states and private actors in addressing and preventing systemic discrimination.
- It recognizes that the law must take elements such as discrimination, marginalization, and unequal distribution into account in order to achieve equal results for basic human rights, opportunities, and access to goods and services.

► CJI BACKS 50% RESERVATION FOR WOMEN IN JUDICIARY

Speaking at the event to welcome new Judges of Supreme Court, Chief Justice of India asked the women advocates to fight for their right of 50 per cent reservation in all levels of Judiciary to address the problem of gender gap in the legal field. CJI also favoured reservation for women across all law colleges in India.

RESERVATION IN JUDICIARY

- Judiciary is one of the three important pillars of democracy. It checks arbitrariness of the executive and legislature and also functions as a sentinel to safeguard constitutional rights - liberty, freedom, life, speech and expression etc.

- Yet unlike Legislature and Executive that follow the principle of reservation. There is no provision for adequate representation/reservation in the judiciary.

- **Article 15(3)** of the Indian Constitution states that Nothing in this article shall prevent the State from making any special provision for women and children
- **Article 243 D** of the Indian Constitution provides 1/3rd of the Seats of Panchayati Raj Institutions and 1/3rd offices of the Chairperson at all level of Panchayati Raj Institutions covered by Part IX of the Constitution are reserved for women to be allotted by rotation to different constituencies in a Panchayat.
- **108th Constitution Amendment Bill, 2008** seeks to reserve one-third of all seats for women in the Lok Sabha and the state legislative assemblies

DATA ON WOMEN IN JUDICIARY

- In high courts, the percentage of women judges is a mere 11.5%.
- In the Supreme Court there are four sitting women judges out of 33 in office, the Chief Justice of India said.
- Out of 1.7 million advocates registered, only 15% are women.

Thus, reservation in judiciary is recommended to help -

- Bring constitutional balance between the legislature, executive and judiciary;
- Serve the cause of social justice and equity through equitable representation
- Bring firsthand experience of the problems faced by backward members of judiciary to help in sensitising the issue and dispensing justice.

► SUPREME COURT STAYS HC ORDER ON HARYANA LAW ON RESERVATION

Supreme Court has set aside Punjab and Haryana High Court order which stayed the operation of The Haryana State Employment of Local Candidates Act 2020 which provided 75% reservation for local people in private sector jobs having a monthly salary of less than Rs 30,000. The law carried a jail term of 1 years and penalty upto Rs. 2 lakhs.

DECISION OF SUPREME COURT (SC)

- **Valid Reasons Not Provided** – According to SC, High Court did not give any valid constitutional reasons

ordering stay on the quota law. Accordingly the Supreme Court has asked the High Court to decide the matter giving sufficient legal reasons as to why the law should not be implemented.

- **State Not to Take Coercive Step** - The Apex Court also stated that till the High Court gives its judgment, state government of Haryana must not take any coercive steps against employers for violating the Haryana State Employment of Local Candidates Act.

IMPORTANT HIGHLIGHTS OF OF THE HARYANA STATE EMPLOYMENT OF LOCAL CANDIDATES ACT 2020

On whom does the law apply?

- The Law applies to all Companies, Societies, Trusts, Limited Liability Partnership Firms, Partnership Firms, and any person employing ten or more persons, but excludes the Central Government or the State Government, or any organization owned by them.

Registration of Employees by the Employer Compulsory

- Employers are required to register employees receiving gross monthly salary or wages of less than INR30,000 on the Haryana Udhyan Memorandum portal within three months of the commencement of the Act.
- The Act further provides that no new employees may be engaged in such posts by any employer until the registration is completed.
- Every employer must furnish a quarterly report of the local candidates employed and appointed during the quarter on the designated portal. These reports can be examined by an Authorised Officer.

REASONS PRESENTED AGAINST THE LOCAL LAW

- Against Articles 14, 15, 16 and 19 of the Constitution of India.
- Domicile Criteria violates Article 16 (2) of the Constitution which provides that no citizen shall be ineligible for or discriminated against in respect of employment on the ground only of religion, race, caste, sex, descent, place of birth, residence or any of them.
- Implementing the law might lead to daily prosecution under the law.
- Livelihood of migrants might be at risk.
- It will impact the workforce at ground level
- No empirical study carried out to prove backwardness of a particular class.
- Impact the functioning of the industries including private hospitals which employs nurses from kerala.

► STATES MUST DECIDE ON SC/ST QUOTA IN PROMOTIONS: SC

A Three Judge Bench of Supreme Court has held that states are obligated to collect data on the inadequacy of representation of Scheduled Castes and Scheduled Tribes and refused to provide any criteria or yardstick to be followed by states.

IMPORTANT HIGHLIGHTS OF THE JUDGMENT

- **Court recognised principles laid down in M. Nagraj & Jarnail Singh** - where questions of adequate representation of SC/ST in promotions were left to the states.
- **Refused to lay down any Yardstick to determine inadequacy of representation as**
 - It would curtail discretion of state on such matters
 - It might not consider prevailing or local conditions in any state regarding availability of seats in a specific cadre.
- **Court held Cadre as Unit and not Class, group or entire Service** - for purpose of collection of quantifiable data for giving promotion.
- **B.K. Pavitra Judgment was set aside** - by recognising 'cadre' as the unit for collection of quantifiable data.
- **States obligated to collect quantifiable data** - on the inadequacy of representation of Scheduled Castes and Scheduled Tribes.
- **Need for Review on Data by States** - for the purpose of determining the inadequacy of representation in promotions by the states and the centre can fix a reasonable time for states to conduct the review.

► HORIZONTAL RESERVATION BY BIHAR

Bihar Government has announced 33% horizontal reservation for women in State engineering and medical colleges. This will encourage girls to pursue higher studies in the state and will also increase Labour Force Participation Rate (LFPR) for Women.

LABOUR FORCE PARTICIPATION RATE

The labour force participation rate is calculated as the labour force divided by the total working-age population. The working age population refers to people aged 15 to 64. This indicator is broken down by age group and it is measured as a percentage of each age group.

WHAT IS THE MEANING OF HORIZONTAL RESERVATION?

- The concept of vertical and horizontal reservation was explained by the Supreme Court in the famous **Indra Sawhney judgment**.
- The Court held that all reservations are not of the same nature. There are two types of reservations which can be referred as 'vertical reservations' and 'horizontal reservations'.
- The reservations in favour of Scheduled Castes, the Scheduled Tribes and the other backward classes [under **Article 16(4)**] may be called **vertical reservations**.
- **Whereas reservations in favour of physically handicapped, women, transgender community, freedom fighters or ex-service men [under Article 16(1), Article 15(3)] can be referred to as horizontal reservations.**
- **Article 15(3)** - Nothing in this article shall prevent the State from making any special provision for women and children.
- Horizontal reservation cut across vertical reservation and hence there is no concept of 'merit' while making adjustment/accommodation.
- So, we can say that horizontal reservations cut across the vertical reservations - what is called inter-locking reservations.

BENEFITS OF PROVIDING RESERVATION IN ENGINEERING & MEDICAL INSTITUTIONS

- It will encourage girls to pursue higher education and overall reduce school dropout rate for girls in primary and secondary education.
- Welfare programmes for girls like providing reservation in educational institutions not only provide formal education to girls but also neutralize the cumulative socio economic, education and political disadvantages faced by girls including patriarchal control.
- Such welfare measures when implemented properly by the states, could become an important driver in improving Female Labour Force Participation Rate.

► ECONOMIC CRITERIA NOT THE SOLE BASIS FOR CREAMY LAYER

Supreme Court has quashed notification issued by Haryana Government and held that economic criterion cannot be sole basis to decide creamy layer within the backward classes.

HARYANA GOVERNMENT'S NOTIFICATION FOR CREAMY LAYERS

- Haryana Government issued notification in August, 2016 under Section 5(2) of Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016.
- **As per the notification:**
 - children of those with gross annual income of up to Rs 3 lakh shall be the first to get the benefit of reservation in services and admission in educational institutions.
 - The remaining quota shall go to those from the backward classes who earn more than Rs 3 lakh but up to Rs 6 lakh per annum.
 - The sections of backward classes earning above Rs 6 lakh per annum were to be considered as creamy layer.
- **Reason for Notification:** the sub-classification amongst the backward classes will provide them reasonable platform for overall growth and development as compared such section who are better off economically.

SUPREME COURT JUDGMENT

- **Economy not the only criteria** - Section 5(2) of the 2016 Act "clearly provides that social, economic and other factors have to be taken into account to determine and exclude the creamy layer within a backward class.
- **Against Indra Sawhney Judgment** - Haryana Government's notification was in flagrant violation of the directions issued by Supreme Court in Indra Sawhney Judgment.
- **Social advancement, higher employment in government services, etc.,** also plays an equal role in deciding whether a person belonged to the creamy layer and could be denied quota benefits.
- **Determining Creamy Layer exclusively on "economic criteria" was unconstitutional** since the category of "poor" did not reflect "social backwardness".
- For the court, 'social backwardness' meant extreme marginalisation in terms of social status, primarily in the form of caste.
- **Who would be included in Creamy Layer?**
 - **Members of All India Service as they have reached** higher level of social advancement and economic status and cannot be treated as backward.

- **People with sufficient income who were in a position to provide employment to others** - are considered to have reached higher social status and hence to be treated outside the backward class.
- **Persons from backward classes who had higher agricultural holdings or were receiving income from properties**, beyond a prescribed limit, do not deserve the benefit of reservation.

The Supreme Court quashed Haryana Government's notification and has directed the State to issue fresh notifications after taking into account the principles laid down in Indra Sawhney-I and the criteria mentioned in Section 5(2) of the 2016 Act for determining creamy layer.

► CONSTITUTION 105TH AMENDMENT ACT

- The Constitution (One Hundred and Fifth Amendment) Act, 2021 by amending **Article 338B, 342A and 366(26C)** allow states and union territories to prepare their own list of socially and educationally backward classes.
- **The Constitution (One Hundred and Second Amendment) Act, 2018** - inserted three new Articles - **342A, 366(26C) and 338B** in the Constitution.
 - **Article 338B** constituted **the National Commission for Backward Classes**
 - **Article 342A** dealt with the Central List of the socially and educationally backward classes (commonly known as the Other Backward Classes) and
 - **Article 366 (26C)** defined the socially and educationally backward classes.
- **Constitution 105TH Amendment enables states and union territories to prepare their own list of socially and educationally backward classes. This list must be made by law, and may differ from the central list.**
- Article 338B of the Constitution mandates the central and state governments to consult the NCBC on all major policy matters affecting the socially and educationally backward classes.
- **The Amendment exempts states and union territories from this requirement for matters related to preparation of their list of socially and educationally backward classes.**

► FIRST & SECOND BACKWARD CLASS COMMISSION

KELKAR COMMISSION - FIRST BACKWARD CLASS COMMISSION

- The Commission was set up as a Presidential Order under **Article 340** to investigate the conditions of backward classes.
- It prepared a comprehensive list of backward caste or communities and out of 2399 such castes, 837 were classified as 'Most Backward'.
- The commission submitted its report in 1955 but was not implemented. (PM – Jawahar Lal Nehru)

MANDAL COMMISSION - SECOND BACKWARD CLASS COMMISSION

- It was set up to investigate the extent of social and educational backwardness among various sections of Indian society and recommend ways of identifying these 'backward classes'.
- It advised backward castes had a very low presence in both educational institutions and in employment in public services. It therefore recommended **reserving 27%** of seats in **educational institutions** and **government jobs** for these groups.
- The government accepted the recommendations and along with it, issued another order by which, **within the 27% of vacancies**,
 - **preference** was to be given to candidates belonging to the **poorer sections of the Socially and Economically Backward Classes**; and
 - **10% vacancies** were to be reserved for **Other Economically Backward Sections** who were not covered by any of the existing schemes of reservation.

Second Backward Class Commission (Mandal Commission)	
Who announced its formation?	PM Morarji Desai in December 1978
When was the Report Submitted?	On 31 st December 1980 to President N.S. Reddy. PM – Indira Gandhi
When and by Whom was the Report implemented?	August 1990 - Prime Minister V.P. Singh

2015 - RECOMMENDATIONS OF NCBC - CHAIRMAN - JUSTICE V. ESWARAIAH

It discussed sub-categorisation of OBCs at length and proposed that the Other Backward Classes/castes/

communities/ synonyms be divided into the following three categories:

1. **Extremely Backward Classes (Group 'A')**: This would include Aboriginal Tribes, Vimukta Jatis, nomadic and semi-nomadic tribes, wandering classes etc., whose traditional occupation is/was begging and pig-rearing, snake-charming, bird catching, game-sneakers, religious mendicants, drum beaters, bamboo workers, hunters and labourers, making mats from date leaves, basket making, agricultural labourers, earth workers, boatmen etc.
2. **More Backward Classes (Group 'B')**: This would include vocational groups whose traditional occupation is/was making of brushes for weaving looms and dyers, painting and doll making, weavers, toddy tappers, cotton ginning, oil pressing, silk weavers, potters, sheep-rearing and combingweaving, earth workers, jute weaving and gunny bag making, butchers, tailoring, fishing, gardening, dancers and singers, barbers, petty traders in kumkum and bangles, dyeing, petty dealers in beads, needles etc., scheduled castes converted into Christianity and their progeny, washermen etc.
3. **Backward Classes (Group 'C')**: This would include land owning, cultivating castes, agriculturists, business and trading castes and comparatively advanced castes/communities.

► INDRA SAWHNEY JUDGMENT

The majority judgments (9 Judge Bench) upheld the reservation of 27% in favour of backward classes, and the further subdivision of more backward within the backward classes who were to be given preference, but struck down the reservation of 10% in favour of Other Economically Backward categories.

IMPORTANT HIGHLIGHTS OF THE JUDGMENT

- **Test** or requirement of **social and educational backwardness cannot be applied to Scheduled Castes and Scheduled Tribes**, who indubitably fall within the expression "**backward class of citizens**".
- **The Scheduled Castes (SC) and the Scheduled Tribes (ST) are the most backward** among backward classes and once their name appears in **Presidential List** under **Articles 341** and **Article 342** of the Constitution of India, they need not prove their backwardness.
- The advanced sections among the **OBCs (Creamy Layer)** should be **excluded** from the list of beneficiaries of reservation.

- **There shall be no reservation in promotions and the reservation should be confined to initial appointments only.**

► M. NAGRAJ V UNION OF INDIA

- The government further felt that representation of the SCs and STs in the services in the state had not reached the required level.
- Hence to continue to provide reservation in promotion, legislature passed the **Constitution 77th Amendment Act of 1995** and added **Article 16(4A)** to the constitution.
- As per **Article 16(4A)** - State can make any provision for **reservation in matters of promotion** if SC/STs are not adequately represented in the services in the state.
- In **M. Nagaraj case**, the constitutional validity of 77th Amendment was challenged which provided for **reservation in promotion** along with other amendments on **backlog vacancies** in reservation.
- The Supreme Court **upheld the constitutional validity of 77th Amendment** and said these were mere enabling provisions.
- If a state government wishes to make provisions for reservation to SC/STs in promotion, **(1) the state has to collect quantifiable data showing backwardness of the class and inadequacy of representation of that class and (2) maintenance of efficiency.**
- **The Court allowed reservations in promotion for members of SC/ST subject to proving three conditions:**
 - *Backwardness of class – so there is a need for quantifiable data to prove backwardness*
 - *Inadequacy of representation in the services*
 - *Administrative Efficiency under Article 335 must not be compromised*

► JARNAIL SINGH V LACHHMI NARAIN GUPTA

QUESTION RAISED

- Court confined their entire judgment based on two grounds:
 1. Whether the state has to collect quantifiable data to show backwardness of members of SC and ST?
 2. Can the concept of **Creamy Layer** be applied to the members of SC and ST as it will amount to

sub-classification within the members of SC and ST. (considering the fact that it was declared in Indra Sawhney that further sub-classification within Scheduled Castes and Scheduled Tribes is not permissible.)

THE JUDGMENT

- There is no need to revisit the judgment of **M. Nagaraj** by a 7-judge Constitutional Bench.
- States no longer need to collect **quantifiable data** on the backwardness of SCs and STs in granting quota in promotions.
- However, the states will have to back it with data to show their **inadequate representation in the cadre.**
- The Court said that the principle of creamy layer can be extended to members of SC/ST for promotions in government jobs.

► RESERVATION IN PROMOTION NOTA FUNDAMENTAL RIGHT

Reservation in promotion in public posts cannot be claimed as a fundamental right as per the recent Supreme Court judgment under Article 16(4) and Article 16(4A).

JUDGMENT OF SUPREME COURT

Article 16 (4) and **16 (4A)** empowers the State to make reservation in matters of appointment and promotion in favour of the Scheduled Castes and Scheduled Tribes *'if in the opinion of the State they are not adequately represented in the services of the State'*.

1. **Article 16 (4) and 16 (4A) are in the nature of enabling provisions** and accordingly State has discretion - either to provide reservation in public services under Article 16(4) or reservation in promotions under Article 16(4A) or - not to provide such reservations.
2. If the states wish to provide reservation in promotion, then the **State has to collect quantifiable data showing inadequacy of representation of that class in public services.**
3. Even if under-representation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of the Court, the **State cannot be directed to provide such reservations under writ of Mandamus.**
4. Supreme Court effectively held that **State Government is not bound to make reservations** and citizens cannot claim reservation in public services

under Article 16(4) and reservation in promotion under Article 16(4A) as Fundamental Right.

► SUB-CATEGORISATION AMONG SC/ST & OBC

State of Punjab v Davindar Singh - SC observed that there can be sub-classifications within Scheduled Castes (SCs) and Scheduled Tribes (STs) to provide preferential treatment in reservation to the “weakest of the weak”. Government has appointed Justice G. Rohini Commission for sub-categorisation of OBCs.

SUB-CATEGORISATION PROVIDED BY PUNJAB - HELD UNCONSTITUTIONAL BY HIGH COURT

- A legislation in Punjab offered 50% of the vacancies reserved for Scheduled Castes in direct recruitment to Balmikis and Mazhbi Sikh communities.
- This provision was held **unconstitutional** by Punjab and Haryana High Court relying on the judgment of **V Chinniah vs State of Andhra Pradesh and Others** - which disallowed such sub-categorisation in reservation for Scheduled Caste and Scheduled Tribes.
- **E.V. Chinniah Judgment** held that that all the castes in the Presidential Order under **Article 341(1)** of the Constitution formed one class of homogeneous group and the same could not be further sub divided.

SUPREME COURT JUDGMENT

- **Sub-Classification of Reservation for benefit of deprived sections of SC/ST** and to give them equal treatment.
- **Such sub-classification would not amount to exclusion from the Presidential List (under Article 341 & 342)** as no class (caste) is deprived of reservation in totality.
- **The entire basket of fruits cannot be given to mighty at the cost of others under the guise of forming a homogenous class.**
- Creamy layer among members of SC/ST who have progressed or advanced in their life can be created as compared to the weakest among the weaker sections of Scheduled Caste and Scheduled Tribe.
- Different criteria for SC/ST & Socially and Educationally backward classes cannot be adopted **under Article 16(4) and Article 342A.**
- **Adoption of Distributive Justice** - It is State's obligation to undertake the emancipation of the deprived section among SC/ST thereby fulfilling objectives of Article 39(b) and 39(c).

TERMS OF REFERENCE FOR JUSTICE ROHINI

COMMISSION ON SUB-CATEGORISATION OF OBCS

- Examine the extent of inequitable distribution of benefits of reservation among caste/communities included within OBCs.
- Work out a mechanism, criteria, norms and parameters in a scientific approach for sub-categorisation within such OBCs.
- Identify castes or communities or sub-castes or synonyms in the Central List of OBCs to classify them into their respective sub-categories.
- To study the various entries in the Central List of OBCs and recommend correction of any repetitions, ambiguities, inconsistencies and errors of spelling or transcription.

PROPOSAL SO FAR DRAWN BY THE COMMISSION

- The Commission has drawn up a proposal for **FOUR CATEGORY FORMULA** - according to which the Commission intends to divide the total OBC castes in the Central List into FOUR SUB-CATEGORIES.
- **SPLIT OF RESERVATION** - The categories numbered 1, 2, 3 and 4 are proposed to split 27% of the OBC quota reservation into 2, 6, 9 and 10 per cent, respectively.

► LOK SABHA EXTENDS RESERVATION FOR SC/STs BUT NOT FOR ANGLO-INDIANS

- **The Constitution 104th Amendment Act, 2019 has amended Article 334** to extend reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs) in Lok Sabha & State Legislative Assemblies (SLA) reservation for another 10 years up to 25th January, 2030.
- However, **the amendment did not extend the reservation for Anglo-Indians** in Lok Sabha & SLA under Article 334 for another 10 years.
- Scheduled Castes and the Scheduled Tribes have yet not ceased to exist despite their progress in the last 70 years.

WHO ARE ANGLO-INDIANS?

- The Anglo-Indian community in India traces its origins to an official policy of the British East India Company to encourage marriages of its officers with local women.
- The term Anglo-Indian first appeared in the **Government of India Act, 1935.**

- In the present context, **Article 366(2)** of the Constitution Of India states: *"An Anglo-Indian means a person whose father or any of whose other **male progenitors** in the male line is or was of European descent but who is domiciled within the territory of India and is or was born within such territory of parents habitually resident therein and not established there for temporary purposes only."*

PROVISIONS FOR RESERVATION IN LEGISLATURE

- **Article 332** -Provision for nomination of two **Anglo-Indians to Lok Sabha by President.**
- **Article 333**- Provision of nomination of one (1) Anglo-Indian to **Legislative Assemblies by Governor.**
- The Anglo-Indian members enjoy the same powers as others, but they cannot vote in the Presidential election because they are nominated by the President.
- According to the 10th Schedule of the Constitution, Anglo-Indian members of Lok Sabha and state Assemblies **can take the membership of any party within six months of their nomination.** But, once they do so, they are bound by their party whip.

LEGISLATURE & EXECUTIVE

► JOINT PARLIAMENTARY COMMITTEE

Joint Parliamentary Committee (JPC) is a kind of Ad Hoc Committee constituted for a specific purpose. JPC is set up for a given period of time and is aimed at addressing a specific issue. Joint Committees are set up by a motion passed in one house of Parliament and agreed to by the other.

ABOUT JPC

- **Investigate Specific Issue** - JPC are generally constituted on the basis of consensus arrived between the government and the opposition to investigate specific issues.
- **Mandate of a JPC** - depends on the specifics of motion presented in either House of Parliament. Thus, a JPC has a wider ambit and need not only be limited to the scrutiny of government finances.
- **Members of JPC** - The committee's members are decided by the Parliament. Generally, number of Lok Sabha members are double than the Rajya Sabha members in JPCs.
- **Previous Examples** - The motion on the stock market scam constituted a JPC of 30 members of which 20 were from the Lok Sabha and 10 were from the Rajya Sabha. The motion to constitute the JPC on pesticides included 10 members from the Lok Sabha and 5 from the Rajya Sabha.

POWERS OF JPC

- **Collect Evidence** - JPC is authorised to collect evidence in oral or written form or demand documents in connection with the matter which is being investigated. A JPC can obtain evidence of experts, public bodies, associations, individuals or interested parties suo motu or on requests made by them.
- **Summons for presence** - If a witness fails to appear before a JPC in response to summons, his conduct constitutes Contempt of the House.
- **Findings Confidential** - The proceedings and findings of the committee are confidential, except in matters of public interest. The government can take the decision to withhold a document if it is considered prejudicial to the safety or interest of the State.
- **Speaker's Role** - The Speaker has the final word in case of a dispute over calling for evidence.

RECOMMENDATIONS OF JPC

- **Cannot be Enforced** - JPC recommendations have persuasive value but the committee cannot force the government to take any action on the basis of the report.
- **Fresh Investigation** - The government may decide to launch fresh investigations on the basis of a JPC report. However, the discretion to do so rests entirely with the government.
- **Follow up by Government** - The government is required to report on the follow-up action taken on the basis of the recommendations of the JPC and other committees.
- **Members of JPC can also submit Dissent Note** if they do not agree with the majority on certain findings of the Report.

► ATTORNEY GENERAL & ADVOCATE GENERAL

Based on political compulsions, Chief Minister of Punjab had suggested to appoint APS Deol as the Advocate General of Punjab. According to Article 165 of the Indian Constitution, the Governor of each State shall appoint a person who is qualified to be appointed a Judge of a High Court to be Advocate-General for the State. The Advocate-General shall hold office during the pleasure of the Governor, and shall receive such remuneration as the Governor may determine.

	ATTORNEY GENERAL	ADVOCATE GENERAL
1.	Article 76 – President appoints	Article 165 – governor appoints
2.	Highest Law Officer of the Union Govt.	Highest Law officer of the State Govt.
3.	Eligible to be appointed as Judge of SC	Eligible to be appointed as Judge of H.C.
4.	Holds office during the Pleasure of the President	Holds office during Pleasure of the Governor.
5.	Remuneration decided by President	Remuneration decided by the Governor.
6.	Duties & Functions of Attorney General (a) Advice GOI on legal	Duties & Functions of Advocate General

	<p>matters.</p> <p>(b) Represent GOI in Courts</p> <p>(c) Perform other legal duties assigned time to time by President.</p>	<p>(a) Advice concerned state govt.</p> <p>(b) Represent concerned state.</p> <p>(c) Legal matters referred by Governor.</p>
7. Privileges	<p>(a) Right to audience all courts in territory of India.</p> <p>(b) Attend Parliamentary Proceedings; speak and take part in the proceedings of the committee; No right to vote.</p> <p>(c) Right to Private practice (Criminal case prior permission from the govt.)</p>	<p>Privileges</p> <p>(a) Audience within the territory of the state (Article 177)</p> <p>(b) Similar position in State Legislature</p>

RESTRICTIONS ON ALL LAW OFFICERS INCLUDING AGI - THEY SHALL NOT

- Hold briefs against government of India or its affiliates.
- Advise any party against the Government of India or any Public Sector Undertaking (PSU).
- Defend an accused person in a criminal prosecution without Government of India's (Gol) permission
- Accept appointment to any office in any company or corporation without Gol's permission.
- Advise any Ministry or Department of Gol or any statutory organization or any PSU unless a reference is received through the Ministry of Law and Justice, Department of Legal Affairs.

WHETHER AGI IS "PUBLIC AUTHORITY" UNDER RTI ACT?

- **2013 - Chief Information Commission** ruled that since the office of *AGI did not come within the definition of "State" under Article 12, it did not have the authority to affect the legal relations of others and hence would not come under the purview of the RTI Act.* The Commission also said that AG's office, being manned by a single person, did not have the infrastructural wherewithal to meet the requirements of the RTI Act.
- **2017 - Division Bench of Delhi High Court overruled an earlier judgment and held that AGI is not "Public Authority" because:**
 - Attorney General has a lawyer-client relationship and in this fiduciary capacity, the advice tendered

by AGI to the Indian Government cannot be disclosed under RTI Act.

- AGI is not a functionary reposed with any administrative or other authority which effects the rights or liabilities of persons.

► PUBLIC ACCOUNTS COMMITTEE

On completion of hundred years of Public Accounts Committee (PAC), Vice-President of India has called for wider debate on harmonizing the expenditure on freebies under welfare obligations of the governments with developmental needs. Vice-President also suggested to re-designate PAC as Public Accounts and Audit Committee as audit review is also PAC's core function.

Audit refers to the examination or inspection of various books of accounts by an auditor followed by physical checking of inventory to ensure that all departments are following documented system of recording transactions. Audit is done to ascertain the accuracy of financial statements provided by the organisation.

HISTORICAL EVOLUTION OF PAC

- PAC was first set up in 1921 in the wake of the **Montague-Chelmsford Reforms.**
- **W. M. Hailey** was its first president, and Bhupendra Nath Mitra was its first Indian president.
- The last president before Independence was Liaquat Ali Khan.
- Post 26th January, 1950, PAC became a Parliamentary Committee functioning under Speaker of Lok Sabha. Minister of Finance ceased to be a Member of the Committee

CONSTITUTION OF PAC

- **PAC is constituted by Parliament every year** from amongst its members according to the principle of proportional representation by means of single transferable vote.
- **PAC consists of 15 Members of Lok Sabha and 7 Members of Rajya Sabha.**
- **Chairperson appointed by Speaker from amongst the elected members.**
- **A Minister in the government is not eligible to be elected as a member of PAC.**

FUNCTIONS OF PAC

- **Examine Demands for Grants of various Ministries/Departments** of Union Government; Annual Finance Accounts of Union Government, accounts of autonomous and semi-autonomous

bodies (except those of Public Undertakings and Government Companies).

- **Brings to notice of Parliament extravagance, loss and lack of financial integrity in public services.**
- **Examine Bills referred to the Committee** - by the Chairman, Rajya Sabha or the Speaker, Lok Sabha and submit reports thereon.
- **Consider Annual Reports of Ministries/ departments, Policy Documents** and make suitable reports.
- **Examine Report of CAG** submitted to the President. **Article 151** of the Indian constitution requires the President to lay this report before each House of the Parliament.
- **In examining the report of the CAG, the committee has to satisfy itself that -**
 - (a) the expenditures made by the government, were authorized by the Parliament, and
 - (b) that the expenditures under any head has not crossed the limits of parliamentary authorization.
- **Examine Accounts & Audit Reports with the help of CAG**
- **Examine Loopholes in Tax Administration** - under-assessments, tax-evasion, non-levy of duties, misclassifications etc., and suggest recommendations in order to check leakage of revenue.
- **PAC can summon the representatives of respective Ministries or Departments** while examining the Accounts and Audit Reports relating to their Ministries. A Minister is not called before the Committee either to give evidence or for consultation in connection with the examination of Accounts by the Committee.

WHAT PAC CANNOT DO?

- **PAC does not examine the accounts relating to such Public Undertakings** allotted to the **Committee on Public Undertakings.**
- **PAC cannot question policies of the government** - It only concerns itself with the execution of policy on its financial aspects.

REPORT OF PAC PRESENTED IN LOK SABHA & RAJYA SABHA

- After conclusion and adoption of Report by PAC, the Report is presented by the Chairperson to the Lok Sabha and a copy of the Report is also laid on the Table of Rajya Sabha.

- The Reports of the Committee are adopted by consensus among members.
- Copies of Report are also forwarded to respective Ministries/Departments and furnish action taken notes thereon within six months from the date of presentation of the Report.

► CHANGES IN IAS CADRE RULES

In the backdrop of decreasing number of IAS officers opting for central deputation (309 in 2011 to 223 in 2021) despite increase in their overall strength (621 in 2014 to 1130 in 2021), central government has proposed amendment in IAS Cadre Rules, 1954.

LETTERS SENT TO STATES FOR THEIR OPINION

- **Amendment of Rule 6** - DoPT sent a communication to all States seeking their opinion on the proposal to amend Rule 6 (deputation of cadre officers) of the Indian Administrative Service (Cadre) Rules 1954.
- Similar letters were also sent proposing changes in cadre rules of the other two All India Services (AIS) namely the Indian Police Service (IPS) and the Indian Forest Service (IFoS).
- Union government plans to acquire powers to depute IAS/IPS and IFoS officers to the Central Government and Ministries without necessarily taking the State government's consent.

FOUR AMENDMENTS INCLUDING TWO NEW INSERTIONS ARE PROPOSED

1. **States should make available the names of such officers**, part of a central deputation reserve (CDR), who can be deputed to the Centre. The actual number of officers to be deputed to the Central government shall be decided by the Central government in consultation with the State government concerned. According to existing norms, States have to depute AIS officers to the Union government offices.
2. **In case of disagreement, centre's decision shall prevail** and transfer to be done within "specified time". The aspect of specified time frame is a new addition.
3. **If state does not relieve any officer within the specified time, then after the time, such officers stands automatically relieved.** No-objection clearance not needed from state.
4. **Centre can request services of cadre officers in "public interest"** and the State shall give effect to such decisions within specified time.

STATES HAVE OPPOSED IT ON THE FOLLOWING GROUNDS

- Impacts State's Autonomy
- Misuse by Centre
- No Consultation with States
- Leads to Confrontational Federalism
- Dampen the morale of AIS Officers who do not want central deputation.

ABOUT IAS CADRE RULES

IAS (Cadre) Rules are published by Department of Personnel & Training under the Ministry of Personnel, Public Grievances & Pensions under the All-India Services Act, 1951.

ABOUT CIVIL SERVICES BOARD

- **T.S.R. Subramanian Vs Union of India:** Supreme Court directed the Centre, State Governments and the Union Territories to constitute Civil Services Boards (CSB).
- CSB has been set up to decide postings and transfers of officers belonging to the Indian Administrative Service (IAS).
- Chairman – Cabinet Secretary
- Functions under Ministry of Personnel, Public Grievances, and Pensions
- The evaluation of annual confidential reports is considered by a "Civil Services Board" (CSB) which makes recommendations to the ACC for the empanelment of suitable officers.
- In States – Chief Secretary of State is the chairman at state level.

► POWER OF SPEAKER TO SUSPEND MEMBERS OF PARLIAMENT

Twelve Opposition MPs were suspended for the rest of the Winter Session for disruptions in Rajya Sabha due to their acts of misconduct, contemptuous, unruly and violent behaviour and intentional attacks on security personnel.

POWER OF CHAIRMAN - RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN THE COUNCIL OF STATES

The Rules of Procedure of Rajya Sabha also provides for the **withdrawal** & **suspension** of Members of Rajya Sabha. It is slightly different from Lok Sabha.

- Withdrawal of Member regarding disorderly conduct in the House.
- Suspension of Member - shall take place after Rajya Sabha adopts a motion for suspension for remaining session.

- The Council can terminate the suspension by passing another motion.
- So, unlike Lok Sabha, the motion for suspension of member of Rajya Sabha is not moved by the Chairman but is adopted by the Council.

POWER OF SPEAKER - RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN LOK SABHA

- Maintaining Orderly Business
- Withdrawal of Member in case of disorderly conduct in the House for the remaining day
- A motion of is moved by Speaker - if passed by the House - results in suspension of the member for the remainder of the Session of the House.
- The suspension of such member can be terminated on presenting of another motion in the House.
- Speaker appoints a committee to investigate the conduct and activities of MP, whether it is derogatory to the dignity of the House and inconsistent with the Code of Conduct.
- Committee on Ethics can also be asked to give its recommendations.
- Consequent to the findings of committee a motion for expulsion is adopted by the house.

COMMITTEE ON ETHICS

- It consists of 15 members nominated by the Speaker. *The Chairperson of the Committee is appointed by the Speaker* from amongst the Members of the Committee.
- *The functions of the Committee are:*
 - (a) to examine every complaint relating to unethical conduct of a Member of Lok Sabha referred to it by the Speaker and make such recommendations as it may deem fit.
 - (b) to formulate a Code of Conduct for Members and suggest amendments or additions to the Code of Conduct from time to time.
- The Committee can conduct a *preliminary enquiry* on matters referred to it.
- The Committee *can take up the matter for further investigation* if needed.
- *The Report of the Committee shall be presented to the Speaker* who may direct that the report be laid on the Table of the House.
- As per *The Members of Lok Sabha (Declaration of Assets and Liabilities) Rules, 2004* - every elected candidate of Lok Sabha shall, within 90 days from the date on which he makes and subscribes an oath or affirmation for taking his seat, furnish information

pertaining to his/her Assets and Liabilities.

► MOTION OF THANKS

Members of Opposition tried to move an amendment to the Motion of Thanks to the President citing government's failure to handle COVID-19 pandemic and alleges use of Pegasus spyware. These amendments were rejected by the Chairman of Rajya Sabha.

- **When it is moved?** - Motion of Thanks is moved in Lok Sabha and Rajya Sabha after President's Special Address under Article 87(1).
- **Article 87 - Special address by the President - Clause (1)** of that article provides that:
 - at the commencement of the first session after each general election to the House of the People and
 - at the commencement of the first session of each year,

the President shall address both Houses of Parliament assembled together and inform Parliament of the causes of its summons.

- **Clause 2 of Article 87** mentions that - provision shall be made by the rules regulating the procedure of either House for the **allotment of time for discussion** of the matters referred to in such address.
- No other business is transacted till the President has addressed both Houses of Parliament assembled together through the Special Address.

CONTENTS OF THE PRESIDENT'S ADDRESS UNDER ARTICLE 87

- **It is the statement of policy of the Government** - drafted by the Government which is responsible for its contents.
- **The Address contains a review of various activities and achievements of the Government** during the previous year.
- **It sets out the policies, projects and programs** which Government wishes to pursue with regard to the important national and international issues.
- **Indicates Broad issues of Legislative Business** which are proposed to be brought during the sessions to be held in that year.

Copy of the Address is laid on the Table in Lok Sabha and Rajya Sabha.

Scope of Discussion (Lok Sabha & Rajya Sabha)

- **Wide Scope of Discussion** - takes place on national or international problems.

- **Discussion can take place on Matters Not Mentioned** in the Address.
- **Amendment of Motion** - Other discussions take place through amendments to Motion of Thanks.
- **Speaker/Chairman may reject to consider certain amendments** which any member desire to move
- **Limitations** - 1. Matters which are not direct responsibility of Centre 2. Name of President cannot be brought into discussion.
- **Conclusion of Motion of Thanks** - The discussion on the Motion of Thanks is concluded by the reply of the Prime Minister or any other Minister.
- **If Motion of Thanks is not passed in Lok Sabha, it amounts to defeat of the government as reflects lack of majority for the government on the floor of the House.**

WHAT HAPPENS AFTER MOTION OF THANKS IS ADOPTED?

- After the Motion of Thanks is adopted, it is conveyed to the President direct by the Speaker through a letter. The President also acknowledges the receipt of the Motion through a message to the Speaker.
- On receipt of the message, the Speaker reads it out to the House.
- When the acknowledgement from the President to the Motion of Thanks is received after the House has adjourned *sine die*, it is published in Bulletin—Part II for the information of Members.

This concludes the entire process which begins with the Address of the President delivered to members of both Houses of Parliament assembled together in the Central Hall of Parliament.

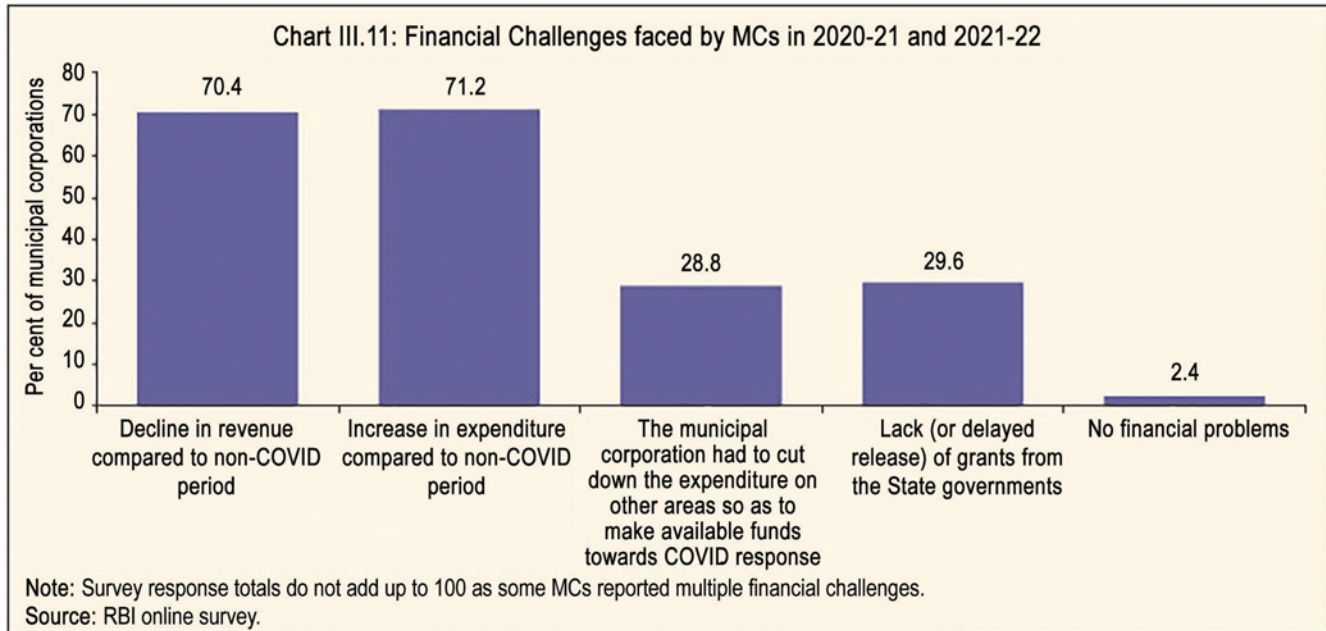
► FINANCE OF LOCAL INSTITUTION STRAINED DURING COVID – RBI

Reserve Bank of India (RBI) released the report titled "State Finances, Study of Budgets of 2021-22", an annual publication that provides information, analysis and an assessment of the finances of State governments for 2021-22 including the local institutions. The theme of this year's Report is "Coping with the Pandemic: A Third-Tier Dimension" in which the RBI has highlighted about the frontline role played by third-tier government to combat COVID pandemic by implementing containment strategies, healthcare, quarantining and testing facilities, organising vaccination camps and maintaining the supply of essential goods and services. However, in the process, local institutions' finances were severely strained forcing them to cut down expenditures and mobilise funding from various sources.

SURVEY OF RBI HIGHLIGHTS VARIOUS FINANCIAL CHALLENGES FACED BY MUNICIPAL CORPORATIONS (MCS)

- increase in expenditure
- decline in revenue collection and
- lack (or delayed release) of funds from the State governments during the second wave of the pandemic.

- 70 per cent of MCs reported a decline in revenue while 71 per cent reported an increase in expenditure.
- Several MCs had to cut down expenditure on other areas to make available funds for the COVID response.



IMPACT ON REVENUE OF MUNICIPAL CORPORATIONS

- Revenue receipts account for around 70 per cent of total receipts of MCs in India whereas capital receipts account for about 30 per cent.

Revenue Receipt	Capital Receipt
<p>MCs' revenue receipts largely comprise</p> <ul style="list-style-type: none"> • own tax revenue • non-tax revenue • and transfers from the Central and the State governments. • Property tax is the dominant component of own tax revenue, whereas fees and user charges constitute the largest sub-component of non-tax revenue. • The share of transfers, predominantly State government transfers, in revenue receipts is 	<p>The capital receipts of MCs mainly comprise</p> <ul style="list-style-type: none"> • Grants • contributions and subsidies from central and State governments and • transfers from funds maintained by municipal bodies.

significant.

STEPS TAKEN BY MUNICIPAL CORPORATIONS TO FILL THE RESOURCE GAPS

- Reduction of non-essential expenditure
- Mobilised additional funding from multiple sources such as borrowing, grants from the States and the Centre,
- Drawing from reserve funds - reserves are linked to either the infrastructure sector or committed liabilities such as provident and pension funds.
- Municipal funds
- Deposits in State Disaster Response Funds (SDRF)
- Issuances of COVID bonds
- Donations and contributions
- Creating Special Reserve Funds to cope with future pandemics by MCs

THE CRUX OF THE PROBLEM IS LACK OF DEVOLUTION OF FUNDS TO THE LOCAL LEVEL

- Despite the constitutional empowerment, the local bodies face problems of inadequate finance to carry out various activities assigned to them.

- Transfers made through the State Finance Commissions are also meager in most States.
- In most of the states, most of the Gram Panchayats are found reluctant to raise their own source of revenue (OSR).
- Only a few Gram Panchayats are able to generate OSR in the form of tax or non-tax revenue by renting shops, house tax and clean water fee.
- The Constitution (One Hundred and Fifth Amendment) Act, 2021 by amending **Article 338B, 342A and 366(26C)** allow states and union territories to prepare their own list of socially and educationally backward classes.
- **The Constitution (One Hundred and Second Amendment) Act, 2018** - inserted three new Articles - **342A, 366(26C) and 338B** in the Constitution.
 - **Article 338B** constituted the **National Commission for Backward Classes**
 - **Article 342A** dealt with the Central List of the socially and educationally backward classes (commonly known as the Other Backward Classes) and
 - **Article 366 (26C)** defined the socially and educationally backward classes.

STEPS SUGGESTED BY RBI TO STRENGTHEN LOCAL INSTITUTIONS

- Increasing the financial and functional autonomy of civic bodies
- Strengthening their governance structures and
- Financially empowering them via higher resource availability
- Focusing on improving "Own Resource Generation" capacity of local institutions which are critical for their effective intervention at the grassroot level.
- During the pandemic, inter-governmental transfers were among the least affected sources of revenue. Thus, strengthening and streamlining transfers from upper tiers of government through institutionally sound mechanisms can help fortify the financial stability of MCs.
- There are several facets of municipal finances that merit reforms:
 - Greater fiscal transparency
 - Revitalising the municipal bond market
 - Boosting developmental/infrastructure finance and green finance
 - Exploiting land-based financing opportunities and
 - Developing partnerships with impact finance in the private space would strengthen the third tier and make it viable and effective, especially in managing and mitigating future crises.

► 105TH CONSTITUTION AMENDMENT ACT

Parliament passed the Constitution 105th Amendment Act 2021 to restore the power of State Governments to identify and specify SEBCs which was taken away by Supreme Court's judgment in the Maratha quota case. Earlier, Supreme Court held that after the insertion of Article 342A in the Constitution, the Centre alone is empowered to identify SEBC.

IMPORTANT HIGHLIGHTS

► CONTROVERSY SURROUNDING OFFICE OF DEPUTY SPEAKER

The constitutionally mandated post of Deputy Speaker to Lok Sabha is vacant even after constitution of 17th Lok Sabha in May 2019. As per Parliamentary traditions, member from opposition parties are elected as Deputy Speaker. The Speaker and the Deputy Speaker are the Presiding Officers of the Lok Sabha.

ABOUT DEPUTY SPEAKER

- **Election** - to be fixed by Speaker of LS and notice for the election the Secretary-General shall send to every member notice of this date. The members of Lok Sabha may elect a Deputy Speaker among themselves.
- **Presiding over Sessions** - He shall presides over the Lok Sabha when the Speaker is absent from the sitting of the House including Joint Sitting. The Deputy Speaker shall have the same powers as the Speaker when he is presiding over any session of Lok Sabha. Deputy Speaker shall not preside (in case

Speaker is absent) while a resolution for his removal from office is under consideration.

- **Removal (Article 94)** – He shall vacate his office if he ceases to be a member of the House of the People; He may resign by writing under his hand addressed to the Speaker; He may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House. (Effective Majority which is equal to more than 50% of the effective strength of the House. It does not include vacancies.)
- **Vacancy** - While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker.
- **Chairperson** - Whenever Deputy Speaker is appointed as Member of any Committee, he automatically becomes its Chairperson and performs necessary functions of the committee.
- **Casting Vote** - While holding office of Speaker, deputy speaker cannot vote in the first instance and can only exercise his casting vote in case of tie.
- **Committee Membership** - Deputy Speaker is a member of General Purposes Committee and Library Committee. Deputy Speaker is the ex-officio Chairperson of the Committee.

General Purposes Committee shall consider and advise on matters concerning the affairs of the House referred to it by the Speaker from time to time. Speaker is the ex-officio Chairperson of the General Purposes Committee which also consists of members of the Panel of Chairpersons, Chairmen of all Standing Parliamentary Committees of Lok Sabha, Leaders of recognised parties and groups in Lok Sabha and such other members as may be nominated by the Speaker.

Library Committee suggests on improvement of the Library and assist members of Parliament in fully utilising the services provided by the Library.

► QUESTION HOUR & ZERO HOUR TO ENSURE ACCOUNTABILITY

In the second part of 2022-Budget Session, 'Zero Hour' and 'Question Hour' which was curtailed to half an hour during the first part will now be for a full one hour per each sitting.

QUESTION HOUR

- The first hour of every sitting of Parliament is generally reserved for the asking and answering of questions.

- Parliamentary question is a technique of parliamentary surveillance over functioning of the government.
- Members of Parliament are free to ask questions to elicit information on matters of public importance and concern from ministers of the government.
- The members of the government are bound to answer every question asked in the Question Hour.
- Questions enable Ministries to gauge the popular reaction to their policy and administration.
- Unless the Speaker otherwise directs, not less than 15 days' notice of a question shall be given. Notice of a question shall be given in writing to the Secretary-General and shall specify
 - the text of the question,
 - the official designation of the Minister to whom the question is addressed,
 - the date on which answer to the question is desired, and
 - the order of preference, if any, for its being placed on the list of questions, where a member tables more than one notice of questions for the same day.
- A member who desires an oral answer to one's question shall distinguish it by an asterisk (referred as starred questions).
- If the member does not distinguish it by an asterisk, the question shall be placed on the list of questions for written answer.

ZERO HOUR

- The time immediately following the Question Hour has come to be known as "Zero Hour". It starts at around 12 noon (hence the name) and members can, with prior notice to the Speaker, raise issues of importance during this time.

TYPES OF QUESTIONS

Questions are of four types - Starred, Unstarred, Short Notice Questions and Questions addressed to private Members.

1. **Starred Question** is one to which a member desires an oral answer in the House and which is distinguished by an asterisk mark. Supplementary questions can be asked thereon.
2. **Un-starred Questions** – which desires written answer to whom it is addressed.
3. **A Short Notice Question** relates to a matter of urgent public importance and can be asked with shorter notice than the period of notice prescribed for an

ordinary question. Like a starred question, it is answered orally followed by supplementary questions.

4. **Question addressed to Private Member** is asked when the subject matter pertains to any Bill, Resolution or any matter relating to the Business of the House for which that Member is responsible.

IMPORTANCE OF QUESTION HOUR

- Ensures Accountability & Transparency in government's work
- Addressing Questions on issues of specific importance
- Elicit Wider Debates on government performance
- Helps Government to Explain their Stand

► UNDERSTANDING OFFICE OF PROFIT

- **Article 102 and 191** of the Indian Constitution provides that a person shall be disqualified from being chosen as a Member of Parliament (MP) or State Legislature if he holds an office of profit under the Central or State Government.
- An office of profit means an extra position within the government which brings some financial gain, or advantage, or benefit or perks apart from the public they currently hold.
- Thus, to comprise office of profit, it has to be an "office" under the appointment of government and the benefit, perks, salary, or any financial gain must be released from public exchequer.
- However, holding certain offices will not incur this disqualification as per the Parliament (Prevention of Disqualification) Act, 1959.
- The Act has listed certain offices of profit under the central and state governments, holding of which does not disqualify MP/MLA under Office of Profit.

SUPREME COURT ON OFFICE OF PROFIT

The Supreme Court of India in various judgments has elaborated the following points to determine whether any MP/MLA/MLC holds Office of Profit or not -

- If the appointment has been made by government
- If the government had the right to remove or dismiss those holding such office
- If the government pays the remuneration
- Are these functions performed any different from the one the member already performs

- If the office holder perform these functions for the government
- If the government exercises any control over the performance of those functions

Supreme Court held that if answers to any of these questions are in the affirmative, then the person concerned can be said to be holding office of profit.

OPINION OF ELECTION COMMISSION MANDATORY

- It is mandatory for the President and the Governor to act according to such opinion as provided by the Election Commission in case of disqualification on grounds of office of profit.

JOINT COMMITTEE OF PARLIAMENT ON OFFICE OF PROFIT

- It consists of 15 Members, ten from Lok Sabha and five from Rajya Sabha, who are elected from amongst the Members of the respective Houses according to the principle of proportional representation by means of single transferable vote.

The main functions of the Joint Committee on Offices of Profit are:

- Examine the composition and character of all committees - membership of which may disqualify a Member under Article 102 of the Constitution.
- Recommend in relation to the 'committees' examined by it what offices should disqualify and what offices should not disqualify; and
- Scrutinise The Schedule to the Parliament (Prevention of Disqualification) Act, 1959 from time to time.

► ANTI-DEFECTION & MERGER

The High Court of Bombay at Goa in its judgment held that the former members of the Congress Legislature Party in the Goa assembly who had defected to BJP are exempt from disqualification under paragraph 4(2) of Constitution's Tenth Schedule. The Court said that under sub-paragraph (2) of paragraph (4), the merger of this group of Congress MLAs with the BJP is deemed to be a merger of the original political party (Congress) with the BJP. Therefore, these members are protected under paragraph (4).

IMPORTANT HIGHLIGHTS OF TENTH SCHEDULE

- **Disqualification of Elected & Nominated Members** - Both Elected and Nominated members of Parliament would be disqualified on the ground of defection if
 - She/he voluntarily relinquishes his membership of such political party or

- votes or abstains from voting in such House contrary to any direction of such party or is expelled from such party.
- **Paragraph 4 - Disqualification on ground of defection not to apply in case of merger** - The merger of the original political party of a member of a House shall be allowed only if, not less than two-thirds of the members of the legislature party concerned have agreed to such merger.
- **Paragraph 5 of Tenth Schedule** - A person who has been elected to the office of the Speaker or the Deputy Speaker of the House of the People or the Deputy Chairman of the Council of States or the Chairman or the Deputy Chairman of the Legislative Council of a State or the Speaker or the Deputy Speaker of the Legislative Assembly of a State, shall not be disqualified under this Schedule -
 - (a) if he, by reason of his election to such office, voluntarily gives up the membership of the political party to which he belonged immediately before such election and does not, so long as he continues to hold such office thereafter, rejoin that political party or become a member of another political party; or
 - (b) if he rejoins his previous political party after he ceases to hold such office.
- **Paragraph 6** - The question of disqualification under Tenth Schedule shall be determined by the Presiding Officer of the House. However, where the question is with reference to the presiding officer himself, it will be decided by a member of the House elected by the House in that behalf.
- **Judicial Review** - Decision of Presiding Officer on disqualification due to defection shall be subject to Judicial Review.
- **Prior to Constitution 91st Amendment** - split of 1/3rd of members of political party was allowed.

CONSTITUTION (NINETY-FIRST AMENDMENT) ACT, 2003 OMITTED PARAGRAPH 3 FROM TENTH SCHEDULE

- Constitution 91st Amendment omitted Paragraph 3 and also limited the size of council of minister.
- The 91st Amendment has added Article 75(1A), 75(1B), 164(1A), 164(1B) and 361B to the Indian Constitution.

CONSTITUTION (NINETY-FIRST AMENDMENT) ACT, 2003

- **Article 75(1A)** - *The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15 per cent of the total number of members of the House of the People.*

- **Article 164(1A)** - *The total number of Ministers, including the Chief Minister, in the Council of Ministers in a State shall not exceed 15 per cent of the total number of members of the Legislative Assembly of that State: Provided that the number of Ministers, including the Chief Minister in a State shall not be less than 12.*

IMPORTANT HIGHLIGHTS - KIHOTO HOLLOHAN V ZACHILHU AND OTHERS

- *Decision of Speaker on Anti-defection operates independently (like a Tribunal) and is not the decision of the House and does not need approval from the House.*
- *Decision of Speaker on anti-defection can be judicially reviewed and only the procedure followed cannot be judicially reviewed.*
- *Judicial Review under Tenth Schedule cannot be available at a stage prior to the making of a decision by the Speaker/Chairman as per Kihoto Hollohan judgment.*
- *Speaker/Chairman Quasi-Judicial Authority*
- *Decisions on disqualification must be taken within reasonable time - 3 months.*
- *The power to resolve such disputes vested in the Speaker or Chairman is a judicial power.*

► OPPOSITION MOVES PRIVILEGE MOTION ON PEGASUS

Based on the report on New York Times, opposition parties have moved privilege motion in both Houses of the Parliament against the Minister for Electronics and Information Technology Ashwini Vaishnaw for "misleading" the House and Supreme Court on the alleged Pegasus spyware deal with Israel.

PARLIAMENTARY PRIVILEGES

- **Parliamentary privileges (Art 105 & 194)** are special rights, immunities, exceptions enjoyed by the members of the two houses of Parliament and their committees.
- These rights are also given to those individuals who speak and participate in any committee of the Parliament, which includes the **Attorney General of India and the Union Ministers**.
- *President, who is integral part of the parliament, does not enjoy these privileges.*
- **Article 105 (3)** was amended by the Constitution 44th Amendment and now has two aspects:
 1. Powers, privileges and immunities of each Houses of Parliament, its Members and Committees shall be such as may be defined by Parliament by law in time.

2. Till such powers, privileges and immunities are defined by Parliament, shall be the same as that was enjoyed by House of Commons as on 26th January 1950.

- **Article 105 (3)** has avoided direct reference to House of Commons but effectively such privileges continue till Parliament frames a law.
- The Parliament has **not yet codified its privileges**.

BREACH OF PRIVILEGE

- When any of these rights and immunities is disregarded by anyone including Members of Parliament, the offence is called a breach of privilege and is punishable under law of Parliament.
- A notice is moved in the form of a motion by any member of either House against those being held guilty of breach of privilege.
- This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.
- Each House also claims the right to punish as contempt actions which, while not breach of any specific privilege, are offences against its authority and dignity.

INTRODUCING THE MOTION ON PRIVILEGE

- A member may, with the consent of the Lok Sabha Speaker/Rajya Sabha Chairman, raise a question involving a breach of privilege either of a member or of the House/Council or of any Committee.
- The Member moving the privilege is required to give notice in writing to the Secretary-General
 - by 10 am in Lok Sabha
 - before the commencement of the sitting on the day in Rajya Sabha

the question is proposed to be raised.

- If the question proposed to be raised is based on a document, the notice shall be accompanied by the document.

CONDITIONS FOR RAISING QUESTION OF PRIVILEGE

- The right to raise a question of privilege shall be governed by the following conditions:
 - not more than one question shall be raised at the same sitting;
 - the question shall be restricted to a specific matter of recent occurrence; and
 - the matter requires the intervention of the House/Council.

CONSENT BY SPEAKER/CHAIRMAN + LEAVE BEING GRANTED

- If the Speaker/Chairman gives consent and holds that the matter proposed to be discussed is in order - shall then call the member concerned to ask for leave to raise the question on privilege.
- However, the Speaker/Chairman can refuse to give consent to raise the question on privilege.
- Speaker/Chairman shall request those members who are in favour of leave being granted to rise in their places.
- If not less than 25 members (in Lok Sabha & Rajya Sabha) rise accordingly, then the Speaker/Chairman shall declare that leave is granted.
- If less than twenty-five members rise, the Speaker/Chairman shall inform the member that such member does not have the leave of the House.

COMMITTEE ON PRIVILEGES

- **If leave is granted in the above case, the Lok Sabha/Council may either consider the matter or refer the matter to the Privileges Committee** for examination, investigation or report.
- **A 15 member committee nominated by the Lok Sabha Speaker examines every issue involving breach of privilege of the House upon reference by the Speaker, and makes requisite recommendations.**
- **In Rajya Sabha, the Chairman shall** nominate a Committee of Privileges consisting of 10-Members.
- The Privilege Committee has the power to take evidence or call for papers, records or documents including attendance of persons.
- The Committee shall present its report to the Speaker/Chairman in respective Houses of Parliament.

IMPORTANT HIGHLIGHTS

- **Prior to Constitution 44th Amendment**, powers and privileges of Members of Parliament was same as those of House of Commons in Britain on the date of commencement of Indian Constitution.
- It was realised that constitution of a sovereign country should not contain reference of a foreign country. Hence, Article 105(3) was amended by Constitution 44th Amendment.
- **After Amendment – Article 105(3)** - In other respects, the powers, privileges and immunities of each House of Parliament, and of the members and the committees of each House, shall be such as may from time to time be defined by Parliament by law, and,

until so defined, shall be those of that House and of its members and committees immediately before the coming into force of section 15 of the Constitution (Forty-fourth Amendment) Act, 1978.

- **Article 361A:** Protects from civil or criminal proceedings for publication of true reports of Parliament and State Legislature. However, civil or criminal proceedings can be initiated if publications are done with bad intention or malice or of secret meetings for which publication is expressly prohibited.
- **Article 361A was added by Constitution 44th Amendment.**

► **IMPEACHMENT – PRESIDENT OF USA & INDIA**

The US Senate acquitted Donald Trump in his second impeachment trial. Fifty Seven senators, including seven Republicans voted 'guilty', but fell 10 votes short of the 67 needed for a conviction, two-thirds of the 100-member Senate.

IMPEACHMENT IN US

- Impeachment is an **accusation, similar to a criminal charge**, brought by the House of Representatives.
- It **does not directly result in removal** from office.
- The **US House of representative (435 members)** needs to pass the impeachment motion by a simple majority, after investigation by **judiciary committee**.
- **The motion of Impeachment then goes to the Senate** (Upper House consisting of 100 members), where a trial presided by **Chief Justice** takes place with representative from House acting as prosecutors and the President & his attorneys presenting his defence.
- **A two-third majority** in Senate is necessary to convict and remove the President.
- If the President is convicted, **the Vice-President** takes over the White House for remaining period of tenure.
- As of 2019, three **presidents have been impeached** by the House of Representatives: Andrew Johnson in 1868, Bill Clinton in 1998, and Donald Trump in 2019.
- **No president has ever been removed from office via the impeachment process.**

IMPEACHMENT IN INDIA

- In India, President can only be impeached for violation of the Constitution (Article 61)
- The motion for impeaching President **can be introduced in any House of Parliament.**

- The charges need to be signed by 1/4th of the members of the House and a **14 day notice should be given to the President.**
- After the impeachment resolution is passed by a **majority of not less than two-thirds of the total membership of that House**, it is sent to the other to investigate upon the charges.
- If the other house also passes the resolution for impeachment by a majority of two-thirds of the total membership of that House, the President then stands impeached from his office from the date on which the resolution has been passed.

► **RECONSTITUTION OF CABINET COMMITTEES-2019**

Under the Transaction of Business Rules, the Government has reconstituted Cabinet Committees. Under Article 77(3), the President can allocate various business of the government based on the Transaction of Business Rules.

CABINET COMMITTEES	HEADED BY
Appointments Committee of the Cabinet	Prime Minister
Cabinet Committee on Economic Affairs	Prime Minister
Cabinet Committee on Political Affairs	Prime Minister
Cabinet Committee on Security	Prime Minister
Cabinet Committee on Investment and Growth	Prime Minister
Cabinet Committee on Employment & Skill Development	Prime Minister
Cabinet Committee on Parliamentary Affairs	Union Defence Minister
Cabinet Committee on Accommodation	Union Home Minister

Note* - A cabinet form of government is a mechanism of parliamentary democracy for ensuring collective responsibility of the government to the people (Article 75).

► METHODS OF VOTING IN PARLIAMENT

On the issue of Farm Bills in Rajya Sabha, members of opposition demanded Division Vote but the Bills were passed by Voice Vote. This also negated opposition's demand to send the three Bills to a Parliamentary Select Committee for further scrutiny. The procedure regarding Voting and Divisions in the House is governed by Article 100(1) of the Constitution and as per Rules of Procedure and Conduct of Business in Lok Sabha.

Article 100(1) - Voting in Houses, power of Houses to act notwithstanding vacancies and quorum

All questions at any sitting of either House or Joint Sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker. The Chairman or Speaker or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

THE VARIOUS METHODS ADOPTED FOR VOTING IN THE LOK SABHA ARE

- **Voice Vote** - It is a simple method for deciding a question put by the Chair on a motion made by a Member. Under this method, the question before the House is determined simple by AYE or NO.
- **Division Vote** - here are three methods of holding a Division Vote
 1. **By operating the Automatic Vote Recording Equipment** - Under the Automatic Vote Recorder system, each member casts vote of her/his choice from the seat allotted to her/him by pressing the specific button provided for the purpose.
(Green button for 'AYES', Red button for 'NOES', Yellow button for 'ABSTAIN' and a White button for 'PRESENT' together with a vote Initiation Switch)
 2. **By distributing 'Ayes' and 'Noes' slips in the House;** and
 3. **By Members going into the Lobbies** - This method of recording of votes in the Lobbies has become obsolete ever since the installation of the Automatic Vote Recording Machine.
- **Secret Ballot** - is held on similar lines except that the LED Display on the Individual Result Display Panel flashes only White Light to show that the vote has been recorded.
- **Recording of votes by distribution of slips:** The method of recording of votes by Members on 'Ayes' and 'Noes' slips is generally resorted to in the

eventuality of (i) sudden failure of the working of the Automatic Vote Recording Equipment; and (ii) at the commencement of the new Lok Sabha, before the seats/division numbers have been allotted to Members.

- **Physical count of Members in their places instead of a formal division:** If in the opinion of the Chair, Division Vote is unnecessarily claimed, Chair may ask the Members to rise in their places for the count to be taken for AYES and Nos respectively. In such a case, the particulars of voting of the Members are not recorded.
- **Casting Vote:** If in a Division the number of 'Ayes' and 'Noes' is equal, the question is decided by the casting vote of the Chair. *Under the Constitution, the Speaker or Deputy Speaker cannot vote in a Division Vote* as they only have casting vote which is exercised in the case of equality of votes.

► SUSPENDING 12 MLA FOR 1 YEAR UNCONSTITUTIONAL – SC

In July 2021, Maharashtra Assembly had passed a resolution suspending 12 MLAs of BJP for one year for misbehaviour. However, the Supreme Court in its recent judgment has quashed the decision of the Maharashtra Assembly terming the suspension beyond a session as unconstitutional, substantively illegal and irrational. Maharashtra Legislative Assembly does not have a Speaker since February 2021 and the Chair was presided over by one of the four Presiding Officer named by Acting Speaker.

ARTICLE 190(4) – CONSTITUTION OF INDIA

- **If for a period of 60 days** a member of a House of the Legislature of a State is without permission of the House absent from all meetings thereof, the House may declare his seat vacant:
- Provided that in computing the said period of 60 days no account shall be taken of any period during which the House is prorogued or is adjourned for more than four consecutive days.

ARTICLE 212 - CONSTITUTION OF INDIA

- **Courts not to inquire into proceedings of the Legislature**
 - 1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.
 - 2) No officer or member of the Legislature of a State in whom powers are vested by or under this Constitution for regulating procedure or the

conduct of business, or for maintaining order, in the Legislature shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers.

SECTION 151A – REPRESENTATION OF PEOPLE ACT, 1951

- It mandates the Election Commission to fill the casual vacancies in the Houses of Parliament and State Legislatures through bye elections within six months from the date of occurrence of the vacancy, provided that the remainder of the term of a member in relation to a vacancy is one year or more.

SUPREME COURT'S JUDGMENT

- **One Year Suspension Unconstitutional** - as it went beyond the six-month limit and amounted to “not punishing the member but punishing the constituency as a whole”.
- **Goes Against Threshold fixed under Article 190(4) of 60 days** - beyond which a bye-election can be held on the said seat under Section 151 (A) of The Representation of the People Act, 1951. Based on this understanding, Supreme Court declared suspension of 12 BJP MLAs for one year as an “irrational” act that would impact the democratic set-up, leave constituencies unrepresented and help “thin majority” governments manipulate numbers.
- **Unrepresented Constituency** - Suspension of 1 year is violative of the basic democratic values as the constituency would remain unrepresented in the Assembly.
- **Impact Democratic Set-up** – and will permit the thin majority government of the day to manipulate the numbers of the Opposition party in the House in an undemocratic manner.
- **Decline in Quality of Debates** – on fear of suspension of more MLAs.
- **Against Article 14 & 21** - Suspension for one year is violative of procedure established by law and also manifestly arbitrary, grossly irrational and illegal and violative of Articles 14 and 21 of the Constitution.
- **Judgment Not Against Article 212** - SC held that though non-compliance of or deviation from the procedure may be non-justiciable, it would still be “open to judicial review on the touchstone of being unconstitutional, grossly illegal and irrational or arbitrary”.

► MPLADS RESTORED

Citing economic recovery, the Union Cabinet has partially restored the Members of Parliament Local Area Development Scheme (MPLADS) that was suspended in April 2020 subsuming the funds for the scheme in the consolidated fund of India. The scheme was suspended for two financial years (2020-21 and 2021-22) but now the MPs will get Rs. 2 crore instead of the annual approved Rs. 5 crore under the scheme.

MP LOCAL AREA DEVELOPMENT (MPLAD) SCHEME

- The scheme is funded and administered through the **Union Ministry of Statistics and Program Implementation (MOSPI)**.
- **Dist. Administration** - Projects are to be recommended to and implemented by the district-level administration.
- **Nodal District** - If a Lok Sabha Constituency is spread over more than one District, the MP can choose any one of the Districts as Nodal District in his/her constituency.
- **MPLADS allot Rs. 5 crore per year to each Member of Parliament (MP)** to be spent on projects of their choice in their constituency.
- **Amount released in two Installments.**
- **MPLADS Fund Non-Lapsable.**
- **Funds for SC/ST Areas** – 15% of MPLADS fund for areas inhabited by Scheduled Caste & 7.5% for areas inhabited by S.T. population.
- **Funds help in creating community assets & for areas prone to calamities.**
- **Funds from MPLADS can be converged with MGNREGA, Khelo India, National Program for Development of Sports.**

COMMITTEE ON MPLADS

- It is an ad hoc Committee consisting of 24 Members who are nominated by the Speaker from amongst the Members of the Lok Sabha for a period of 1 year.
- The Committee is reconstituted by the Speaker every year.
- The functions of the Committee on MPLADS of Lok Sabha are –
 - (a) to monitor and review periodically the performance and problems in implementation of the MPLAD Scheme;
 - (b) to consider complaints of members of Lok Sabha in regard to the Scheme; and

- (c) to perform such other functions in respect of the MPLAD Scheme as may be assigned to it by the Speaker from time to time.
- The observations/recommendations of the Committee on a subject/complaint/suggestion/representation are contained in its Report, which, after its adoption by the Committee, is presented to the Lok Sabha by the Chairperson or in her/his absence by any other member of the Committee.

► SUPREME COURT QUASHES PROVISIONS OF 97TH CONSTITUTION AMENDMENT

Three Judge Bench of Supreme Court using Doctrine of Severability has struck down parts of Constitution Ninety Seventh Amendment which deals with co-operative societies as it did not followed the process laid down in Article 368(2) of the Indian Constitution.

CONSTITUTION 97TH AMENDMENT ADDED THE FOLLOWING PROVISIONS IN THE INDIAN CONSTITUTION

- Article 19(1)(c)** - It added the term "co-operative societies" in Article 19(1)(c).
- Article 43B** - in Directive Principles of State Policy (PART IV) to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
- PART IXB** - was added in the constitution which provided for Article 243ZH to Article 243ZT for professional management of co-operative societies by state legislature, determining the functioning and tenure of members of Board along with their regular election, audit and accounts, maximum number of directors in each society, reservation for seats for SCs, or STs, and women, multi-state co-operatives and application of Part IX-B to Union Territories.

SUPREME COURT JUDGMENT

- Supreme Court (2:1 Judgment)** upheld the Gujarat High Court judgment but did not strike down Part IXB in its entirety. The Court by applying **Doctrine of Severability** held Article 243ZI to 243ZQ as unconstitutional leaving aside Article **243ZR and 243ZS**.
- So, the Supreme Court struck down part IX B of the Constitution related to cooperative societies but declared the part related to multi-State cooperative societies both within the various States and in the Union territories of India as valid.

- The Court also referred **Kihoto Hollohan judgment** where Doctrine of Severability was applied on Tenth Schedule to render Paragraph 7 of Tenth Schedule of the Indian Constitution as invalid.

REASONS TO ENACT CONSTITUTION 97TH AMENDMENT

- Growth of Cooperative Societies on Large Scale** - secure social and economic justice and equitable distribution of the fruits of development.
- Poor Performance of State Cooperative Societies** - lead to non-achievement of constitutional goals.
- Prevent from unnecessary outside interference, Ensure Autonomous organisational set up and democratic functioning** - of cooperative societies in states
- Failure to safeguard the interests of the members.**
- Non-fulfillment of objectives** for which these institutions were organised.
- Indefinite postponement of elections** leading to office bearers remaining in office indefinitely, which reduced accountability and increased corruption.
- Inadequate professionalism in management** in many of the co-operative institutions leading to poor services and low productivity.
- Thus, need was felt for fundamental reforms in the functioning of co-operatives to:**
 - Revitalize the institutions to ensure their contribution in the economic development of the country.
 - Serve the interests of members and public at large.
 - Ensure their autonomy, democratic functioning and professional management.

► GOVERNOR'S POWER TO PARDON OVERRIDES RESTRICTIONS IMPOSED BY CRPC

Supreme Court has held that powers of Governor under Article 161 to pardon override the restrictions imposed under Section 433-A of the Criminal Procedure Code even if the prisoner has not undergone 14 years or more of actual imprisonment.

Section 433A - Restriction on powers of remission or commutation in certain cases —Notwithstanding anything contained in section 432, where a sentence of imprisonment for life is imposed on conviction of a person for an offence for which death is one of the punishments provided by law, or where a sentence of death imposed on a person has

been commuted under section 433 into one of imprisonment for life, such person shall not be released from prison unless he had served at least fourteen years of imprisonment.

SUPREME COURT'S OBSERVATION

- Section 433-A of the Code does not in any way affect the constitutional power conferred on the President/Governor to grant pardon under Articles 72 or 161 of the Constitution.
- If the prisoner has not undergone 14 years or more of actual imprisonment, the Governor has a power to grant pardon.
- Such power is in exercise of the power of the sovereign, even though the Governor is bound to act on the aid and advice of the State Government.
- Thus, the sovereign power of a Governor to pardon a prisoner under Article 161 is actually exercised by the State government and not the Governor on his own.

MERCY PETITION

- If the Supreme Court turns down the appeal against capital punishment, a condemned prisoner can submit a mercy petition to the President of India and the Governor of the State.
- Under **Articles 72 and 161** of the Constitution, the President and Governors, respectively have the power *"to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.*
- The power to be exercised under Article 72 & 161 respectively by President and Governors need to be exercised in conformity with the aid and advice of the Council of Ministers under Articles 74 and 163.

MEANING OF PARDON, REPRIEVE, RESPITE, COMMUTATION & REMISSION

- **In Pardon**, it affects both the punishment prescribed for the offence and guilt of the offender. A full pardon may blot out the guilt itself.
- **'Reprieve'** means a temporary suspension of the punishment awarded by a court of law.
- **'Respite'** means postponement of the sentence of punishment.
- **Commutation** means changing the punishment from one category to another, such as changing of death sentence to life imprisonment.
- **Remission** is the reduction of the amount of a sentence without changing its character.

IS JUDICIAL REVIEW AVAILABLE ON CLEMENCY POWERS?

- In the case of **Epuru Sudhakar v. Government of Andhra Pradesh**, the Supreme Court laid down that judicial review **under Articles 72 and 161** is available on the following grounds:-
 - a) That the order has been passed without application of mind;
 - b) That the order is mala fide;
 - c) That the order has been passed on extraneous or wholly irrelevant considerations;
 - d) That the order suffers from arbitrariness.
- The Court also held that pardon obtained on the basis of **manifest mistake or fraud** can also be **rescinded or cancelled**.
- The Court further elaborated that if power under Article 72 is exercised on **irrational, irrelevant, discriminatory grounds or in bad faith**, then in such cases Court can examine the case and intervene if necessary.

DOES THE PRESIDENT ENJOY DISCRETION WHILE GRANTING PARDON?

- Power to pardon vested in the President **under Article 72 shall not be exercised independently without the aid and advice of Home minister.**
- In the case of **Maru Ram v. Union of India**, Supreme Court held that under Article 72, the President cannot take an independent decision or direct release or refuse release on his own choice.
- This has been done to avoid any decision made on arbitrary grounds or on some partial grounds of religion, caste, colour or political loyalty.

SUPREME COURT ON VALIDATING CAPITAL PUNISHMENT

- **Article 21** has been legally construed to mean if there is a procedure, which is fair and valid, then the state by framing a law can deprive a person of his life.
- In **Jagmohan Singh vs State of Uttar Pradesh (1973)**, then in **Rajendra Prasad vs State of Uttar Pradesh (1979)**, and finally in **Bachan Singh vs State of Punjab (1980)**, the **Supreme Court affirmed the constitutional validity of the death penalty.**
- SC held that **if capital punishment is provided in the law and the procedure is a fair, just and reasonable one, the death sentence can be awarded to a convict. (in rarest of rare cases)**

PRESIDENT V GOVERNOR – DISPOSING MERCY PETITION

- The President has power with respect to pardon in cases where punishment has been provided through

Court Martial. The Governor does not have any power with respect to cases under Court Martial.

- Governor cannot pardon death sentence. However, the governor can suspend, remit or commute a death sentence. Whereas pardoning power of President extend even to cases of death penalty.

► CONFRONTATION OF GOVERNOR WITH ELECTED GOVERNMENTS

Confrontation of centrally appointed Governors with the elected state governments has increased especially in states such as Maharashtra, Kerala, Rajasthan, Tamil Nadu and West Bengal on account of increasing interference of the central government through the governor in different states.

- **Maharashtra** - The Governor refused to accept the date of election of the Speaker recommended by the State government.
 - **Article 178** - Every Legislative Assembly of a State shall, as soon as may be, choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.
- **Tamil Nadu** - State Assembly adopted a Bill to scrap the National Eligibility-cum-Entrance Test as the sole guiding factor for admission to undergraduate medical courses. However, the Bill was reserved by the Governor for President's consideration but was not been forwarded to the President even after three months.
 - **Article 201** - When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom.
- **Rajasthan** - Governor returned Chief Minister proposal to convene an Assembly session in July 2020 but convened it later in August 2020. So, the question arises as to whether Governor has discretionary power to summon the house.
 - **Article 174** - The Governor shall from time to time summon the House or each House of the Legislature of the State to meet at such time and place as he thinks fit.

GOVERNOR'S DISCRETIONARY POWERS

- **Article 163** of the Indian Constitution empowers the council of minister to aid and advise the Governor in the exercise of his functions along with certain discretionary powers. This acts as mechanism of

checks and balance against any unconstitutional decisions taken by the state government.

- **Governor functions both as head of the state and as an agent of the centre and accordingly has been bestowed with the following discretionary powers:**
 - Reserve any Bill for the consideration of the President - Article 201.
 - Appoint Chief Minister of State - Article 164(1), inviting leader of the single largest party in to prove majority in case of hung assembly.
 - Dismiss the ministry as the CM and his ministers holds office during the pleasure of the Governor - Article 164(1)
 - Sending report to the President under Article 356 - failure of Constitutional machinery in States.
 - Governor's responsibility for administration of Tribal Areas and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).

► TAMIL NADU ADOPTS NEET BILL AGAIN

Tamil Nadu Assembly in September 2021 had passed the NEET Exemption Bill exempting students of the state to appear in the National Cum-Eligibility Test (NEET) for admission into medical colleges. The Assembly had passed the Bill based on the recommendations of Justice A.K. Rajan Committee which favoured NEET Exemption to ensure social justice. The NEET Exemption Bill was earlier reserved by the Governor and was believed that it would be reserved for President's Assent under Article 201. However, the Governor has returned the Bill back to the State Legislature under Article 200.

WHETHER STATES HAVE THE CONSTITUTIONAL RIGHT TO FRAME LEGISLATION TO OPT OUT OF NEET EXAMINATION?

- **Entry 25 of the Concurrent List** allows both state and centre to legislate on Education, including technical education, **medical education** and universities, subject to the provisions of entries 63, 64, 65 and 66 of Union List.
- So, based on Entry 25 of Concurrent List, two things are clear:
 1. State government can legislate on matters pertaining to medical education.
 2. However, state government cannot legislate on such matters provided under Entry 63, 64, 65 and 66 of the Union List.

- So, for sake of clarity, let us go through these entries of Union List.

UNION LIST

- **Entry 63** - The institutions known at the commencement of this Constitution as the Benares Hindu University, the Aligarh Muslim University and the Delhi University; the University established in pursuance of article 371E; any other institution declared by Parliament by law to be an institution of national importance.
- **Entry 64** - Institutions for scientific or technical education financed by the Government of India wholly or in part and declared by Parliament by law to be institutions of national importance.
- **Entry 65** - Union agencies and institutions for—
(a) professional, vocational or technical training, including the training of police officers; or (b) the promotion of special studies or research; or (c) scientific or technical assistance in the investigation or detection of crime.
- **Entry 66** - Co-ordination and determination of standards in institutions for higher education or research and scientific and technical institutions.

STATE LIST

- **Entry 32 of State List** - Incorporation, regulation and winding up of corporations other than those specified in List I and universities.

IS THERE ANY TIME FRAME WITHIN WHICH THE GOVERNOR HAS TO RETURN THE BILL BACK TO ASSEMBLY UNDER ARTICLE 200?

Governor to Decide as per Article 200

- The Governor in the present situation in Tamil Nadu regarding NEET Exemption Bill has returned the Bill back to the assembly under Article 200.
- Under Article 200, once a Bill has been passed by the State Legislature, then the Governor has three options:
 1. Either he assents to the Bill; or
 2. He withholds assent therefrom; or
 3. Reserves the Bill for the consideration of the President.
- The Governor as soon as possible shall return the Bill for the consideration of the House with his message as to what provisions of the Bill should be re-considered by the Assembly. Now, the term “as soon as possible” has not been defined.
- Now, when the Bill is so returned, the Assembly shall reconsider the Bill and look into the suggestions or

messages of the Governor regarding any specific provision.

- However, if the Bill is passed again by the House or Houses with or without amendment and presented to the Governor for assent, the Governor shall not withhold assent therefrom.
- The Governor does not have discretion on matters of the Assembly and is bound to follow the advice of his Council of Ministers even on matters where he/she might be withholding assent.
- Provided further that the Governor shall not assent to, but shall reserve for the consideration of the President, any Bill which in the opinion of the Governor would, if it became law, so derogate from the powers of the High Court as to endanger the position which that Court is by this Constitution designed to fill.
- In the entire provision of Article 200, no time frame as such has been provided. So, if the Bill is even reserved for the President’s Assent, then he is not time bound to accept or reject the Bill.

IS THE PRESIDENT BOUND TO ACCEPT OR REJECT THE BILL WHICH IS RESERVED FOR PRESIDENT UNDER ARTICLE 201?

ARTICLE 201 - Bills reserved for President’s consideration

- When a Bill is reserved by a Governor for the consideration of the President, the President shall declare either that he assents to the Bill or that he withholds assent therefrom.
- Provided that, where the Bill is not a Money Bill - the President may direct the Governor to return the Bill to the House or Houses of the Legislature of the State together with such a message as is mentioned in the first proviso to article 200.
- And when a Bill is so returned, the House or Houses shall reconsider it accordingly within a period of six months from the date of receipt of such message and,
 - if it is again passed by the House or Houses with or without amendment, it shall be presented again to the President for his consideration.

Note - Even under Article 201, no time limit has been provided under which the President has to assent or reject the Bill once the Governor reserve the Bill for President’s Assent. The Article ends with the words that the Bill shall again be presented again to the President for his consideration. But what happens after the Bill is presented again has not been mentioned. So, technically, the President is not time bound to assent or reject the Bill which is sent again for his consideration and the Bill can be delayed.*

JUDICIARY

► UNDERSTANDING FIR & ZERO FIR

First Information Report (FIR) is a written document prepared by the police when they receive information about the commission of any cognizable offence. It is the first step towards registering of an offence which further leads to investigation by the police. Informations about any cognizable offence is written down by the police as FIR under Section 154 of Criminal Procedure Code. The term FIR, however is not mentioned either in the Indian Penal Code or Criminal Procedure Code.

COGNIZABLE OFFENCE	NON-BAILABLE OFFENCE
<ul style="list-style-type: none"> Cognizable Offence has been defined under Code of Criminal Procedure (Cr.PC) Cognizable offence means a case in which a police officer may arrest without warrant. Cognizable offences are usually offences which are serious in nature like murder, rape, dowry death, kidnapping etc. 	<ul style="list-style-type: none"> Non-bailable offence has also been defined under Cr.PC When a person is accused of non-bailable offence, then in such case, bail can only be granted by the Court and not by an officer. Application for bail has to be made in Court in such cases of non-bailable offence.

IMPORTANT CONSTITUENT OF SECTION 154 – CR.PC

- Every information relating to commission of a cognizable offence must be reduced in writing.
- Such written information about the commission of offence must be read over to the informant.
- Such written information must be signed by the informant.

COMPLAINT – SECTION 200 OF CR.PC

- Under Cr.PC, complaint means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but does not include a police report.
- Magistrate shall examine a Complaint and the substance of such examination shall be reduced to writing and shall be signed by the complainant and the witnesses, and also by the Magistrate.

ZERO FIR – (OUTSIDE JURISDICTION)

- Registering FIR by police about a cognizable offence which has not happened within the jurisdiction of the police station concerned.
- Such Police Station registers an FIR and then transfers it to the concerned police station (under whose jurisdiction the offence has occurred) for further investigation. This is called a Zero FIR.
- Since the FIR is registered outside the jurisdiction of assigned police station, no serial number is assigned to it and instead it is assigned a number “0”.
- Such FIR is registered irrespective of the area where the offence has been committed.

WHAT IF THE POLICE REFUSE TO REGISTER AN FIR?

- If a magistrate refuses to register FIR under section 154 of Cr.PC, then the information can be sent in writing to the Superintendent of Police (SP) of the district.
- If the SP is satisfied that such information discloses the commission of a cognizable offence, then
 - the SP shall either investigate the case himself or
 - direct an investigation to be made by any police officer subordinate to him, in the manner provided by this Code,
 - and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.
- If no FIR is registered, the aggrieved persons can file a complaint under Section 156(3) CrPC before a concerned court which, if satisfied that a cognizable offence is made out from the complaint, will direct the police to register an FIR and conduct an investigation.

WHAT HAPPENS AFTER AN FIR IS FILED?

- The police will investigate the case and will collect evidence in the form of statements of witnesses or other scientific materials. They can arrest the alleged persons as per law.
- If there is sufficient evidence to corroborate the allegations of the complainant, then a chargesheet will be filed. Or else, a Final Report mentioning that no evidence was found will be filed in court.
- If it is found that no offence has been committed, a cancellation report will be filed. If no trace of the accused persons is found, an ‘untraced’ report will be filed.

► ANTICIPATORY BAIL & STATUTORY BAIL

Bombay High Court ordered National Investigative Agency (NIA) to grant bail to lawyer and activists Sudha Bharadwaj and also decide conditions of her release.

UNDERSTANDING BAIL

- **Bail**, in law, means procurement of release from prison of a person awaiting trial or an appeal, by the deposit of security to ensure his submission at the required time to legal authority.
- **Bail Bond** is the monetary value of the security for bail and is set by the court.
- **The security** may be cash, the papers giving title to property, or the bond of private persons or means or of a professional bondsman or bonding company.
- Failure of the person released on bail to surrender himself/herself at the appointed time results in forfeiture of the security.

ANTICIPATORY BAIL – SECTION 438 OF CR.PC

- *When any person has reason to believe that he may be arrested on an accusation of having committed a non-bailable offence, he may apply to the High Court or the Court of Session for a direction under this section; and that Court may, if it thinks fit, direct that in the event of such arrest, he shall be released on bail.*
- Anticipatory Bail granted to a person in anticipation and apprehending arrest. It may be granted under a few circumstances:
 1. A special case is made out that would suggest that there are ample grounds to assume that the applicant may be detained for unreasonable grounds.
 2. The allegations were made with a false intent or to cause the claimant to be injured/humiliated and arrested.
 3. The arguments against the claimant are ambiguous or generic.
 4. The name of the accused is not mentioned in the FIR.
 5. The applicant satisfies the Court that he is from a respectable family, has deep roots in society, and is not likely to abscond from or avoid the Court's proceedings or to hinder the investigation in any way.
 6. A plaintiff is an influential individual against the defendant who is a weak person or if a case is brought against a political rival.

WHEN CAN ANTICIPATORY BAIL BE REFUSED?

1. The risk of the applicant absconding if cognizance is taken by the trial court or the trial court has issued a warrant of arrest.
2. The applicant has previously been imprisoned for any cognizable offense on conviction.
3. Where the applicant can influence the investigation to his advantage.
4. When the evidence produced suggests that the accused is guilty of crime or wrong doings.

MANDATORY BAIL OR STATUTORY BAIL

- Under Section 167 of Cr.PC, magistrate can either allow for police custody or judicial custody.
- Magistrate may allow for police custody for a period of 15 days.
- However, the accused can also be sent to judicial custody for a period of 90 days or 60 days.
- **Crime for which an accused can be sent to judicial custody of 90 days** - crime which entails a punishment of death, life imprisonment or period of imprisonment exceeding 10 years and 60 days
- **Crime for which an accused can be sent to judicial custody of 60 days** - all other crimes
- Section 167(2) further provides that if at the end of the period (60 or 90 days) of judicial custody, if the investigation is not completed by the police, the court shall release the person "if she/he fulfill bail conditions".
- Thus, a magistrate according to law or a statute (section 167 of CRPC) cannot authorise a person's judicial remand beyond the 60-or 90-day limit if investigation is not completed by the police.
- The stipulated period within which the charge sheet has to be filed begins from the day the accused is remanded for the first time. It includes days undergone in both police and judicial custody, but not days spent in house-arrest.

► POLICE CUSTODY & JUDICIAL CUSTODY

The word 'custody' means apprehending someone for protective care and words "custody" and "arrest" are not synonymous. So, in every arrest there is custody, but every custody does not amount to arrest. Arrest, remand and bail are components related to investigation. Arrest directly curtails personal liberty of an individual affecting his/her freedom.

UNDERSTANDING POLICE CUSTODY

- Police Custody is the custody of a suspect of a crime in police lockup to detain the suspect.
- During the detention, the police officer in charge of the case may interrogate the suspect.
- The officer in charge of the case is required to produce the suspect before a Judge within 24 hours of arrest.
- These 24 hours exclude the time of necessary journey from the police station to the Court. (Article 22)

UNDERSTANDING POLICE CUSTODY AND JUDICIAL CUSTODY

- Police Custody means that police has the physical custody of the accused while Judicial Custody means an accused is in the custody of the concerned Magistrate.
- In Police Custody, the accused is locked in police station, while in judicial custody, the accused is sent to jail by an order of the Judicial Magistrate.
- Once the accused is presented before a Judicial Magistrate, then the Magistrate can either
 - release him on bail or
 - send the accused to judicial custody or
 - send the accused back to police custody.

INTERROGATION BY POLICE DURING JUDICIAL CUSTODY

- During Judicial Custody, the police officer in charge of the case is not allowed to interrogate the suspect.
- However, the court may allow the interrogations to be conducted if it is of the opinion that the interrogation is necessary for further investigation.

WHEN A PERSON CAN BE SENT BACK TO POLICE CUSTODY BY THE JUDICIAL MAGISTRATE?

- Section 167 of CR.PC allows that a person may be held in the custody of the police for a period of 15 days on the orders of a Magistrate.
- A person may be send to judicial custody for a period of 90 days or 60 days.
- **Crime for which an accused can be sent to judicial custody of 90 days** - crime which entails a punishment of death, life imprisonment or period of imprisonment exceeding 10 years and 60 days
- **Crime for which an accused can be sent to judicial custody of 60 days** - all other crimes
- **Release on Bail** - If the Magistrate is convinced that sufficient reasons exist, then the accused or suspect can be released on bail.

► CJI BACKS 50% RESERVATION FOR WOMEN IN JUDICIARY

Speaking at the event to welcome new Judges of Supreme Court, Chief Justice of India asked the women advocates to fight for their right of 50 per cent reservation in all levels of Judiciary to address the problem of gender gap in the legal field. CJI also favoured reservation for women across all law colleges in India.

RESERVATION IN JUDICIARY

- Judiciary checks arbitrariness of the executive and legislature and also functions as a sentinel to safeguard constitutional rights - liberty, freedom, life, speech and expression etc.
- Higher Judiciary unlike Legislature and Executive does not follow the principle of reservation.
- Union Law Minister said that there was no provision for reservation in the higher judiciary and hence it is not envisaged.
- However, the government keeps sensitising about the need for representation of minorities, SCs, STs and women.
- Thus, reservation in judiciary will -
 - bring constitutional balance between the legislature, executive and judiciary;
 - serve the cause of social justice and equity through equitable representation
 - firsthand experience of the problems faced by backward members of judiciary will help in sensitising the issue and dispensing justice.
- With the provision of reservation provided in National Law Schools and other law colleges, there are ample number of candidates to be selected for lower and higher judiciary.

DESIRABILITY OF GREATER WOMEN REPRESENTATION IN INDIAN JUDICIARY

- It will help to address prevailing gender imbalance.
- It will improve gender sensitisation of judicial orders - eg: addressing rights of women especially in cases of heinous crimes including cases of rape, murder and domestic violence.
- It will help to improve gender specific infrastructure within Court premises - separate toilets for women.
- Ensure women empowerment in the judicial arena.
- Encourage women to pursue law as a career choice.

- Improve ratio of women law graduates and women judges.

► JUDICIAL PENDENCY

COVID-19 has impacted the functioning of Courts including physical hearing and this has increased pendency. According to the National Judicial Data Grid (NJDG), backlog of cases in district courts saw a sharp increase of 18.2 per cent between December 31, 2019 and December 31, 2020.

Reasons for Increasing Pendency in India

“Subordinate Judiciary-Access to Justice 2016” Report of Supreme Court, capacity constraints are the main reasons for high level of increasing pendency of lower Courts.

- Subordinate judiciary works under a severe shortage of courtrooms, secretarial and support staff including Judges.
- The number of hearings and the time period taken to dispose of cases across the system suggest that there is a serious problem of cases management in procedure law in India.
- These infrastructural issues adversely affects the effective functioning of Courts.
- Adjournments are granted too easily and freely and in the absence of a fixed time table to dispose of cases leads to delays in disposing the case.
- Judicial manpower needs to be augmented according to increase in crime rate.

STEPS TO REDUCE DELAY IN CASE DISPOSAL

- **Filling judicial vacancies** – at all tiers of judiciary
- **Diverting cases from the courts to alternate dispute resolution forums** - such as Mediation, Lok Adalats and specialised Tribunals.
- **Introduction of Fast-track Courts, jail-adalats, prison court and plea-bargaining.**
- **Reducing Disposal Time for Cases** - Disposal time is measured as the time span between the date of filing and the date when the decision is passed.
- **Improve Case Clearance Rate (CCR)** - CCR is the ratio of the number of cases disposed of in a given year to the number of cases instituted in that year, expressed as a percentage. It is mainly used to understand the efficiency of the system in proportion to the inflow of cases. (Both Disposal Time and CCR can be bettered by appointing more Judges in District & Subordinate Courts, High Courts and Supreme Court.)

- **Short and Long Term Goals** - Reducing case pendency in the short term and achieving long term goal of reducing case life cycle between one and two years.
- **Appointing Retired Judges to High Court and Supreme Court** to reduce backlog. For this, Supreme Court has also altered the Memorandum of Procedure.
- **Merge and rationalize tribunals to enhance efficiency**
- **Creating Indian Courts and Tribunal Services (ICTS)** – It will focus on the administrative aspects of the legal system. The major roles to be played by ICTS will be
 - (i) provide administrative support functions needed by the judiciary
 - (ii) identify process inefficiencies and advise the judiciary on legal reforms
- **Increase number of working days for judiciary to increase productivity** – reducing length of summer and winter vacations in High Courts and Supreme Court.

► NATIONAL COURT OF APPEAL

Attorney General has suggested setting up four National Court of Appeals for the regions of north, south, east and west (other than the Supreme Court) to hear appeal from lower Courts. The four National Courts of Appeal having 15 judges each will act as an Intermediate Appellate Courts between the High Courts and the Supreme Court. They would absorb the extra burden clogging on to Supreme Court and will also allow Supreme Court to function as India's Constitutional Court.

DEMAND FOR MORE COURT OF APPEALS

- **Demand for Southern Bench of SC** - A similar request was made in January 2021 when the Bar Councils of the five southern States called for a Supreme Court bench in south India.
- **Court of Appeal** - While speaking at an online event last year, Attorney General K.K. Venugopal suggested that four benches of Court of Appeal with 15 judges each be created across the country to reduce the burden of the Supreme Court.
- **Amendment in the Constitution** - This would enable judges to go through each case thoroughly and deliver a well-thought-out verdict. Setting up these courts would call for an amendment in the Constitution (preferably Article 130).

Article 130 - Seat of Supreme Court - The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the President, from time to time, appoint.

THE IDEA OF CASSATION BENCH - EXAMPLE OF FRANCE

- **Different Constitution Court & Court of Appeals** - Many continental countries have constitutional courts as well as final courts of appeal called Courts of Cassation (Cour de Cassation in French) for adjudication of non-constitutional matters. A court of cassation is the judicial court of last resort and has power to quash or reverse decisions of the inferior courts.
- **A Court of Cassation is a high-instance court that exists in some judicial systems** - Courts of cassation do not re-examine the facts of a case, they only interpret the relevant law. The Court of Cassation is the highest court in the French judiciary.
- **Civil, commercial, social or criminal cases are first ruled upon by lower courts** of first instance or commercial courts and industrial or labour courts.

229TH LAW COMMISSION REPORT

- **Suggested Setting up Constitution Bench** - at Delhi to deal with constitutional and other allied issues”, and **“Four Cassation Benches be set up in the**
 1. Northern region/zone at Delhi,
 2. Southern region/zone at Chennai/Hyderabad,
 3. Eastern region/zone at Kolkata and
 4. Western region/zone at Mumbai

to deal with all appellate work arising out of the orders/judgments of respective High Courts.

► CONSTITUTIONAL PROVISION ON JUDICIAL INDEPENDENCE

Chief Justice of India N.V. Ramana in an address at the valedictory ceremony of the Pan-India Legal Awareness and Outreach Campaign by NALSA has stated that there is nothing more important than to “preserve, protect and promote” the independence of the judiciary at all levels”.

CONSTITUTIONAL & LEGAL PROVISION TO ENSURE JUDICIAL INDEPENDENCE

- **Separation of Power - Article 50** - Separation of Power between Legislature, Executive and Judiciary – is now a part of Basic Structure of the Indian Constitution.
- **Security of Tenure of Judges** – Judge of Supreme Court or High Court cannot be removed arbitrarily by the executive and their removal has to undergo rigorous legislative scrutiny as provided under **Article 124 (4)**. Further, **Article 124 (5)** mentions that removal of judge on grounds of **“misbehaviour”** and

“incapacity” can be prescribed by law made by Parliament.

- **The Judges Enquiry Act, 1968** – lays down the process to remove Judges of Supreme Court and High Court including the investigation necessary to prove misbehaviour or incapacity.
- **Salary of Judges cannot be reduced - Article 125 (2)** - Salary of Judges is fixed by Parliament and it cannot be reduced during the tenure of a Judge. Privileges, allowances, leaves and pension provided to a Judge cannot be varied or reduced to their disadvantage.
- **Expense of Supreme Court charged upon Consolidated Fund of India – Article 146 (3)**
- **Jurisdiction of Courts cannot be diminished** - Parliament cannot reduce jurisdiction of Supreme Court or High Court by passing any law on appeals or Supreme Court’s **Original Jurisdiction** under Article 131 with respect to dispute between centre and states.
- **Constitution insulates Judges from criticism in Parliament & State Legislature** –Parliament or State Legislature cannot discuss the conduct of Judge in discharge of their duties.
- **Protection from Contempt Proceedings** - Supreme Court in Keshav Singh case held that Article 121 and 211 also protects a Judge of Court from any contempt proceedings which may be taken against them in discharge of their duties.
- **Article 141** - Law declared by Supreme Court to be binding on all courts within the territory of India.
- **Article 142** – SC can give such orders, judgment for doing complete justice in any cause or matter pending before it and its decision shall be enforceable throughout the territory of India.

► AMENDMENT TO THE SUPREME COURT JUDGES (SALARIES AND CONDITIONS OF SERVICE) ACT, 1958

Government has introduced an amendment to amend the High Court Judges (Salaries and Conditions of Service) Act, 1954 and the Supreme Court Judges (Salaries and Conditions of Service) Act, 1958. The amendments provides for additional quantum of pension or family pension for judges of High Courts and Supreme Court.

COMPENSATION OF SUPREME COURT JUDGE

- **According to Article 125**, Judges of Supreme Court shall be paid such salaries, pensions and allowances

which will be determined by Parliament by law. Allowances of a Judge, his leaves and pensions cannot be varied to his disadvantage after his appointment.

- **According to Article 112**
 - Salary of Supreme Court Judge is charged on the Consolidated Fund of India.
 - Pension and other allowances of Judges of Supreme Court is also charged on the Consolidated Fund of India

COMPENSATION OF HIGH COURT JUDGE

- **According to Article 221**, Judges of each High Court shall be paid such salaries, pensions and allowances which will be determined by Parliament by law. Allowances of a Judge, his leaves and pensions cannot be varied to his disadvantage after his appointment.
- **According to Article 112**, Pensions payable to judges of High Court are charged on Consolidated Fund of India.
- **According to Article 202**, expenditure in respect of salaries and allowances of High Court Judges are charged on the Consolidated Fund of each State.

Article 112(3) -The following expenditure shall be expenditure charged on the Consolidated Fund of India

- (a) the emoluments and allowances of the President and other expenditure relating to his office
- (b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People
- (c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt
- (d) The salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court; pensions payable to or in respect of Judges of the Federal Court; pensions payable to or in respect of Judges of any High Court
- (e) The salary, allowances and pension payable to or in respect of the Comptroller and Auditor- General of India
- (f) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal
- (g) Any other expenditure declared by this Constitution or by Parliament by law to be so charged.

Article 202(3) - The following expenditure shall be expenditure charged on the Consolidated Fund of each State

- (a) Emoluments and allowances of the Governor and other expenditure relating to his office
- (b) Salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly and, in the case of a State having a Legislative Council, also of the Chairman and the Deputy Chairman of the Legislative Council.
- (c) Debt charges for which the State is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt.
- (d) Expenditure in respect of the salaries and allowances of Judges of any High Court.
- (e) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.
- (f) Any other expenditure declared by this Constitution or by the Legislature of the State by law, to be so charged.

► CJI MASTER OF ROSTER

Relying on 'healthy practices and sound convention', Supreme Court has reiterated that Chief Justice of India (CJI) is the master of roster, and alone has the power the power to allocate cases.

- Registrar General of Supreme Court prepares the roster as per the orders of CJI and CJI alone has the prerogative to constitute Benches.
- **Roster** - contains general or specific instructions regarding assignment or allocation of case to a particular Bench, allocation of work of a Bench, on account of non-availability of Judges
- **CJI may instruct the Registrar to re-allocate judicial work** to some other Bench in case of emergency.
- **Forming Constitution Bench by CJI** - as per Article 145(3) to adjudicate matters involving substantial question of law or for interpretation of the Constitution or under Article 143 pertaining to Presidential reference
- **Supreme Court Rules, 2013**- framed under Article 145 with the approval of the President to regulate general practice and procedure of Supreme Court.

► SC ALTERS MEMORANDUM OF PROCEDURE

Supreme Court has prescribed a judicially mandated timeline for the Union government to make appointment of judges in the High Courts. Thus, through its ruling, the Court has essentially altered the Memorandum of Procedure (MoP) and stated that the government must act on the names recommended for appointment within four months.

- Generally the MoP does not prescribe any time limit for the Centre to forward the recommendations for appointment.
- Lack of time limit in Memorandum of Procedure resulted in delays in judicial appointments.
- Constitution of India does not prescribe for following of MoP.

Memorandum of Procedure provides for the appointment of following Supreme Court Judges:

- Chief Justice of India – Article 124(2)
- Other Judges of Supreme Court - Article 124(2)
- Acting Chief Justice – Article 126
- Ad Hoc Judges – Article 127
- Attendance of Retired Judges at sittings of SC – Article 128

Memorandum of Procedure provides for the appointment of following High Court Judges:

- Chief Justice of High Court (generally appointed from outside state) – Article 217
- Acting Chief Justice – Article 223
- Permanent Judges – Article 217(1)
- Additional Judges
- Acting Judges – Article 224(2)
- Attendance of Retired Judges at Sittings of High Courts – Article 224A
- Transfer of a Judge including Chief Justice from one High Court to another – Article 222

► APPOINTMENT OF ADDITIONAL, ACTING & AD HOC JUDGES IN HIGH COURT

Appointment of Judges to High Court under Article 224 and 224A is done by the President.

ARTICLE 224 – ADDITIONAL & ACTING JUDGES

- **Appointment of Additional Judges**- by the President- Article 224(1)

- **Reason to Appoint Additional Judge** – increasing arrears of work in High Court
- **Appointment of Acting Judges**- by the President- Article 224(2)
- **Reason to Appoint Acting Judge** – when permanent Judge of HC (other than Chief Justice) unable to perform their duties
- **Appointment for Acting Judges for not less than three months** unless there are special reasons for doing so.

FOR BOTH – ADDITIONAL & ACTING JUDGES

- **Qualification** -duly qualified to be the judge of a High Court
- **Retirement** – Additional or Acting Judges shall not hold office after attaining age of 62 years.

ARTICLE 224A – AD HOC JUDGES

- **Appointment of retired Judges at sittings of High Courts by the President**
- **Criteria** -person who has been High Court Judge
- **Allowance** –entitled to such allowances as the President may determine
- **Shall have all the jurisdiction, powers and privileges of High Court Judge** but shall not be deemed to be Judge of that High Court
- **Consent** -The retired judge must give his consent for appointment under Article 224A.
- **Appointment under Article 224A does not constrain regular appointment** process in High Courts.
- **Ad hoc Judge would receive the same emoluments, allowances and benefits** as are admissible to the permanent/additional Judges.
- **Emoluments paid to Ad Hoc Judges would be charged on Consolidated Fund of India.**
- **Constitution is silent on – [tenure of Ad Hoc Judges+ number of judges to be appointed]** – under Article 224A

► TRIGGER POINTS FOR JUDICIAL APPOINTMENT UNDER ARTICLE 224A: SC

- If the vacancies are more than 20% of the sanctioned strength.
- The cases in a particular category are pending for over five years.
- More than 10% of the backlog of pending cases is over five years old.

- The percentage of the rate of disposal is lower than the institution of the cases either in a particular subject matter or generally in the Court.
- A situation of mounting arrears is likely to arise if the rate of disposal is consistently lower than the rate of filing over a period of a year or more.

► APPOINTMENT OF AD HOC JUDGES & RETIRED JUDGES AT SUPREME COURT

APPOINTMENT OF AD HOC JUDGES - ARTICLE 127

- When there is a lack of quorum of judges in Supreme Court
- CJI with the previous consent of President and after consultation with Chief Justice of High Court request in writing to a Judge of a High Court duly qualified for appointment as a Judge of the Supreme Court to attend the sittings of the Supreme Court.
- The Chief Justice of the High Court will communicate his consent for the release of a particular Judge after consulting the Chief Minister of the State in which the High Court is situated.
- Judges appointed under Article 127 shall have all the jurisdiction, powers and privileges, and shall discharge the duties, of a Judge of the Supreme Court.

ATTENDANCE OF RETIRED JUDGES AT SITTINGS OF THE SUPREME COURT - ARTICLE 128

- CJI with the previous consent of President may request any person
 - who has held the office of a Judge of the Supreme Court or
 - who has held the office of a Judge of a High Court and is duly qualified for appointment as a Judge of the Supreme Court

to sit and act as a Judge of the Supreme Court

- **Allowances** - as the President may by order determine
- **Powers** -shall have all the jurisdiction, powers and privileges of Supreme Court Judge.
- But shall not otherwise be deemed to be, a Judge of Supreme Court

► TRIBUNAL REFORMS

The President of India promulgated the Tribunals Reforms (Rationalisation and Conditions of Service) Ordinance, 2021 under Article 123 to amend the Cinematograph Act, 1952, the Customs Act, 1962, the Airports Authority of India Act, 1994, the Trade Marks Act, 1999 and the Protection of Plant Varieties and Farmers' Rights Act, 2001 and certain other Acts.

Transfer of functions of key appellate bodies as proposed under the Ordinance		
Acts (Legislations)	Present Appellate Body	Proposed Entity to which authority is Transferred
The Cinematograph Act, 1952	Appellate Tribunal	High Court
The Trade Marks Act, 1999	Appellate Board	High Court
The Copyright Act, 1957	Appellate Board	Commercial Court or the Commercial Division of a High Court
The Customs Act, 1962	Authority for Advance Rulings	High Court
The Patents Act, 1970	Appellate Board	High Court
The Airports Authority of India Act, 1994	Airport Appellate Tribunal	Central government, for disputes arising from the disposal of properties left on airport premises by unauthorised occupants. High Court, for appeals against orders of an eviction officer.
The Control of National Highways (Land and Traffic) Act, 2002	The Airport Appellate Tribunal	Civil Court
The Geographical Indications of Goods (Registration and Protection) Act, 1999	Appellate Board	High Court

REASON FOR RATIONALIZATION OF TRIBUNALS

- The 2021 Ordinance scrapped various Tribunals such as the Intellectual Property Appellate Board and the Film Certification Appellate Tribunal.
- The abolishing of tribunals is a continuation of government’s policy of rationalizing tribunals in phases, according to a Bill introduced in the Lok Sabha by Finance Minister Nirmala Sitharaman in February 2021.
- The Finance Minister cited last three years’ data to show that:
 - Tribunals neither contribute in reduction of workload for the High Courts,
 - Nor does the Tribunals provide faster justice delivery and
 - Overall Tribunals come at an expense to the exchequer.

IMPORTANCE OF TRIBUNALS IN INDIA

- In India, the function of dispensing justice is entrusted to regularly established Courts on the pattern of Common law system.
- In the year 1941, first Tribunal was established in the form of **Income-Tax Appellate Tribunal**.
- The Tribunals were however, set up to reduce the workload of courts, to expedite decisions and to provide an alternate judicial forum which would be manned by lawyers and experts in the areas falling under the jurisdiction of the Tribunal.
- **Swaran Singh Committee** acknowledged the mounting arrears in the High Courts and inserted Article 323A & 323B by the **Constitution (Forty-Second Amendment) Act, 1976**.
- **There is a distinction between Article 323-A and 323-B as Article 323A gives exclusive power to the Parliament and Article 323B gives power to the concerned State Legislature** regarding tribunals.
- Based on the Constitution 42nd Amendment, Parliament enacted **The Administrative Tribunals Act, 1985** under which Central and State Administrative Tribunals have been constituted.

Essentials for a Tribunal	Trappings of Court includes the following
<ul style="list-style-type: none"> • Whether a body is Tribunal or not can be decided by applying several tests: <ul style="list-style-type: none"> ○ It should be a quasi- 	<ul style="list-style-type: none"> • Authority to determine cases initiated by parties • Sitting in public • Power to compel

judicial body <ul style="list-style-type: none"> ○ It should be under an obligation to act judicially ○ It should have some “trappings of a court” ○ It should be constituted by the state ○ State should confer on it the power to adjudicate upon disputes • These criteria are not exhaustive but illustrative	attendance of witnesses <ul style="list-style-type: none"> • to examine the witnesses on oath • duty to follow fundamental rules of evidence (though not strict rules of Evidence Act) • provisions for imposing sanctions by way of imprisonment, fine, damages • give prohibitory or mandatory orders to enforce obedience
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► VACATION BENCH OF SC

A Vacation Bench of the Supreme Court is a special bench constituted by the Chief Justice of India under Supreme Court Rules, 2013.

VACATION BENCH HEARS URGENT MATTERS PERTAINING TO

- **Applications for special leave under Article 136.** (However, Vacation Judge shall not decide a petition if raises substantial question of law relating to interpretation of the Constitution.)
- Applications for stay of execution of a decree or order or stay of proceedings in civil matters.
- Applications for transfer of cases under section 406 of the Code of Criminal Procedure, 1973 to meet ends of justice.
- Applications for stay of proceedings in criminal matters.
- **Applications under article 32 of the Constitution of an urgent nature** which do not involve a substantial question of law as to the interpretation of the Constitution.
- Applications of an urgent nature for transfer of cases under section 25 of the Code of Civil Procedure.
- **Issuing notice in applications of an urgent nature under Article 139A(1)** for transfer of cases involving the same or substantially the same questions of law pending before the Supreme Court and one or more High Courts or before two or more High Courts and the Supreme Court.

- Applications of an urgent nature for transfer of cases under Article 139A (2) of the Constitution.
- Article 139A(2) - The Supreme Court may, if it deems it expedient so to do for the ends of justice, transfer any case, appeal or other proceedings pending before any High Court to any other High Court.

► E-COMMITTEE – SUPREME COURT

The e-Committee is the governing body charged with overseeing the e-Courts Project conceptualized under the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary-2005". The digital platforms created by the e-Committee have enabled stakeholders- litigants, lawyers, governmental/law enforcement agencies and ordinary citizens to access judicial data and information in real-time.

THE DIGITAL DATABASE AND INTERACTIVE PLATFORMS ENABLE

- Tracking the status and details of a particular case pending in any court in the country.
- Managing pendency of matters in various judicial institutions across the country.
- Extraction and utilisation of the database to fast track categories of cases.
- Efficient utilisation of court resources.
- Analysis of data to monitor and map the judiciary's competencies and effectiveness.

CORE PRINCIPLES

- Technology must be harnessed to "Empower" and "Enable"
- Ensuring Access to Justice to all
- Creating an efficient and responsive judicial system

OBJECTIVES WHICH GUIDE E-COMMITTEE

- Interlinking of all courts across the country
- ICT enablement of the Indian judicial system
- Enabling courts to enhance judicial productivity, both qualitatively and quantitatively.
- To make the justice delivery system accessible, cost-effective, transparent and accountable.

► E-COURT MISSION MODE PROJECT

The E-Courts Mission Mode Project (Phase I 2010-15; Phase II 2015-19) is a national e - Governance project for ICT enablement of district and subordinate courts of the country. The major objectives of the Project are -

- To make whole judicial system ICT enabled by putting in place adequate and modern hardware and connectivity;
- Automation of workflow management in all courts;
- Electronic movement of records from taluka/trial to appeal courts;
- Installation of video conferencing (VC) facility and recording of witness through Video Conferencing; connecting all courts in the country to the National Judicial Data Grid (NJDG) through WAN and additional redundant connectivity;
- Citizen centric facilities such as electronic filing, e-payment and use of mobile applications in all courts;
- Touch screen based kiosks in each court complex, full computerisation of State and district level judicial and service academies and centres.

Phase III will enable the vision and a shift to an 'ecosystem approach' by:

- Simplifying Procedure
- Creating foundational digital infrastructure
- New Institutional and Digital Framework – setting up Digital Courts Technology Office which will ultimately evolve to a National Judicial Technology Council.
- Setting up Digital Courts

► ALL INDIA JUDICIAL SERVICE

Creation of All India Judicial Service (AIJS) common to Union and States was added in Article 312 through Constitution 42nd Amendment way back in 1976. Even NITI Aayog in its Report - "StrategyforIndia@75", has supported constituting AIJS to bring judicial reforms and improve the judicial administration.

CONSTITUTIONAL PROVISIONS

- **Article 312(3)** - The all-India judicial service referred shall not include any post inferior to that of a district judge as defined in article 236.
- **Article 312(4)** – any amendment made in CHAPTER VI of PART VI due to enactment of legislation setting up an AIJS would not be deemed to be amendment of the Constitution for the purpose of Article 368.
- Chapter VI pertains to State and Chapter VI pertains to Subordinate Judiciary where conditions of appointment of District Judge is defined.
- **To facilitate creation of AIJS**, "administration of justice" was transferred from State List to the present **Entry 11A of Concurrent List** as per Constitution 42nd Amendment.

- **Concurrent List - Entry 11A** - Administration of Justice; constitution and organisation of all courts, except the Supreme Court and the High Courts.
- **State List - Entry 65** - Jurisdiction and powers of all courts, except the Supreme Court, with respect to any of the matters in this List.
- **Article 233** - A person shall only be eligible to be appointed a district judge if he has been for not less than seven years an advocate or a pleader and is recommended by the High Court for appointment.
- Although Foreigners Tribunal has been constituted through an Executive Order of Home Ministry, its decisions is to be treated as a “quasi-judicial order” and is therefore final and binding on all parties including upon the cases pertaining to preparation of the NRC in Assam.
- In the backdrop of preparation of NRC in Assam, Ministry of Home Affairs has amended the **Foreigners (Tribunals) Order, 1964**.
- The amended order has empowered **District Magistrates** in *all States and Union Territories* to set up tribunals to decide whether a person staying illegally in India is a foreigner or not. Earlier, the powers to constitute tribunals were vested only with the Centre, however, now it is available to the state as well.

► MADRAS HC DIRECTS GOVT. TO PROVIDE SUPPORT TO LGBTQIA+

Madras High Court has directed the Union Ministry of Social Justice and Empowerment to enlist non-governmental organisations (NGOs) that could provide counseling, monetary support, legal assistance and protection to lesbian, gay, bisexual, transgender, queer, intersex, asexual and such others' (LGBTQIA+) community until a law could be enacted to protect them.

- **Ministry of Social Justice and Empowerment** to upload the details of the NGOs, along with their address, contact details and the services provided by them, on its website.
- **Approach the Enlisted NGOs** - Any person from LGBTQIA+ community who has faced an issue can approach any of the enlisted NGOs for safeguarding their rights.
- **NGOs to co-ordinate with Police** - to provide need based relief to people from LGBTQIA+ community regarding offences committed against them.
- **NGOs to maintain confidential records of members approaching them** and such records to be submitted to the Ministry bi-annually.
- **Appropriate changes be made** to the existing government short stay homes, anganwadi shelters, Garima Greh (shelter home for transgender persons) for providing accommodation, food, medical care and recreational facilities to those from the community in need of such assistance.

► FOREIGNER’S TRIBUNAL

- Foreigner’s Tribunal was established through **Foreigners (Tribunal) Order, 1964** from an order of Ministry of Home Affairs under Section 3 of **The Foreigners Act, 1946**. It is applicable to the whole country.

► IMPLEMENTING NATIONAL LITIGATION POLICY

Central government has informed Delhi High Court that the government is drafting a revised National Litigation Policy (NLP) which was formulated by Ministry of Law & Justice to bring down litigation from government agencies by making them more responsible litigants.

SALIENT FEATURES OF THE DRAFT NATIONAL LITIGATION POLICY

- Take preventive measures for reducing the new filing of cases by prescribing a procedure for proper dealing of the cases by addressing all three stages of disputes – pre-litigation, litigation and post litigation stage.
- Avoiding litigation between Government departments and PSUs through intervention of empowered agencies.
- Restricting appeals to minimum by careful scrutiny of the implications of the judgment.
- Making appeal an exception unless it affects policy of the Government; minimal recourse to Supreme Court under Article 136.
- Effective presentation of the Government through assigning legal functions on legally trained persons, proper response to the claim of the petitioner, making efforts for clubbing of the cases and through effective and active ICT enabled case management system with Nodal officers.
- Effective handling of PILs, conducting training programs and augmentation of internal capacity building measures.
- It also seeks emphasises on exploring alternative means of dispute resolution to settle disputes.

Article 136 - Special leave to appeal by the Supreme Court

- *The Supreme Court may, in its discretion, grant special leave to appeal from any judgment, decree, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.*
- *Article 136 shall NOT apply to any judgment, determination, sentence or order passed or made by any court or tribunal constituted by or under any law relating to the Armed Forces.*

► TELE-LAW SERVICE

Tele-Law service provides online legal consultation to the poor people even in remotest areas through Common Service Centres (CSC) at Gram Panchayat level.

- Tele-Law primarily addresses issues at the pre-litigative stage and digitally connects marginalized and poor people with panel lawyers, to seek legal advice and consultation through use of video conferencing and telephone service available at CSC.
- The program benefits people entitled to free legal aid under Section 12 of Legal Services Authorities, Act, 1987 that include women, children, Members of scheduled caste, scheduled tribes etc. to seek legal advice free of cost. Others can avail services at Rs 30/- per consultation.
- To ensure its seamless penetration in far flung and remote areas, a TeleLaw mobile application has been developed to enable pre-registration of cases by Para-Legal volunteers (PLV).
- Tele-Law program functions under aegis of Department of Justice under Ministry of Law & Justice.

► LIMBS

- A web portal Legal Information and Management Based System (LIMBS) set up for monitoring of Court Cases of the entire GOI. It functions under Department of Legal Affairs.
- LIMBS aims to digitalize the details of court cases against Government of India pending under different ministries.
- LIMBS provides easy access web-based tool for comprehensive, regulatory and proactive monitoring of court cases.
- LIMBS provides low cost web based technology to standardize the procedures adopted by different ministries, distribute the information, remove the

impediments, develop professional base, make the system proactive and responsive and a great initiative to keep all government court cases under one umbrella.

- LIMBS has unique features of e-Document vault and Group SMS to sensitize the users. Advocate and Arbitration modules make this application complete as all the stakeholders are brought at single platform.

► NATIONAL DATA SHARING AND ACCESSIBILITY POLICY (NDSAP)

- The objective of this policy is to facilitate the access to Government of India owned shareable data and information in both human readable and machine readable forms through a network all over the country in a proactive and periodically updatable manner, within the framework of various related policies, Acts and rules of Government of India, thereby permitting wider accessibility and use of public data and information.
- **Benefits of NDSAP:** a) Maximising use b) Avoiding duplication c) Maximised integration d) Ownership information e) Better decision-making.

► NATIONAL MISSION FOR JUSTICE DELIVERY AND LEGAL REFORMS

- Central government had launched the National Mission for Justice Delivery and Legal Reforms in to reduce case backlogs and to usher significant legal reforms.
- The idea to launch the Mission was to ensure a well-coordinated response of the executive and the judiciary for speeding up delivery of justice in the country and to reduce the delay in the disposal of cases by the courts.
- It is chaired by Union Minister of Law and Justice.

► SUPREME COURT STRENGTH INCREASED

Supreme Court (Number of Judges) Act of 2019 has added four judges to strength. It increased the judicial strength from 31 to 34, including the CJI.

- **Article 124 (1):** There shall be a Supreme Court of India consisting of a Chief Justice of India and, until Parliament by law prescribes a larger number, of not more than seven other Judges.

- Thus, strength of Supreme Court Judges can be increased through **Simple Majority** of the Parliament i.e more than 50% of member present and voting each house respectively
- Accordingly, the Parliament passed the SC (No. of judges) Act 1956 providing for a maximum of 10 judges excluding the CJI.
- In 2009 the law was last amended to increase strength of Supreme Court Judges from 26 to 31 (including CJI).
- The **Supreme Court of India** came into existence on 26th of January 1950 and its first sitting was held on 28 January 1950.

NOTE: However, the number of judges of HC will be determined by the order of the president as provided under Article 216.

APPOINTMENT OF SUPREME COURT JUDGES

- **Article 124:** Every SC judge shall be appointed by the President by warrant under his/her hand and seal after consultation with such other Judges of the Supreme Court and of the High Court in the States as President may deem necessary for the purpose and shall hold office until he attains the age of 65 years.
- The other judges are appointed by the President **after** consultation **with the CJI** and such other judges of the Supreme Court and the high courts as he deems necessary. The consultation with the chief justice is **obligatory** in the case of appointment of a judge other than Chief justice.

SEAT OF THE SUPREME COURT

- **Delhi is the seat of the Supreme Court** as per the Constitution.
- It also authorises the **CJI** to appoint other place or places as seat of the Supreme Court with the approval of the President.
- No court can give any direction either to the President or to the Chief Justice to appoint any other place as the seat of the Supreme Court.

► CURATIVE PETITION (ART 137)

A five-judge bench of the Supreme Court rejected the curative petition filed by Delhi gang rape convict Akshay Kumar Singh. The bench, led by Justice NV Ramana, also turned down the death row convict's request to stay his execution.

WHAT IS A CURATIVE PETITION?

- The concept of a curative petition was evolved in 2002 by a Supreme Court judgment to cure any defect that

may lead to gross miscarriage of justice in the top court's verdict.

- A curative petition may be **filed after a review plea** against the final conviction is dismissed. It is meant to ensure there is **no miscarriage of justice**, and to prevent abuse of process. A curative petition is usually decided by judges in chamber, unless a specific request for an open-court hearing is allowed.
- Curative petition can be entertained if the petitioner establishes there was a **violation of the principles of natural justice**, and that he was not heard by the court before passing an order.
- It will also be admitted where a judge failed to disclose facts that raise the apprehension of bias.
- SC has held that curative petitions must be **rare rather than regular** and entertained with circumspection.
- A curative petition must be accompanied by **certification by a senior advocate**, pointing out substantial grounds for entertaining it. It must be first circulated to a bench of the three senior-most judges, and the judges who passed the concerned judgment, if available. Only when a majority of the judges conclude that the matter needs hearing should it be listed — as far as possible, before the same Bench.

► CONTEMPT OF COURT

The expression 'contempt of court' has not been defined by the Constitution. As per the Contempt of Courts Act 1971, contempt refers to the offence of showing disrespect to the dignity or authority of a court. The act divides contempt into civil and criminal contempt.

- **Civil contempt:** It is willful disobedience to any judgment, decree, direction, order, writ or other processes of a court or willful breach of an undertaking given to the court.
- **Criminal contempt:** It is any publication which may result in -
 - Scandalizing the court by lowering its authority.
 - Interference in the due course of a judicial proceeding.
 - An obstruction in the administration of justice.
- Contempt of Court is a punishable offence and High Court and Supreme Court can provide for certain punishment as per the Act.

Constitutional Provisions

- **Article 129:** Grants Supreme Court the power to punish for contempt of itself.

- **Article 142(2):** Enables the Supreme Court to investigate and punish any person for its contempt.
- **Article 215:** Grants every High Court the power to punish for contempt of itself.

Instances which cannot be said to be Contempt of Court

- Innocent publication or distribution of matter
- Fair and accurate report of judicial proceedings
- Fair criticism of judicial act upon the merits of any case
- When a person makes any statement in good faith concerning the presiding officer of any subordinate court to any other subordinate court or to the High Court.
- A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera *except in the following cases:*
 - (a) where the publication is contrary to the provisions of any enactment for the time being in force;
 - (b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description which is published,
 - (c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to those proceedings.
 - (d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

► NATIONAL JUDICIAL INFRASTRUCTURE AUTHORITY OF INDIA

- To address the issue of deficit of judicial infrastructure in a structured way, the Chief Justice of India was proposed setting up of National Judicial Infrastructure Authority of India (NJIAI) for arrangement of adequate infrastructure for courts.
- The proposed body will be headed by a Governing Body with Chief Justice of India as its Patron-in-Chief.
- Functions: Act as a Central body for laying down the road map for planning, creation, development, maintenance and management of functional infrastructure for the Indian Court System.
- Similar structures are planned to be created at the level of High Courts.

► JUDICIAL DOCTRINES

DOCTRINES	DESCRIPTION
Doctrine of Pith & Substance	<ul style="list-style-type: none"> • Pith denotes 'essence of something' or 'true nature', while substance states 'most significant or essential part of something'. • Doctrine of pith & substance relates to finding out true nature or essence of any legislation or provision.
Doctrine of Colorable Legislation	<ul style="list-style-type: none"> • Used to determine questions of competency to enact a law when a legislature oversteps its conferred power and legislate upon something indirectly which it can't do in a direct manner. • This doctrine limits overstretching or misuse of granted constitutional power in a covert manner.
Doctrine of Severability/ Separability	<ul style="list-style-type: none"> • It is applied to remove certain part of a statute or provisions of law when declared invalid. • Application of this doctrine prevents entire law being declared unconstitutional and only part which is unconstitutional is declared invalid.
Doctrine of Harmonious Construction	<ul style="list-style-type: none"> • Used to avoid any inconsistency, repugnancy or conflict within two or more statutes or provisions of constitution. • In case of contradiction, proper harmonization is to be done between conflicting parts so that one part does not defeat purpose of another. • If reconciling differences is not possible then interpretation must be done to give effect to both provisions in a harmonious manner. • Harmonising different laws or provisions should not render either provision or law as useless.
Doctrine of Basic Structure	<ul style="list-style-type: none"> • Basic Structure doctrine was expounded in landmark judgment of Kesavananda Bharati Case. • Basic Structure of Constitution cannot be altered or amended by

	<p>Parliament or Executive.</p> <ul style="list-style-type: none"> • Basic Structure is not an exclusive list, and things can be added by Judiciary in future in list of Basic Structure. <p>Elements of Basic Structure</p> <ul style="list-style-type: none"> • Supremacy of the Constitution • Republican and democratic form of government. • Secular character of constitution • Separation of powers between legislature, executive & judiciary • Federal character of constitution. • Mandate to build welfare state contained in the DPSP. • Sovereignty and unity and integrity of the nation. • Essential features of the individual freedoms • Judicial review (Minerva Mills Judgement) • Secularism (S R Bommai Case) 		<p>resources.</p> <ul style="list-style-type: none"> • Any sovereign authority cannot transfer public trust properties to a private party if such transfer of natural resources would interfere with public interest. • Important Case: SPAN MOTEL CASE – (M.C. Mehta v Union of India, 1997)
<p>Public Trust Doctrine</p>	<ul style="list-style-type: none"> • Public trust doctrine is a traditional common law doctrine, rooted in English and Roman law that has for over a century served as a limit on government power over natural resources. • The doctrine limits government and private individuals' authority to use and transfer public trust resources when doing so would interfere with the purposes for which the resources were held in trust. <p>Doctrine serves two purposes:</p> <ul style="list-style-type: none"> • Mandates affirmative state action for effective management of resources. • Empowers citizens to question ineffective management of natural 		

ELECTIONS

► LINKING AADHAAR WITH EPIC

Union government has introduced the Election Laws (Amendment Bill) 2021 as part of electoral reforms to link electoral rolls with Aadhaar ecosystem to authenticate voters. The Bill amends both Representation of People Act 1950 and 1951. In 2020, the government notified the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 (Good Governance Rules) to broaden the scope of Aadhaar authentication.

Changes Introduced – RPA, 1950 & 1951

1. Empowering Electoral Registration Officer

Previous Law	Amendment Introduced
<ul style="list-style-type: none"> Section 23 of Representation of People Act, 1950 provides that a person may apply to the electoral registration officer for inclusion of their name in the electoral roll of a constituency. 	<ul style="list-style-type: none"> the Electoral Registration Officer may ask for Aadhaar Number of a person - <ul style="list-style-type: none"> to verify and establish the identity of the person to authenticate entry in electoral roll and to weed out multiple enrollment of the same person in same or different constituencies Note: Application for inclusion of name in the electoral roll shall not be denied or name from the electoral roll shall not be deleted if an individual does not furnish Aadhaar Number but furnishes other details as prescribed by Election Commission.

2. Qualifying date for enrolment in Electoral Roll

Previous Law	Amendment Introduced
<ul style="list-style-type: none"> RPA 1950 prescribes 	<ul style="list-style-type: none"> The Bill provides four

1st January of the year in which the roll is prepared or revised as the qualifying date. This makes it difficult for new voters turning 18 as they have to wait out for another year or the year in which electoral roll are prepared.

qualifying dates for registration of name in the electoral rolls in a calendar year, which will be the first day of January, April, July and October.

3. Requisitioning of premises for Election Purpose

Previous Law	Amendment Introduced
RPA, 1951 permits the state government to requisition premises needed or likely to be needed for being used as polling stations, or for storing ballot boxes after a poll has been conducted.	The Bill expands the purposes for which such premises can be requisitioned including using the premises for counting, storage of voting machines and poll-related material, and accommodation of security forces and polling personnel.

4. Gender Neutral Provisions

Previous Law	Amendment Introduced
<ul style="list-style-type: none"> As per RPA, 1950, Wives of persons holding service qualifications are also deemed to be ordinarily residing in the same constituency of their husband. The 1951 Act enables the wife of a person holding a service qualification to vote either in person or by postal ballot. 	<ul style="list-style-type: none"> The Bill replaces the term 'wife' with 'spouse' in both the Acts.

THE AADHAAR AUTHENTICATION FOR GOOD GOVERNANCE (SOCIAL WELFARE, INNOVATION, KNOWLEDGE) RULES, 2020

- Purposes for Aadhaar authentication** - Central Government may allow Aadhaar authentication by requesting entities in the interest of good governance,

preventing leakage of public funds, promoting ease of living of residents and enabling better access to services for them, for the following purposes, namely:

- *usage of digital platforms to ensure good governance*
- *prevention of dissipation of social welfare benefits; and*
- *enablement of innovation and the spread of knowledge*
- **Aadhaar authentication shall be done on a VOLUNTARY BASIS**
- On receipt of proposal of Aadhaar Authentication, if UIDAI is satisfied, then it shall inform the Central Government that the requesting entity may be allowed to perform Aadhaar authentication
- Thereafter, the Ministry or the Department of the Government of India or the State Government may be authorised by the Central Government to allow for Aadhaar authentication.

► LIMIT ON ELECTION EXPENSE ENHANCED

The Union ministry of Law and Justice has approved raising the election expenditure ceiling by a candidate as proposed by Election Commission. Failure to submit election expense can amount to disqualification of the candidate.

Earlier Decisions on Enhancing Expenditure limit for individual Candidates

- Considering the factor of COVID-19, the Ministry of Law & Justice on 19.10.2020 had earlier notified an amendment in Rule 90 of Conduct of Elections Rules, 1961 enhancing the existing expenditure limit by 10%.

ELECTORAL LAWS

- **Section 77 of Representation of People Act, 1951** mandates every candidate or his election agent to maintain an account of all expense incurred for the election authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive.
- The total of the said expenditure shall not exceed such amount as may be prescribed under Rule 90 of Conduct of Election Rules.
- **Rule 90 – Conduct of Election Rules** – provides for a maximum limit on election expense as mandated under Section 77 of RPA 1951. The maximum limit is different for Lok Sabha and Assembly constituencies.

Committee Constituted by EC in October, 2020

- Election Commission had also constituted a committee comprising Sh. Harish Kumar, Ex. IRS and DG (Investigation), Sh. Umesh Sinha, Secretary General and DG (Expenditure) to examine the issues concerning expenditure limit for a candidate in view of increase in number of electors and rise in Cost Inflation Index and other factors.
- The terms of Reference for the Committee were:
 - To assess the change in number of electors across the States/Union Territories and its bearing on expenditure.
 - To assess the change in Cost Inflation Index and its bearing on the pattern of expenditure incurred by the candidates in recent elections.
 - To seek views/inputs of the political parties and other stakeholders.
 - To examine other factors which may have bearings on expenditure

Recommendations of the Committee Accepted by the Election Commission

- **Grounds considered by the Committee**
 - Increase in number of electors - from 2014 to 2021 from 834 million to 936 million - up by 12.23 %
 - Increase in Cost Inflation Index since 2014-15 to 2021-22 from 240 to 317 - up by 32.08%.
 - Changing modes of election campaign - which is gradually shifting to virtual campaign.
- **The Election Commission has accepted the recommendations of the Committee** and has decided to enhance the existing election expenditure limit for candidates.
- **Accordingly, revised limits have now been notified by Ministry of Law, Justice and Legislative Department, which are as under:**

For Parliamentary Constituencies (PCs)	
Earlier expenditure limit (2014)	Enhanced expenditure limit now
Rs. 70 Lakhs	Rs. 95 Lakhs
Rs. 54 Lakhs	Rs. 75 Lakhs

For Assembly Constituencies (ACs)	
Earlier expenditure limit (2014)	Enhanced expenditure limit now
Rs. 28 Lakhs	Rs. 40 Lakhs

Rs. 20 Lakhs	Rs. 28 Lakhs
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Representation of People Act, 1951	Conduct of Election Rules, 1961
<p>Section 77</p> <ul style="list-style-type: none"> mandates every candidate or his election agent to maintain an account of all expense incurred for the election authorized by him or by his election agent between the date on which he has been nominated and the date of declaration of the result thereof, both dates inclusive. <p>Section 78</p> <ul style="list-style-type: none"> mandates every contesting candidates § who has won the election to lodge with the District Election Officer their account of election expense within 30 days of winning the election Such election expense account shall be a true copy of the account kept by the candidate or by his election agent under section 77. <p>Section 10A – Disqualification for failure to lodge account of election expenses</p> <ul style="list-style-type: none"> If the Election Commission is satisfied that a person– has failed to lodge an account of election expenses within the 	<p>Rule 86 – Particulars of account of election expenses (under sec 77 of RPA, 1951)</p> <ul style="list-style-type: none"> Date and nature of expenditure – eg – printing, campaign, Amount paid & outstanding Serial number of vouchers & bills Name and address of the person/company <p>Rule 87 – Notice by District Election Officer for inspection of accounts</p> <p>Rule 88 – Inspection of account is allowed by any person including its attested copies</p> <p>Rule 89 – District Election Officer shall submit a Report to EC regarding submission/omission of election expenses</p> <p>Rule 89(8) - Report by DEO to EC on election expense by the Candidate</p> <ul style="list-style-type: none"> If, after considering the representation submitted by the candidate and the comments made by the district election officer and after such inquiry conducted by EC If the EC thinks that, there is no justification or good reason for failure to lodge election expense account with the DEO – the EC shall declare him to be disqualified under section 10A of RPA, 1951 for a period of 3 years from the date of the

<p>time and in the manner required by or under this Act; and</p> <ul style="list-style-type: none"> has no good reason or justification for the failure Election Commission shall, by order published in the Official Gazette, <u>declare him to be disqualified and any such person shall be disqualified for a period of 3 years from the date of the order.</u> 	<p>order.</p>
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► VIOLATION OF MODEL CODE OF CONDUCT

Violation of Model Code of Conduct is often alleged mostly by members of opposition for misuse of official functionalities for election work, releasing additional funds to secure votes for other purposes prohibited by the Code.

MODEL CODE OF CONDUCT (MCC)

- MCC is the **set of guidelines** issued by the Election Commission of India (EC) for the **conduct of political parties and candidates during** elections.
- MCC has evolved with the **consensus of political parties** who have consented to abide by the set of guidelines embodied in the code.
- In the case of *Union of India v Harbans Singh Jalal and Others*, Supreme Court ruled that MCC would come into force the moment the Election Commission issues the press release, which precedes the notification of elections.
- Thus, MCC is **operational from the date the election schedule is announced** till the date that results are announced. (**Note* MCC is NOT APPLICABLE from the day Elections are Notified**)
- The MCC is **not enforceable by law**. However, certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Representation of the People Act, 1951.
- Kerala was the first state** to adopt a code of conduct for elections in 1960 assembly elections.

- MCC does not have a statutory backing and hence cannot be enforced legally.
- However, certain provisions of the MCC may be enforced through invoking corresponding provisions in other laws such as IPC, Cr.PC, Election laws – RPA, 1951 etc.
- MCC has 8 Parts. Part 8 has been added through an amendment based on recommendations of **Umesh Sinha Committee**.

Part of MCC	Subject for guidance of political candidates & candidates
Part 1	General Conduct
Part 2	Meetings
Part 3	Procession
Part 4	Polling Day
Part 5	Polling Booth
Part 6	Observers
Part 7	Party in Power
Part 8	Guidelines on Election Manifestos

NEW GUIDELINES ON ELECTION MANIFESTO

- The Election Commission by amending MCC has prohibited political parties from releasing their manifestos in the last 48 hours leading up to voting in each phase of the coming Lok Sabha elections.
- The EC's decision stems from the recommendation **Umesh Sinha Committee** set up to revisit the MCC in the wake of rapid use of social media.
- The Committee constituted under the chairmanship of **Sr. Deputy Election Commissioner Sh. Umesh Sinha** to review and suggest modifications and changes in the provisions of the **Section 126** and other sections of the **Representation of the People Act 1951**, provisions of **Model Code of Conduct** and any other ECI instruction in this regard.
- **Section 126 of the Representation of the People (RP) Act, 1951** which prohibits any form of poll campaign in the last 48 hours leading up to voting), and other related provisions in the wake of rapid media expansion.

WHAT CAN AND CANNOT BE DONE AFTER ANNOUNCEMENT OF MCC

- **Combining Election & Official Work for Minister – excluding the Prime Minister.**

- **Government Transport not to be used** - including official air-crafts, vehicles etc.
- **Ban on Transfers & Postings** of all officers/officials directly or indirectly connected with the conduct of the election. Transfer can only be done if considered necessary with prior approval of Election Commission.
- **If transfer prior to MCC Announcement, but the officer has not taken charge** - then such officer cannot take charge of his new office after MCC has been announced.
- **Minister cannot Summon Officer in their Constituency** for any official discussion during the period of elections.
- **Exception** - Minister or Chief Minister can undertake an official visit to a constituency in case of failure of law and order, natural calamity or any such emergency which requires personal presence of such Ministers/Chief Ministers for the specific purpose of supervising review/salvage/relief.
- **Chief Minister/Minister/Speaker can attend a "State Day" function of a State – provided they do not make any political speech on the occasion and the function is to be conducted only by Govt. officials.**
- **Advertisement depicting the photograph of Chief Minister/Minister/Speaker at such State Day function shall not be released.**

► PLEA TO EXTEND DATES FOR STATE ELECTIONS

Amid rising cases of omicron, concerns were raised by Allahabad High Court on the conduct of election in states and it had urged the Prime Minister and Election Commission to immediately ban rallies and public meetings of political parties and consider postponing the Assembly election as according to the Court, it is more important to save lives. However, taking note of the judgment of Allahabad High Court, Election Commission has stated that all parties in Uttar Pradesh want the Assembly elections to be held as per schedule and also the fact that constitution does not allow for extension of state legislative assembly or even Parliament beyond a period of five years.

CONSTITUTIONAL PROVISIONS

- **Article 83 - Duration of Houses of Parliament** - The House of the People, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the House.

- Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.
- **Article 172 - Duration of State Legislature**
- Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly.
- Provided that the said period may, while a Proclamation of Emergency is in operation, be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

UNDERSTANDING THE CONSTITUTIONAL PROVISIONS

ILLUSTRATION

- The Union Cabinet chaired by the Prime Minister approved the Resolution advising the President to dissolve the Sixteenth Lok Sabha, which was constituted on 18th May, 2014.
- The first meeting of the Sixteenth Lok Sabha was held on June 4, 2014, when members were administered oath and affirmation. Hence, the life of 16th Lok Sabha expired on June 3, 2019, unless the President dissolved it earlier.

UNDERSTANDING ARTICLE 83(2) & ARTICLE 172(1)

- Thus, constitutionally speaking, there is no provision to extend the duration of Lok Sabha or State Assembly unless proclamation of emergency under Article 352 is in operation.
- This is because completion of 5 years for both Lok Sabha and State Legislative Assemblies operates as dissolution of the House.
- This also means that Election Commission by the operation of Article 324 must conduct elections so that a new government is elected on completion of the period of 5 years.

► EC CHANGES DATES FOR PUNJAB POLLS

Punjab Chief Minister wrote a letter to Election Commission and urged them to postpone the February 14 Assembly polls by six days as lakhs of devotees were to visit Varanasi to celebrate Sri Guru Ravidass Jayanti on February 16. Election

Commission after taking inputs from the State Government and Chief Electoral Officer rescheduled the General Elections to Legislative Assembly of Punjab under Section 153 of the Representation of the People Act.

SECTION 153 – REPRESENTATION OF PEOPLE ACT, 1951

- **Section 153 states** - *It shall be competent for the Election Commission for reasons which it considers sufficient, to extend the time for the completion of any election by making necessary amendments in the notification issued by it.*
- Thus, **Section 153** of the Representation of the People Act allows the poll panel to extend the time for completing an election, but such extension should not go beyond the date of the normal dissolution of the Lok Sabha or the Assembly as mandated under Article 83 and 172 respectively.
- In 1991, the Commission, under this provision read with Article 324 of the Constitution, postponed parliamentary elections for three weeks following the assassination of former Prime Minister Rajiv Gandhi during his campaign in Tamil Nadu.
- **Under Article 172** - Every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years from the date appointed for its first meeting and no longer and the expiration of the said period of five years shall operate as a dissolution of the Assembly.

► ELECTIONS TO BODOLAND TERRITORIAL COUNCIL – BTC

Polling was conducted for Bodoland Territorial Council (BTC) in December 2021. Assam's 40-seat BTC threw up a fractured mandate. The Bodoland People's Front (BPF) won 17 seats, followed by United People's Party Liberal (UPPL) 12, BJP nine, Congress one and Gana Suraksha Party one.

- The Bodoland Territorial Council was constituted under the *Sixth Schedule to the Constitution of India in the year 2003* after the signing of Memorandum of Settlement on 10th February 2003 between the Government of India, the Government of Assam and Bodo Liberation Tigers, to fulfill economic, educational and linguistic aspiration and the preservation of land-rights, socio-cultural and ethnic identity of the Bodos; and to speed up the infrastructure in BTC area.
- **BTC currently has control over 30 subjects** such as education, forests, horticulture but no jurisdiction

over the police, revenue and general administration departments, which are controlled by the Assam government.

- **Communities residing in BTR Area** - Bodos, Assamese, Bengalis, Koch-Rajbongshis, Rabhas, Garos, Adivasis, Muslims and Nepalis, etc.

Bodoland Territorial Council		
Members of BTC	Categories of Members	Number of Members
Elected Members	Scheduled Tribes	30
	Non-Tribal Communities	5
	Open Communities	5
Nominated Members		6
Total BTC Members		46

► ELECTION PETITION OF WB CM TO BE HEARD BY HIGH COURT

Election Petition filed under Representation of People Act 1951 by Mamata Banerjee on her loss to Suwendu Adhikari from Nandigram constituency is due to be heard next week by Calcutta High Court.

SETTLEMENT OF ELECTION DISPUTES

- **Section 80 of RPA 1951** - Any issue with respect to an election must be presented through an election petition.
- **Section 80A** - High Court of a particular constituency (where such disputes have arisen) shall have the jurisdiction to try such election petition. Election petition can be submitted by any candidate or **elector** within 45 days of declaration of results.

FILING OF ELECTION PETITION

- **Filing of Election Petition** - An election petition can be filed by any candidate, or an elector relating to the election personally, to the authorized officer of the High Court.
- **Time Period** - An election petition calling in question an election shall be filed within the time period of forty-five days from the date of declaration of results.
- **Particulars** - An election petition must consist of a concise statement of the material facts stating the claim of the petitioner, particulars of **corrupt practice**

alleged by the petitioner including date and place of commission of such offence.

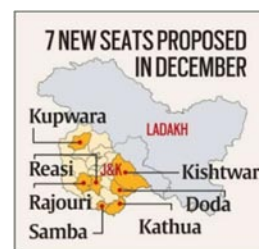
CORRUPT PRACTICE - SECTION 123 OF RPA, 1951 DESCRIBES THE FOLLOWING AS CORRUPT PRACTICE

- Bribery
- Undue influence
- Direct or indirect interference or attempt to interfere on the part of the candidate or his agent or by any other person with the consent of the candidate.
- Appeal by a candidate on the ground of his religion, race, caste, community or language.
- Use of, or **appeal to religious symbols** or the use of, or **appeal to national symbols**, such as the national flag or the national emblem to enhance the prospects of the election of that candidate or to affect the election prospect of any rival candidate.
- The promotion of, or **attempt to promote, feelings of enmity or hatred** between different classes of the citizens of India on grounds of religion, race, caste, community, or language, by a candidate or his agent or any other person.
- The propagation of the practice or the commission of sati or its glorification for election prospects.
- Publication of any **false statements** about rival candidates - including their personal character and conduct.
- Getting any assistance from any gazetted officer to enhance election prospects.

Punishment: Any person who in connection with an election under this Act promotes or attempts to promote on grounds of religion, race, caste, community or language, feelings of enmity or hatred, between different classes of the citizens of India shall be **punishable with imprisonment for a term which may extend to three years or with fine or with both.**

► OPPOSITION ON REDRAWING CONSTITUENCIES IN J&K

Delimitation Commission has proposed significant changes in the electoral map of Jammu and Kashmir and Ladakh. In the draft paper, the Commission has proposed changes in Baramulla, Kupwara, Srinagar, Kulgam and Anantnag districts of the Kashmir



division. The changes proposed by the Delimitation Commission in the Second Draft was sent to the five

associate members - Farooq Abdullah, Hasnain Masoodi and Akbar Lone (Lok Sabha MPs from the National Conference) and Jitendra Singh and Jugal Kishore (BJP MPs). The associate members have been asked to submit their views by February 14 after which the report would be put in the public domain.

J&K REORGANISATION ACT 2019

- It provides for delimiting the constituencies of Jammu and Kashmir and Ladakh by a Delimitation Commission constituted under section 3 of the Delimitation Act, 2002.
- The Commission headed by retired Supreme Court judge Justice Ranjana Desai with CEC Sushil Chandra and State Election Commissioner K.K. Sharma was set up in March 2020.

Opposition from Associate Members of National Conference (NC)

NC has summarily rejected the proposal of the Commission on redrawing the constituency boundaries. NC also opposed when the Delimitation Commission submitted its First Draft and in its response in December 2021, it suggested to put on hold the delimitation exercise because of the following reasons:

- **Abrogating Article 370 is still Sub-judice**
- **J&K Reorganisation Act has become Constitutionally Suspect - *If any Act is under judicial custody and the apex court is seized of the matter, it can be termed as a constitutionally suspect law.***
- **Delimitation Commission has increased the seat without considering "population" as a major criterion.**
- **Division on grounds of Difficult Terrain Challenged**

DELIMITATION COMMISSION

- **Article 82** of the Indian Constitution has empowered Parliament to legislate Delimitation Acts from time to time which constitutes and empowers Delimitation Commission to fulfill the constitutional mandate.
- **Constitution 84th and 87th Amendment** led to the enactment of Delimitation Act, 2002. The amendment fixed the allocation of seats in Lok Sabha based on 1971 Census and division of each State into territorial constituencies based on 2001 Census.
- **Important Role and Function of Delimitation Commission**
 - Ensure balance of representation to achieve the ideals of 'One Vote One Value'
 - Adequate representation to vulnerable sections including Scheduled Caste and Scheduled Tribes.

- Fair division of geographical areas to ensure that communities do not go unrepresented.
- **Four Delimitation Commission** have been constituted since independence:
 - **1952** - under Delimitation Commission Act, 1952
 - **1963** - under Delimitation Commission Act, 1962
 - **1973** - under Delimitation Commission Act, 1972
 - **2002** - under Delimitation Commission Act, 2002
- **Orders of Delimitation Commission cannot be called in question before any Court of law.**
- The copies of its orders are laid before the House of People and the State Legislative Assembly concerned, but no modifications are permissible therein by them.
- **Composition of Delimitation Commission**
 - one member, who shall be a person who is or has been a Judge of the Supreme Court, to be appointed by the Central Government who shall be the Chairperson of the Commission;*
 - Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner, ex officio;*
 - State Election Commissioner of concerned State, ex officio.*
- The Commission shall determine its own procedure and shall, in the performance of its functions, have all the powers of a civil court under the Code of Civil Procedure.

► POSTAL BALLOT & ABSENTEE VOTERS

Postal ballot allows such person to vote who cannot be present at their voting booth on the day of voting. Voting through postal ballot is allowed to **Service Voters, Absentee Voters, Voters on Election Duty and Voting by certain classes of persons determined by EC.**

SERVICE VOTERS

- Service voter is a voter having service qualification. According to the provisions of sub - section (8) of **Section 20 of Representation of People Act, 1950**, service qualification means
 - Being a member of the armed Forces of the Union ; or
 - Being a member of a force to which provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modification ;
 - Being a member of an Armed Police Force of a State, and serving outside that state; or

(d) Being a person who is employed under the Government of India, in a post outside India.

- Election Commission in Lok Sabha Elections of 2019 allowed voting through Electronically Transmitted Postal Ballot System (ETPBS). The service voters were sent postal ballots electronically one way to save processing time, resources and avoid human errors.

ABSENTEE VOTERS

- Section 60(c) – RPA, 1951 - Absentee voter' means a person belonging to such class of persons who is employed in essential services and includes an elector belonging to the class of senior citizen or persons with disability.
- 'Person with Disability' means a person flagged as person with disability in the data base for the electoral roll;
 - 'Senior Citizen' for the purpose of this Part means an elector belonging to the class of absentee voters and is above 80 years of age;
 - Engagements in various capacities in the discharge of Essential Services include railways, state transports, aviation etc.
 - Section 60 of RPA, 1951 provides for Special procedure for voting by certain classes of persons

Voting by certain classes of persons determined by EC

- It includes such persons as Election Commission may determine including any person subjected to preventive detention under any law in India.

► EC TO EXTEND E-POSTAL FACILITY TO OVERSEAS VOTERS

Election Commission of India (ECI) wrote to the Law Ministry, proposing to extend the facility of postal ballots to (eligible) overseas, non-resident Indians (NRIs) for the Assembly elections in Assam, Kerala, Puducherry, Tamil Nadu and West Bengal in 2021. However, as of now the Ministry of Law and Justice has not approved the idea.

SERVICE VOTERS

Service voter is a voter having service qualification. According to Section 20 (8) of Representation of People Act, 1950, *service qualification means:*

- (e) Being a member of the armed Forces of the Union; or
- (f) Being a member of a force to which provisions of the Army Act, 1950 (46 of 1950), have been made applicable whether with or without modification;
- (g) Being a member of an Armed Police Force of a State, and serving outside that state; or

(h) Being a person who is employed under the Government of India, in a post outside India.

- Election Commission during the Lok Sabha Elections of 2019 allowed voting through *Electronically Transmitted Postal Ballot System (ETPBS)*.
- The service voters were sent postal ballots electronically one way to save processing time, resources and avoid human errors.

PRIOR TO 2010 - VOTING FOR AN INDIAN CITIZEN

STAYING ABROAD

- An Indian citizen who was an eligible voter and was residing abroad for more than six months owing to employment, education or otherwise was not allowed to vote.
- This was because the NRI's name was deleted from electoral rolls if he or she stayed outside the country for more than six months at a stretch.

POST 2010 – AMENDMENT IN RPA, 1950 (ADDING SECTION 20A)

- The Representation of the People (Amendment) Act, 2010 - eligible NRIs who had stayed abroad *beyond six months* were allowed to vote, *but only in person at the polling station* where they have been enrolled as an overseas elector. (Section 20A)
- Overseas Indian citizens like other Indian citizens are therefore allowed to vote but have to be physically present.
- In the case of overseas voters, their address mentioned in the passport is taken as the place of ordinary residence and chosen as the constituency for the overseas voter for enrollment.

► ELECTRONICALLY TRANSMITTED POSTAL BALLOT SYSTEM (ETPBS)

- Electronically Transmitted Postal Ballot System (ETPBS) is the one-way electronic transmission of the Postal ballots to the Service Voters.
- The Service Voter then cast their vote and send it to the respective returning officer via Post. The complete process is secured by way of multiple checks and transmission protocol to ensure safe transmission.
- Upon receipt of the postal ballot at the counting centres, the returning officer validates the receipt by a series of QR codes with that of the transmitted system.

FUNCTIONALITY - ETPBS

- Returning Officer generates ballot paper electronically by a specific desktop application. This ballot then gets encrypted in the system is ready to be sent.
- **The first functionality** is the ability to generate the postal ballot online for transmitting through ETPBS.
- Through ETPBS system, the ballots are automatically assigned to Service Voters based upon their constituency and get then gets transmitted.
- The unit officer downloads the Postal ballots on behalf of the service voter. These downloaded ballots will be password protected.
- The downloaded Postal Ballot can now be e-transmitted / hand-delivered using their secured network/infrastructure to the individual service voters.
- The PIN will be transmitted/ dispatched to the individual service voters by the Record Officer to ensure that the downloaded Postal Ballot is opened by the concerned service voter only.
- Thus ETPBS transmits the Postal ballot from the returning officer to the service voters electronically by a series of security protocol.

TWO WAY ELECTRONIC VOTING

- Two-way electronic transmission of vote envisages that - a registered voter from any location in India, once his identity is proved, will be able to cast his vote electronically through a secure encrypted system and the same will reach the designated returning officer for counting.
- EC is currently experimenting by using blockchain technology to facilitate two way electronic voting.

► NATIONAL VOTERS DAY CELEBRATED

On the eve of 12th National Voters Day (NVD) on 25th January, 2022, Election Commission announced number of measures as future vision for Indian voters. The theme for 2022 NVD is "Making our Elections Inclusive, Accessible and Participative" envisages active and participative voters during elections. It also focuses on ECI's commitment towards conducting elections safely during the COVID-19 pandemic.

WHY IS NATIONAL VOTERS DAY CELEBRATED ON 25TH JANUARY EVERY YEAR?

- The National Voters' Day has been celebrated on January 25 every year since 2011, all across the

country to mark the foundation day of Election Commission of India, i.e. 25th January 1950.

- The main purpose to celebrate National Voters Day celebration is to *encourage, facilitate and maximize enrolment, especially for the new voters.*

ROLE OF ELECTION COMMISSION

- NVD 2022 carries a special significance as it marks 70 Years of the Journey of Indian Elections and happens to be a celebration in the 75th year of Indian Independence.
- This period of seven decades and a half has been a witness to the emergence, evolution and progress of a robust, vibrant, inclusive, inclusive and participative electoral democracy in India in which the
- Election Commission of India has played a pivotal role as a constitutional entity.

► MUNICIPAL POLLS DELAYED IN DELHI

Aam Aadmi Party has alleged that centre has forced State Election Commissioner to postpone elections to municipal bodies in Delhi on the pretext of merging of North, South and East Municipal Corporation in Delhi.

STATE ELECTION COMMISSION - SEC

- SEC has been constituted under **Article 243K** and **Article 243ZA** and has been entrusted with the function of conducting free, fair and impartial elections to the local bodies in the state.
- **Article 243K & 243ZA** provide that the superintendence, direction and control of the preparation of electoral rolls for, and the Conduct of all elections to the Panchayats and Municipalities shall vest in the State Election Commission consisting of the State Election Commissioner.
- **Article 243K ensures independence of State Election Commissioner**
 1. Appointed by the Governor
 2. **Removal Procedure:** as that of Judge of High Court – removed by President
 3. Salary and Status and allowance of a Judge of a High Court.
 4. **Conditions of service cannot be varied to his/her disadvantage after appointment.**
- **Mandate & Functions of SECs are vested with powers of superintendence, direction and control for:**

- Preparation of electoral rolls
- Conducting elections for Panchayats & Municipalities
- Conducting mid-term or bye-elections for local bodies.
- Delimiting constituencies for local election
- Determine seats to be reserved for SC, ST, Tribals and Women
- Safeguards to Election Commissioners under Constitution - Article 243K (2) ensures independent functioning of State Election Commissioner as: He cannot be removed at will by the state government before his tenure.
- He can only be removed as judge of High Court is removed – through a motion passed in both the houses of parliament.
- Conditions of service cannot be varied to his disadvantage after appointment.

► VVPAT & EVM

Time and again the use of Electronic Voting Machine (EVM) has been distrusted as opposition believes that they can be hacked. To remove the suspicion and increase credibility of EVM, Supreme Court during the 2019 General Election to Parliament suggested to increase Voter Verified Paper Audit Trail (VVPAT) verification to five random Electronic Voting Machines (EVMs) in each Assembly segment/constituency.

ABOUT VVPAT

- Voter Verifiable Paper Audit Trail (VVPAT) is an independent system attached with the Electronic Voting Machines (EVMs) that allows the voters to verify that their votes are cast as intended.
- When a vote is cast, a slip is printed containing the serial number, name and symbol of the candidate and remains exposed through a transparent window for 7 seconds. Thereafter, this printed slip automatically gets cut and falls in the sealed drop box of the VVPAT.
- VVPATs use thermal printers which can print only on one side of thermal paper. The print is fully visible through the viewing window.
- The paper rolls used in VVPATs have only one-sided thermal coating and hence can be printed only on one side. The VVPAT paper print lasts at least for five years.
- VVPAT does not need electricity and operates on battery.

- VVPATs with EVMs were used for first time in a bye-election from 51-Noksen (ST) Assembly Constituency of Nagaland.

ABOUT EVM

- **Electronic Voting Machine (EVM)** is an electronic device for recording votes.
- **EVM has 2 Units – Control Unit and Balloting Unit** – joined by a five-meter cable.
- The Control Unit is placed with the Presiding Officer or a Polling Officer and the Balloting Unit is placed inside the voting compartment.
- Instead of issuing a ballot paper, the Polling Officer in-charge of the Control Unit will release a ballot by pressing the Ballot Button on the Control Unit.
- This will enable the voter to cast his vote by pressing the blue button on the Balloting Unit against the candidate and symbol of his choice.
- EVMs were first used in 70-Parur Assembly Constituency of Kerala in the year 1982.
- EVMs do not require electricity. EVMs run on an ordinary battery assembled by Bharat Electronics Limited/Electronics Corporation of India Limited.
- An EVM being used by ECI can record a maximum of 2,000 votes.
- In case of M2 EVMs (2006-10), EVMs can cater to a maximum of 64 candidates including NOTA. There is provision for 16 candidates in a Balloting Unit. If the total number of candidates exceeds 16, more balloting units can be attached (one per 16 candidates) up to a maximum of 64 candidates by connecting 4 Balloting Units.
- However, in case of M3 EVMs (Post 2013), EVMs can cater to a maximum of 384 candidates including NOTA by connecting 24 Balloting Units.
- If an EVM of a particular polling station goes out of order, the same is replaced with a new one. The votes recorded until the stage when the EVM went out of order remains safe in the memory of the Control Unit and it is perfectly fine to proceed with the polling after replacing the EVM with new EVM and there is no need to start the poll from the beginning.
- On counting day, votes recorded in both Control Units are counted to give the aggregate result of that polling station.
- The EVMs have been devised and designed by the **Technical Experts Committee (TEC)** of the Election Commission in collaboration with two Public Sector undertakings viz., Bharat Electronics Ltd., Bangalore

and Electronic Corporation of India Ltd., Hyderabad. The EVMs are manufactured by the above two undertakings.

► VOTING RIGHTS OF PRISONERS

Delhi High Court while hearing a petition has denied right to vote for prisoners.

- **Article 326:** The elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage.
- **Grounds of disqualification:** However, Article 326 also provides that such citizens shall be disqualified to vote who otherwise are disqualified under the Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice.
- **Section 62(5) of the RP Act of 1951** mandates that “no person shall vote at any election if he is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise, or is in the lawful custody of the police”.
- The provisions however exempt a person held under **preventive detention** from this rigor.

► NOTA

- **NOTA -None of the Above** - If a voter chooses to press NOTA it indicates that **the voter has not chosen to vote for any of the party.**
- The option of **NOTA for Lok Sabha** and assembly elections was prescribed by the SC **in 2013. The option of NOTA in RS polls** was introduced by the EC **in 2014.**
- India became the 14th country to institute **negative voting.**
- Earlier, in order to cast a negative ballot, a voter had to inform the presiding officer at the polling booth. A NOTA vote doesn't require the involvement of the presiding officer.
- **State Election Commission of Haryana** in compliance with the Supreme Court's directive in PUCL v Union of India, has issued an order regarding application of NOTA option in the local body elections. As per the notification, **NOTA shall be treated as a 'Fictional Electoral Candidate'** while declaring the election results. So, in case, a contesting candidate and the "Fictional Electoral Candidate" i.e. NOTA receive highest equal number valid votes then the contesting

candidate (not NOTA) shall be declared as elected. However, if in any election, all the contesting candidates individually receive lesser votes than the 'Fictional Electoral Candidate' i.e. NOTA, then none of the contesting candidates will be declared as elected and re-election shall be held for the seat.

► REVEALING NAME OF ELECTORAL BOND DONORS NOT IN PUBLIC INTEREST: CIC

The Central Information Commission (CIC) has held that the disclosure of identity of electoral bond scheme donors will not serve any larger public interest and will violate provisions of the Right to Information Act itself.

SECTION 8(1)(E) OF RTI ACT

- Certain information's are exempted under provisions of **section 8 (1) (e) and (j) of RTI Act** from disclosure.
- CPIO has the discretionary power to ascertain whether **larger public interest** is served or not on disclosure of certain information available to a person in his fiduciary capacity.

FEATURES OF ELECTORAL BONDS

The concept of electoral bond was introduced in the **Budget of 2017-18** for political funding. Electoral Bond is a **bearer Banking Instrument to be used for funding eligible Political Parties.**

- Electoral Bonds **may be purchased by a person, who is a citizen of India or incorporated or established in India.** A person being an individual can buy Electoral Bonds, either singly or jointly with other individuals.
- The purchaser would be allowed to buy Electoral Bonds only on **fulfillment of all KYC norms** and by making payment from a bank account. It will not carry the name of payee.
- Political parties are allotted a **verified account** by the Election Commission and all the electoral bond transactions are done **through this account only.**
- Only **political parties registered under Section 29A** of the Representation of the Peoples Act, 1951 and has **secured no less than one per cent votes in the last Lok Sabha elections are eligible to receive electoral bonds.**
- Bond(s) would be issued/purchased for any value, in multiples of Rs.1,000, Rs.10,000, Rs.1,00,000, Rs.10,00,000 and Rs.1,00,00,000 from the Specified Branches of the **State Bank of India (SBI).**

- Electoral Bonds shall be valid for **fifteen days from the date of issue**.

DEMERITS OF ELECTORAL BONDS

- Identity of Donor Unknown
- No Upper Limit for Donation
- Strengthen Corrupt Nexus
- Aid Corruption & Red Tapism
- Formation of Shell Companies to route funds
- Restrictions on Company Removed
- Lack of Transparency
- FCRA Amendment

► SYSTEMATIC VOTERS'

EDUCATION AND ELECTORAL PARTICIPATION PROGRAM (SVEEP)

ECI highlighted its flagship program, SVEEP in Conference on 'Making our Elections Inclusive and Accessible'

- SVEEP, is the flagship program of the Election Commission of India **started in 2009** for voter education, spreading voter awareness and promoting voter literacy in India.
- SVEEP is designed according to the **socio-economic, cultural and demographic profile of the state as well as the history of electoral participation** in previous rounds of elections and learning thereof.

► INDELIBLE INK

Election Commission had allowed the government to use indelible ink to mark people who were quarantined during COVID.

- Indelible Ink (also called voting ink) refers to the **violet-coloured ink in India** that is applied on a voter's forefinger after they exercise their vote.
- Indelible Ink is put on the left hand finger nail of the voter.
- It is a **solution of Silver Nitrate** which stains the skin on exposure to ultraviolet. **Silver nitrate** reacts with the salt present on our skin to form silver chloride which is **not soluble in water** and hence cannot be easily washed or removed. It stays for a few months.
- In India, **Mysore Paints and Varnish Limited (MPVL)** specializes in manufacture and supply of quality Indelible Ink. This is done in association with the Election Commission of India, National Physical Laboratory and National Research Development Corporation.

- MPVL is the sole authorized supplier of this type of foolproof Indelible Ink in India having exclusive license granted by National Research Development Corporation (NRDC), New Delhi since 1962.
- The company is the sole supplier of indelible ink for civic body, Assembly and Parliamentary polls.

► POLITICAL PARTIES

REGISTRATION TRACKING MANAGEMENT SYSTEM (PPRTMS)

The Election Commission has launched an online system to allow political parties track their applications for the registration with the poll panel on a real-time basis.

REGISTRATION OF POLITICAL PARTIES

- The registration of political parties is governed by the provisions of **section 29A of the Representation of the People Act, 1951**.
- An association seeking registration has to submit an application to the Commission within a period of 30 days from the date of its formation.

► RESPONSIBILITIES OF

RETURNING OFFICER – APPOINTED UNDER RPA, 1951

The Returning Officer (RO) has a pivotal role in election management as they conduct the election in a constituency and returns elected candidate. The Election Commission nominates or designates an Officer of the Government or a local authority as the Returning Officer for each of the assembly and parliamentary constituencies in consultation with the State Government/Union Territory Administration.

- Overseeing the election in his/her constituency.
- Accepting and scrutinizing nomination forms
- Rejecting nomination form of candidate after raising important concern or lacunae in filling up of such forms.
- Publishing the affidavits of the candidate
- Allotting approved election symbols to contesting candidates sponsored by National or State Party.
- As per Paragraph 12 of The Election Symbols (Reservation and Allotment) Order, 1968, Returning Officer shall allot a free symbol chosen by an "Independent Candidate" for election purpose. As per the above Order, the Returning Officer shall also allot free symbol to the candidate set up by the unrecognized political party.

- Monitoring election expenses and accounts of the candidates
- Preparing list of contesting candidates
- Preparing EVMs and VVPATS, training poll personnel, designating counting centres
- Counting of the votes
- Declaration and Publication of results in Election

► TYPES OF OBSERVERS

APPOINTED DURING ELECTIONS

The Election Commission of India (ECI) held a briefing for 15 retired civil servants who have been appointed as special observers for elections to the state assemblies of Goa, Manipur, Punjab, Uttar Pradesh and Uttarakhand. Election Commission also appoint Micro-Observers, Expenditure Observers and Police Observers.

- **Section 20B of Representation of People Act** – The provision allows for appointment of Observers by the Election Commission.
- Observers are the appointees of the Commission and work under the superintendence, control and discipline of the Commission for the period from their appointment until the process of election is completed.
- The Representation of the People Act, 1951 was amended in August, 1996 to add a new Section 20B. **This provides statutory powers to the Observers** to watch the conduct of elections and especially in respect of counting of votes.

Statutory Powers of General Observers – Section 20B – RPA 1951

- **Observes Nomination Process** - Observing the processes of scrutiny of nominations and withdrawal of candidature by the RO, and Report back to the Commission promptly in case of any irregularity.
- **Investigates Complaints Received on Nomination** – Examines video clipping of the nomination process and making proper investigation on the complaints received in connection with the process of nomination.
- **Examines Allotment of Symbols** - unresolved grievances by the candidate/ political parties about the allotment of symbols.
- **Effective monitoring of implementation of Model Code of Conduct (MCC)** and detecting cases of violation of MCC by watching the video clippings of various meetings and, if needed, even by visiting important rallies to get first hand input, enforcement

of the defacement of property act, training of **Micro-Observers** and such other things.

- **Check Accounts** - Though checking the account of expenditure of the candidates is entrusted to Expenditure Observers, however, General Observer are also required to do so, in case of exigencies, if directed by the Commission.
- **Tracking dispatch of postal ballot papers** to the service voters, ensuring the setting up of the facilitation counters for polling officials, police and security personnel etc., in accordance with the recent guidelines of the Commission and sending specific report in this regard to the Commission.
- **Checking randomization software**, reviewing the process of randomization of the polling personnel, obtaining report from the DEO regarding first level randomization; and
- **Observing and regulating the counting process** - Observer has to sign the round wise counting sheets as proof of his/her satisfaction. She/he can direct the Returning Officer to stop counting of votes or declaration of result, if she/he notices any irregularities and bring the matter to the notice of the Commission for further directions.
- **Power to stop Counting of Votes** - The Observer nominated by the Commission shall have the power to direct the Returning Officer:
 - to stop the counting of votes at any time before the declaration of the result or
 - not to declare the result if in the opinion of the Observer booth capturing has taken place at a large number of polling stations
 - to stop counting if the votes have been tampered with.

Micro Observers

- Micro Observers are appointed by the Election Commission as extended arms of Observers to enhance deterrence.
- The Micro-observers would directly work under control and supervision of the general observer.
- List of Micro-Observers will be prepared by District Election Officer from a list of gazetted officers and they shall be deployed to shortlisted polling stations on the vulnerability criteria.
- On Polling Day, Micro-observer should specially observe: -
 - Mock Poll Procedures,
 - Presence of Polling Agents and observance of ECI instructions

- The observance of entry pass system and access to Polling Station
- Proper identification of electors in accordance with ECI guidelines
- Identification and recording procedures for the Absentee, Shifted and Duplicate voter's list (ASD list)
- Application of indelible ink
- Noting down particulars of electors
- Secrecy of voting,
- Conduct of polling agents, their complaints, if any, etc.
- Report to the Observers if polls are not done according to rules or if secrecy of ballot is not maintained.

Role of Police Observers

- To observe status of Law and Order in the district.
- To ensure whether training of all Police Personnel on pre-poll and poll duties have been conducted.
- To ensure whether check-posts have been set up and operational and to see whether illegal Arms/Ammunitions, liquor etc. are not moving into the district.
- To ensure whether District Police is adequately mobile to keep an eye on Law & Order, vulnerable section and possible intimidation.
- To ensure whether night patrols have been mobilized in the district.
- To gather intelligence about Left Wing Extremism & the Anti National Forces.
- To ensure whether **area domination** and Nakas/ Check posts through route plan are operational.
- To ensure whether security forces (both State & Central) have been briefed on
 - Pre-poll duties including Area domination.
 - Security/sensitivity aspects of the area of their deployment.
 - Vulnerability
- To review Status of Preventive actions, seizure of Arms, liquor past Election related incidents.
- Reports of Police Observers should be submitted to the Election Commission.

Role of Expenditure Observers

- Supervise and guide all the election expenditure monitoring personnel engaged in the constituency.
- Guide the DEO in imparting final training to all the expenditure monitoring personnel.

- Periodically inspect the functioning of all the teams engaged in expenditure monitoring and in case of irregularity, should bring it to the notice of DEO.
- Inspect the expenditure register of each candidate at least thrice during the campaign period. Any discrepancy must be referred to the Returning Officer.
- Expense discrepancy must also be noted in "Shadow Observation Register" and signed by Poll Agent or Candidate.
- The EO shall coordinate with the Investigation Directorate of the Income Tax Dept., Nodal Officer of Police, Nodal Officer of State Excise Dept., and ensure that there is free flow and exchange of information among all the agencies.
- Expenditure Observers should not be involved in any action being taken by the Enforcement Agencies as per their laws.

► NEW RULES FOR POLLING AGENTS BY EC

As per the new regulations, a political party can now nominate a polling agent for any booth within the assembly segment he/she is a voter from. Earlier, the polling agent had to be a voter of the booth or an adjoining booth that he/she is working at.

Polling Agent

- A polling agent is a person appointed as a representative of a political party as it is not possible for a candidate to be physically present at every polling booth on the day of the elections.
- Therefore, the Election Commission allows a candidate to appoint a polling agent who keeps an eye on the voting process.
- **Section 46 of Representation of People Act, 1951** provides for appointment of polling agents by the political party. Government officers cannot become polling agents of contesting candidates.

Section 46 - RPA, 1951

A contesting candidate or his election agent may appoint in the prescribed manner such number of agents and relief agents as may be prescribed to act as polling agents of such candidate at each polling station provided under section 25 or at the place fixed under sub-section (1) of section 29 for the poll.

Main Duties of Polling Agents:

- To take part in the mock poll and satisfy themselves that EVM & VVPAT are in proper working order.

- To help the presiding officer to detect and prevent impersonation of voters.
- Help the officials in securing and sealing EVMs and VVPATs before and after conduct of polls.
- To see that all election records relating to the poll are secured and sealed properly after the close of polls as required by law.
- To see that serial numbers of Control Units, Ballot Units and VVPATs being used in the polling stations are in conformity with the details provided by the Returning Officer.

► LIST OF IMPORTANT OFFICERS APPOINTED UNDER RPA, 1950 & RPA 1951

PRESIDING OFFICER	RPA 1951 (Section 26)	District Election Officer Appoints Presiding Officer for 1 or More Polling Stations
DISTRICT ELECTION OFFICER (DEO)	RPA 1950 (Section 13AA)	Appointed by Election Commission (Ec) in Consultation with State Govt.
	RPA (Section 20A)	Provides for General Duties of District Election Officer – To Be Done as Mandated by Ec or Chief Electoral Officer (CEO)
CHIEF ELECTORAL OFFICER (CEO)	RPA 1950 (Section 13A)	EC Appoints 1 CEO for each state
	RPA 1951 (Section 20)	Provides for General Duties of CEO
RETURNING OFFICERS	RPA 1951 (Section 21)	Appointed for Every Constituency by EC in Consultation with State Govt.
OBSERVERS	RPA 1951 (Section 20B)	Election Commission Started Deputing Some Senior Officials From The Same State to Observe Election Process in a Constituency or a Group Of Constituencies.

► CVIGIL – EC'S APP TO REPORT ELECTORAL MALPRACTICE

- cVIGIL is an online application for citizens to report on model code of conduct violations during the election period. The application is called as cVIGIL, denoting **Vigilant Citizen** and the proactive and responsible role he can play in the conduct of free and fair elections in India.
- The app c-VIGIL aims to **share proof of malpractices** by political parties, their candidates and activists when the Model Code of Conduct (MCC) is in force.
- The new app provides a framework for fast-track complaint reception and redressal system. It also aims at community participation by playing a proactive and responsible role in the conduct of free and fair elections across the country.
- "cVIGIL" will be operational only where elections are announced.

WORKING OF THE APP

- The vigilant citizen has to click a picture or a video, describe the activity and upload it through mobile application. This will enable the flying squads to reach the spot in a matter of few minutes. The automated location mapping will be done by the app using the Geographic Information System (GIS).
- After its successful submission through the app, the vigilant citizen gets a Unique ID to track and receive the follow up updates on her or his mobile. The identity of the complainant will be kept confidential.

► SALIENT FEATURES OF REPRESENTATION OF PEOPLE ACT, 1950 & 1951

Articles 324 to 329 of Part XV of the Constitution deal with the electoral system in our country. Constitution allows Parliament to make provisions in all matters relating to elections to the Parliament and State Legislatures. In exercise of this power, the Parliament has enacted laws like Representation of the People Act 1950 (RPA Act 1950), Representation of the People Act 1951 (RPA Act 1951) and Delimitation Commission Act of 2002.

RPA, 1950	RPA, 1951
• Qualification of voters	• Qualifications and disqualification for conduct of elections
• Preparation of electoral rolls.	• Notification of general elections to LS & State
• Delimitation of	

constituencies. <ul style="list-style-type: none"> Allocation of seats in the Lok Sabha and state legislatures. Powers and functions of District Election Officers and Chief Electoral Officers. Constitution of electoral colleges for the filling of seats in the Council of States allotted to Union territories. 	Legislative Assemblies <ul style="list-style-type: none"> Administrative machinery for conduct of elections Role of important election officers – Returning Officer, Observers, Filing of nomination papers and scrutiny by Returning Officer Election offences Addressing Election disputes Conducting Bye-elections Registration of political parties. Cap on election expenses by individual candidates Regulating Election Agents of Political Parties Fixing time for poll and cancel poll in case of emergency Counting of votes and declaration of results Security of EVMs and VVPATs
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► OPINION POLL & EXIT POLL

In the recently concluded assembly elections to five states, the authenticity of exit polls was widely debated.

EXIT POLLS

- Exit poll is a survey which is conducted just after a voter walks out after casting his or her vote. In an exit poll, agencies conducting it ask the voters for whom they have actually voted just after the poll.
- Such polls aim at predicting the actual result on the basis of the information collected from voters who have casted their vote.
- Exit polls are conducted by the method of sampling where agencies select different constituencies across different parts of the country based on select demography and caste so as to get an idea across sections of populations about voting pattern.

OPINION POLLS

- On the other hand, opinion poll is a method for collecting information about the views or beliefs of a given group prior to the voting process. Information from an opinion poll can shed light on and potentially allow inferences to be drawn about certain attributes of a larger population.

- Opinion polls involve a sample of respondents drawn to represent a larger population who are asked a standardized series of questions in a fixed form. The results are analyzed for the entire respondent sample that represents different groups in the population.
- Opinion polls help in enhancing awareness among citizens and encourage public debate on performance of the government in different sectors.

LEGAL HISTORY – EXIT POLL

- ECI issued - Guidelines for Publication and Dissemination of Results of Opinion Polls/Exit Poll in 1998.
- Validity of EC guidelines again came into question during the General Election of 1999 on grounds of violation of freedom of speech and expression.
- Constitution Bench observed serious doubts about the EC guidelines on their being issued without statutory sanction and also infringing the fundamental rights of media houses.
- Consequently, EC withdrew the guidelines on 14th September 1999.
- In 2004 general election, majority of political parties agreed not to conduct and publish results of opinion poll from the date of issue of statutory notification till the completion of the poll.
- On the matter of Exit Poll, the EC then asked the Ministry of Law and Justice to add a specific provision in RPA, 1951 prohibiting publication and dissemination of the results of exit polls and opinion polls during the last 48 hours.

- This led to addition of Section 126A in the RPA, 1951.

ADDING SECTION 126A TO REPRESENTATION OF PEOPLE ACT, 1951

- Section 126A** restricts publication and dissemination of result of exit polls from the period between the commencements of the poll **until half an hour** after the closing of the final phase of the poll.
- Section 126A in RPA 1951 was added in 2009 on concerns that such polls influence voting results.
- Now conduct of voting process starts at 7 am in the morning and ends at 6 pm in the evening. That is why exit polls are announced after 6:30 pm.**
- Violation of Section 126A of RPA, 1951 shall be **punishable with imprisonment for a term which may extend to 2 years or with fine or with both.**

LEGISLATIONS

► MERGER OF MUNICIPAL CORPORATIONS OF DELHI

The Delhi Municipal Corporation (Amendment) Bill, 2022 aims merge the three municipal corporations of Delhi - (i) North Delhi Municipal Corporation, (ii) South Delhi Municipal Corporation, and (iii) East Delhi Municipal Corporation - into a single corporation called municipal body called Municipal Corporation of Delhi. The Delhi Municipal Corporation (Amendment) Bill, 2022 seeks to amend the Delhi Municipal Corporation Act, 1957 for this purpose.

OBJECTIVE OF 2022 AMENDMENT

The Delhi Municipal Corporation (Amendment) Bill, 2022 seeks to—

- Unify the three municipal corporations into a single, integrated and well-equipped entity.
- Ensure a robust mechanism for synergised and strategic planning and optimal utilisation of resources.
- Bring about greater transparency, improved governance and more efficient delivery of civic service for the people of Delhi.

WAS THERE ALWAYS THREE MUNICIPAL CORPORATION OF DELHI?

- **No.** The Delhi Municipal Corporation Act, 1957 was amended in in 2011 by **Delhi Legislative Assembly** to trifurcate the erstwhile Municipal Corporation of Delhi into three corporations - (i) North Delhi Municipal Corporation, (ii) South Delhi Municipal Corporation, and (iii) East Delhi Municipal Corporation.
- **Delhi Municipal Corporation Act, 1957** was enacted to consolidate and amend the law relating to the Municipal Government of Delhi.

IMPORTANT FEATURES OF DELHI MUNICIPAL CORPORATION (AMENDMENT) BILL, 2022

- **Unifies three corporations of Delhi**
- **Transfers powers of Delhi Government to Central government - to decide:**
 - *Total number of seats of councillors and number of seats reserved for members of the Scheduled Castes.*
 - *Division of the area of corporations into zones and wards, (iii) delimitation of wards.*
 - *Matters such as salary and allowances and leave of absence of the Commissioner.*

- *Sanctioning of consolidation of loans by a corporation*
- *Sanctioning suits for compensation against the Commissioner for loss or waste or misapplication of Municipal Fund or property.*
- **Reduces the number of seats from 272 to be not more than 250.**
- **Removes the Post of Director of Local Bodies** -*The Director of Local Bodies assisted the Delhi government and discharged the following functions: (i) coordinating between Corporations, (ii) framing recruitment Rules for various posts, and (iii) coordinating the collecting and sharing of toll tax collected by the respective corporations.*
- **Appoints Special Officer** -to exercise powers of the Corporation until the first meeting of the Corporation is held after the commencement of the Bill.
- **Makes provision for e-governance system** - for citizens' services on an anytime-anywhere basis for better, speedy, accountable, and transparent administration.
- **Omits the provision for conditions of service of sweepers employed for doing house scavenging.**

► DISASTER MANAGEMENT ACT, 2005

- **NDMA Chairperson** of National Disaster Management Authority - Prime Minister
- **National Executive Committee** to assist NDMA - chairperson - Secretary, Disaster Management; National Executive Committee can constitute sub-committee for the efficient discharge of its functions.
- **Nodal ministry:** Ministry of home affairs.
- **National Plan** plan for disaster management for the whole of the country to be called the National Plan
- The National Plan shall be prepared by the **National Executive Committee** having regard to the National Policy and in consultation with the State Governments and expert bodies or organisations in the field of disaster management to be approved by the National Authority.
- **SDMA Chairperson:** Chairperson of State Disaster Management Authority (SDMA) - Chief Minister
- **State Executive Committee:** Chief Secretary to the State Government - Chairperson
- **State Plan:** There shall be a plan for disaster management for every State to be called the State Disaster Management Plan. The State Plan prepared

by the State Executive Committee and shall be approved by the State Authority.

- **District Disaster Management Authority:** Collector or District Magistrate or Deputy Commissioner shall be the Chairperson, the elected representative of the local authority who shall be the co-Chairperson; In the Tribal Areas, as referred to in the Sixth Schedule to the Constitution, the Chief Executive Member of the District Council of autonomous district, shall be the co-Chairperson.
- **District Plan:** There shall be a plan for disaster management for every district of the State.
- **National Institute for Disaster Management** located in New Delhi.
- **National Disaster Response Force:** specialist response to a threatening disaster situation or disaster.
- **National Disaster Response Fund** to meet any threatening disaster situation or disaster; an amount deposited after due appropriation made by Parliament by law, includes any grants made by person or institution.
- **Act provides for National Disaster Mitigation Fund.** However, this fund was not constituted. Recently, Ministry of Home Affairs has notified for the creation of NDMF after the 15th Finance Commission in its grants for Disaster Management also gave grants for National Disaster Mitigation Fund.

► COMPENSATION FOR COVID DEATHS

A petition has been filed in the Supreme Court seeking compensation for deaths caused due to COVID-19 as the novel disease was declared as a "notified disaster" under the Disaster Management Act.

DECLARATION FOR COMPENSATION UNDER DISASTER MANAGEMENT ACT

- **April, 2015** - the Disaster Management Division of the Ministry of Home Affairs (MHA) attached a revised list of "norms of assistance" to all state governments. Under "*ex gratia payment to families of deceased persons*", it specified to pay Rs. 4 lakh per deceased person including those involved in relief operations or associated in preparedness activities, subject to certification regarding cause of death from appropriate authority."
- **COVID-19 declared as Notified Disaster** - MHA in March 2020 in its letter to state governments stated that it has declared Covid-19 as a notified disaster

under the Disaster Management Act for the purpose of providing assistance under State Disaster Response Fund (SDRF). However, MHA did not specify payment of ex gratia to families of deceased.

- Supreme Court has mentioned that it is the *statutory duty of National Disaster Management Authority (NDMA) to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster, which shall include the reliefs as per Section 12 of DMA.*
- Accordingly, the Court has directed NDMA to recommend guidelines for ex gratia to family members of those who lost their lives during the COVID pandemic.

SECTION 12 OF DISASTER MANAGEMENT ACT

It allows National Disaster Management Authority to recommend guidelines for the minimum standards of relief to be provided to persons affected by disaster.

► CHANGES IN JUVENILE JUSTICE ACT

The Union Cabinet, chaired by the Prime Minister has approved the proposal of the Ministry of Women and Child Development to amend the *Juvenile Justice (Care and Protection of Children) Act, 2015* to introduce measures for strengthening Child Protection set-up to ensure best interest of children.

- DM & ADM authorized to issue adoption orders under Section 61 of the Juvenile Justice Act, in order to ensure speedy disposal of cases and enhance accountability.
- DM & ADM empowered to ensure its smooth implementation, as well as garner synergized efforts in favour of children in distress conditions.
- Defining eligibility parameters for appointment of CWC members, and categorizing previously undefined offences as 'serious offence' are some of the other aspects of the proposal.
- DM is entrusted to assess the capacity and conduct a background check of a person who wants to establish a shelter home under JJ act.

► UNLAWFUL ACTIVITIES (PREVENTION) AMENDMENT ACT, 2019

Unlawful Activities (Prevention) Act, 1967 (also referred as **UAPA**) has mentioned about unlawful associations, punishment for terrorist activities including defining

terrorist act (section 15), offences by companies, forfeiture of proceeds of terrorism or any property intended to be used for terrorism, listing of terrorist organisation under Schedule I of the Act and constituting Unlawful Activities (Prevention) Tribunal under section 5 and Three Schedule.

- **Schedule I** – List of Terrorist Organisation
- **Schedule II** – International Conventions and Protocols to curb and suppress terrorism
- **Schedule III** – It provides security features to define high quality counterfeit Indian currency notes which includes watermark, latent image and see through registration in currency notes
- **Schedule IV** – Name of Individuals – Added by 2019 Amendment

CHANGES MADE THROUGH 2019 AMENDMENT

- Chapter VI of UAPA 1967 is about **“Terrorist Organisation”**. 2019 Amendment has changed the chapter to **“Terrorists Organisations and Individuals”**.
- **Section 36** of the original Act provides for **“Denotification of terrorist organisation”**. The 2019 Amendment adds the word **“Individual”** along with terrorist organisation.
- Accordingly, the 2019 Amendment adds a new schedule namely **Fourth Schedule** providing names of individual terrorists.
- Section 25 of UAPA 1967 provided for **“Powers of investigating officer and designated authority and appeal against order of designated authority”**. The 2019 Amendment adds - **“Investigation to be conducted by an officer of the National Investigation Agency, with the prior approval of the Director General of National Investigation Agency”**.
- **Section 43** of UAPA 1967 provided for Officers competent to investigate offences. The 2019 Amendment provides investigative powers to **National Investigation Agency**, not below the rank of Inspector.
- In the Second Schedule, **International Convention for Suppression of Acts of Nuclear Terrorism (2005)** has been added.

► PREVENTION OF CORRUPTION ACT, 2018

The Prevention of Corruption (Amendment) Act, 2018 has brought India's anti-corruption legal framework in conformity with current international practices laid down by

the United Nations Convention against Corruption (UNCAC) which was ratified by India in 2011.

SIGNIFICANCE OF THE AMENDMENT MADE TO PCA

- **Defined Undue Advantage** - means any gratification whatever, other than legal remuneration. Gratification also includes non-monetary compensation.
- **Giving Bribe has been made an offence.**
- **Specified timeline for completion of corruption cases by a Special Judge within 2 years.** Extension allowed for 6 months in writing. Trial cannot exceed 4 years.
- **Modified and enhanced the definitions and penalties** for offences related to accepting an undue advantage, being a habitual offender and abetting an offence.
- **Protection to honest officials irrespective of their ranks or levels** - Except when a public official is caught 'red handed', the police cannot begin a probe, without the approval of the relevant authority, of any public official. Earlier, this was limited to protecting joint secretaries and above.
- **Make Past Crime Culpable** - Earlier, the sanction requirement only applied to serving officials. This has now been extended to prosecution for offences allegedly committed by former officials when in office.
- **Provides punishment for Commercial Organizations**
- **Increased Punishment for abatement of offences by Public Servants and punishment for Habitual Offenders.**
- **Amendment provides for attachment or confiscation of money or property** procured by means of offence under Prevention of Corruption Act.

► PROTECTION OF CHILDREN FROM SEXUAL OFFENCES (POCSO) ACT, 2019

Protection of Children from Sexual Offences (Amendment) Act, 2019 entails amendments to the POCSO Act by including death penalty for aggravated sexual assault on children, besides providing stringent punishments for other crimes against minors. The proposed changes in the Protection of Children from Sexual Offences (POCSO) Act also provide for fines and imprisonment to curb child pornography.

SALIENT FEATURES

- **Penetrative sexual assault:** The Act increases the minimum punishment from 7 years to 10 years. If a person commits penetrative sexual assault on a child below the age of 16 years, he will be punishable with imprisonment between 20 years to life, with a fine.

- **Aggravated penetrative sexual assault:** The Act defines certain actions as “aggravated penetrative sexual assault”. It increases the punishment for aggravated penetrative sexual assault from imprisonment between 10 years to life to a minimum punishment from ten years to 20 years, and the maximum punishment to death penalty.
- **Aggravated sexual assault:** The Act adds two more offences to the definition of aggravated sexual assault. These include: (i) assault committed during a natural calamity, and (ii) administering or help in administering any hormone or any chemical substance, to a child for the purpose of attaining early sexual maturity.
- **Pornographic purposes:** The Act penalises persons who use children for pornographic purposes resulting in sexual assault along with storage of pornographic materials for commercial purposes.

Supreme Court has corrected a wrong interpretation of Section 7 of POCSO Act which defines sexual assault on child below 18 years of age.

- Supreme Court held that restricting the interpretation of the words ‘touch’ or ‘physical contact’ to ‘skin to skin contact’ would be a narrow and pedantic interpretation of Section 7, and if such a narrow interpretation is accepted it would frustrate the very object of the Act.
- The judgment sets right not only a misinterpretation of the statute but also underscores that the core ingredient of a sexual offence is the “sexual intent” behind it. The Court also said that an interpretation should not be destructive of the law’s intention.

► RIGHT TO INFORMATION (AMENDMENT) ACT, 2019

The RTI Amendment Act, 2019 changes the terms and conditions of service of the CIC and Information Commissioners at the centre and in states.

AS MENTIONED IN RTI, 2005	RTI AMENDMENT ACT 2019
<ul style="list-style-type: none"> • Section 13 of the original Act provides for terms of office and conditions of service for Chief Information Commissioner and Information Commissioners. 	<ul style="list-style-type: none"> • The amendment provides that the appointment will be <i>“for such term as may be prescribed by the Central Government”</i>. • The amendment provides that the

- It says that the Chief Information Commissioner shall hold office for a term of **5 years** from the date on which he enters his office and shall not hold office after he has attained the age of **65 years**.
- Again, Section 13 states that salaries, allowances and other terms of service of *“the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner”*, and those of an **Information Commissioner** “shall be the same as that of an **Election Commissioner”**.

salaries, allowances and other terms of service of the Chief Information Commissioner and the Information Commissioners *“shall be such as may be prescribed by the Central Government”*.

- **Note*** - The Amendment has removed the equivalence of CIC with that of CEC. This makes the CIC vulnerable to be removed by the Central Government as CEC can only be removed on the same manner as that of Judge of Supreme Court.

- **Section 16** of the original Act deals with **state-level** Chief Information Commissioners and Information Commissioners. It sets the term for state-level CICs and ICs at five years and **shall not** hold office after he has attained the age of **65 years**.
- The salaries and allowances payable to and other terms and conditions of service of
 - (a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner,
 - (b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government,

The amendment provides that these appointments should be for “such term as may be prescribed by the Central Government”.

- The amendment proposes that salaries, allowances and other terms of service of the state Chief Information Commissioner (SIC) *“shall be such as may be prescribed by the Central Government”*.
- **Note*** - The equivalence of state CIC and that of Election Commissioner and State Information Commissioner with Chief Secretary of state stands removed on salary.

- **Section 27** provides for power of central and
- By amending Section 27, the Central

state government to make rules for smooth functioning of RTI Act, 2005.

Government controls the terms and conditions of appointment of Commissioners in the States.

► FCRA AMENDMENT ACT, 2020 INCOMPATIBLE WITH INTERNATIONAL LAW

Parliament has passed the Foreign Contribution (Regulation) Amendment Act, 2020. The Amendment to FCRA proposes to make Aadhaar a mandatory identification document for all the office-bearers, directors and other key functionaries of an NGO or an association eligible to receive foreign donations. However, International Commission of Jurists has observed that the amendment is against international law and violates Resolution 22/6 of United Nations Human Rights Council on Protecting Human Rights Defenders.

PROPOSED AMENDMENT

The Foreign Contribution (Regulation) Amendment Act, 2020 seeks to provide for -

- (a) Include "public servant" within its ambit, to provide that no foreign contribution shall be accepted by any public servant;
- (b) Prohibit any transfer of foreign contribution to any association/person;
- (c) Reduce the limit of foreign fund to be used for administrative expenses from existing "50 per cent" to "20 per cent."
- (d) Insertion of a new Section 12A empowering the Central Government to require Aadhaar number, etc., as identification document.
- (e) Enabling the Central Government to permit any person to surrender the certificate granted under the Act.
- (f) Ensure that every person who has been granted certificate or prior permission under section 12 shall receive foreign contribution only in an account designated as "FCRA Account" which shall be opened by him in such branch of the State Bank of India at New Delhi.

MHA AMENDS FCRA 2011 RULES

MHA has amended *FCRA 2011 Rules* based on recent Supreme Court Judgment.

AMENDMENT MADE BY MHA

(a) Organisations of farmers, workers, students, and youths based on caste, community, religion, language or others will only be considered as a political group if they participate in "active politics or party politics".

(b) Such groups or organisation can receive foreign funds if not involved in active politics or party politics.

FCRA ACT, 2020 INCOMPATIBLE WITH INTERNATIONAL LAW

The International Commission of Jurists (ICJ) has observed that the Foreign Contribution (Regulation) Amendment Act, 2020 passed by Parliament is incompatible with international law.

Against International Law

- The UN Human Rights Council in its Resolution on Protecting Human Rights Defenders declared that, "no law should criminalize or delegitimize activities in defence of human rights on account of the origin of funding".
- The resolution call upon states that legislation affecting the activities of human rights defenders and its application must be consistent with international human rights law, including the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, and guided by the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, and, in this regard, condemns the imposition of any limitations on the work and activities of human rights defenders enforced in contravention of international human rights law.
- The resolution also call upon states to ensure that they do not discriminatorily impose restrictions on potential sources of funding aimed at supporting the work of human rights defenders.

► AMENDMENT IN EPIDEMIC DISEASE ACT TO ADDRESS COVID

The colonial government introduced the Epidemic Diseases Act to tackle the epidemic of *bubonic plague* that had spread in the erstwhile Bombay Presidency in the 1890s. However, due to COVID, central government amended the Epidemic Diseases Act.

IMPORTANT HIGHLIGHTS OF AMENDMENT

- Penal provisions can be invoked in instances of damage to property including a clinical establishment, any facility identified for quarantine and isolation of patients, mobile medical units and any other property

in which the healthcare service personnel have direct interest in relation to the epidemic.

- **Payment of Compensation determined by Court** - Persons convicted of offences will be liable to pay compensation to the healthcare service personnel whom they have hurt. Such compensation will be determined by the Court.
- **In case of damage to property or loss of property, the compensation payable to the victim will be twice the amount of the fair market value** - as determined by the Court.
- If the convicted person fails to pay the compensation, the amount will be recovered as an arrear of land revenue under the **Revenue Recovery Act, 1890**.
- **Offences shall be investigated by an officer of the rank of Inspector** within a period of 30 days, and trial has to be completed in one year, unless extended by the court for reasons to be recorded in writing.
- **Centre empowered to take certain measures** - Central Government has been given a concurrent role with the State Governments to take any measures that may be needed to prevent the outbreak of an epidemic or the spread thereof. In addition, the scope of inspection of vessels arriving or leaving the country has been enlarged to include road, rail, sea and air vessels.
- **Powers of the central government to inspect vessels** - The Act specifies that the central government may regulate: (i) the inspection of any ship or vessel leaving or arriving at any port, and (ii) the detention of any person intending to travel from the port, during an outbreak. Centre can regulate the inspection of any bus, train, goods vehicle, ship, vessel, or aircraft leaving or arriving at any land port, port or aerodrome.
- **Detention of Persons** - The central government may regulate the detention of any person intending to travel by these means.

► CONSUMER PROTECTION ACT, 2019

The Consumer Protection Act 2019 (CPA-2019) has replaced The Consumer Protection Act, 1986.

TO ACHIEVE THE AFORESAID PURPOSE, CPA-2019 ESTABLISHES THE FOLLOWING

- **Central Consumer Protection Authority (CCPA)** – Referred as **Central Authority**

- **Central Consumer Protection Council** - at National, State and District level referred as National, State and District Commission
- **Consumer Disputes Redressal Commission** – at National, State and District level
- **Consumer Mediation Cell** - to be attached to each of the District Commissions and the State Commissions

IMPORTANT PROVISIONS OF CPA-2019

- **Central Authority** aims to promote, protect and enforce the rights of consumers; make interventions when necessary to prevent consumer detriment arising from unfair trade practices and to initiate class action including enforcing recall, refund and return of products, etc.
- **The Central Authority** shall have an **Investigation Wing** headed by a Director-General for the purpose of conducting inquiry or investigation on consumer disputes.
- **Product Liability Action** - A product liability action may be brought by a complainant against a product manufacturer or a product service provider or a product seller, for any harm caused to him on account of a defective product.
- **Product Liability of Manufacturer/Service Provider/Seller** – They shall be responsible to compensate for injury or damage caused by defective product, deficiency in services or design, lack of express warranty, inadequate instructions for correct usage leading to harm of product.
- **Dispute Resolution** - The Act envisages simplified dispute resolution process, has provision for Mediation and e-filing of cases.
- **Punishment for Misleading Advertisements** - There are provisions for deterrent punishment to check misleading advertisements and adulteration of products.
- **Regulation for E-Commerce** – The Act regulates buying or selling of goods or services including digital products over digital or electronic network.

► NATIONAL INVESTIGATION AGENCY (AMENDMENT) ACT, 2019

- The law governs the functioning of India's premier **counter-terror agency**. It was introduced by then home minister P Chidambaram in the wake of the 26/11 Mumbai terrorist attacks and was passed in Parliament with very little opposition.

- The Act makes the National Investigation Agency the **only truly federal agency** in the country, along the lines of the FBI in the United States, more powerful than the CBI.
- It gives the NIA powers to take **Suo moto cognizance of terror activities in any part of India** and register a case, to enter any state without permission from the state government, and to investigate and arrest people.

CHANGES INTRODUCED IN THE NIA (AMENDMENT) ACT, 2019

There are **three major amendments** to the National Investigation Agency (NIA) Act of 2008:

- 1) **Change in the type of offences that the NIA can investigate and prosecute:** Under the existing Act, the NIA can investigate offences under Acts such as the Atomic Energy Act, 1962, and the Unlawful Activities Prevention Act, 1967. The latest amendments will enable the NIA to additionally investigate offences related to **human trafficking, counterfeit currency, manufacture or sale of prohibited arms, cyber-terrorism, and offences under the Explosive Substances Act, 1908.**
- 2) **NIA's jurisdiction:** Under the 2008 Act, for the offences under its purview, NIA officers have the same power as other police officers and these extend across the country. **The amendment gives NIA officers the power to investigate offences committed outside India. However, NIA's jurisdiction will be subject to international treaties and domestic laws of other countries.**
- 3) **Special trials courts for the offences that come under NIA's purview or the so-called "scheduled offences":** The existing Act allows the Centre to constitute special courts for NIA's trials. But the amendment enables the Central government to designate sessions courts as special courts for such trials.

► INDIA GETS FIRST WITNESS PROTECTION SCHEME

Recently the Supreme Court has approved the draft witness protection scheme. It has asked all the states to implement the same till Parliament brings the legislation which can be implemented across India.

Justice Malimath Committee (2003) on criminal justice system and **the law commission (in 2006)** have recommended for separate witness protection law.

HIGHLIGHTS OF THE DRAFT SCHEME

The witness protection scheme (draft) has been prepared in consultation with

- National Legal Services Authority (NALSA) and
- Bureau of Police Research and Development (BPRD)
- The types of protection measures envisaged under the scheme are to be **applied in proportion to the threat** and they are not expected to go on for infinite time.
- There should be safeguards that **witnesses and accused do not come face to face** during investigation or trial and adequate security measures should be there for the safety of the witnesses.
- The scheme provides for **identity protection and giving a new identity** to the witness.
- **Police escort will be provided to witnesses** who are threatened and, if needed, they would be relocated to a safe house.
- **Mails and phone calls of the witnesses would be monitored** to trace the person threatening them.
- **Witness deposition complexes will be set up in all district courts by the states and union territories** within a year where the witnesses could fearlessly depose against the high and mighty without coming face-to-face with the accused.
- It has **three categories of witnesses** based on the threat perception:
 - **Category 'A':** Where the threat extends to life of witness or his family members and their normal way of living is affected for a substantial period, during investigation/trial or even thereafter.
 - **Category 'B':** Where the threat extends to safety, reputation or property of the witness or his family members, only during the investigation process or trial.
 - **Category 'C':** Where the threat is moderate and extends to harassment or intimidation of the witness or his family member's, reputation or property, during the investigation process.
- **Scheme provides for a State Witness Protection Fund for meeting the expenses of the scheme.** This fund shall be operated by the **Department/Ministry of Home Affairs** under State/UT Government and shall comprise of the following:
 - **Budgetary allocation** made in the Annual Budget by the State Government;
 - **Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund;**

- o Donations/ contributions from Philanthropist/ Charitable Institutions/ Organizations and individuals permitted by the Government.
- o Funds contributed under Corporate Social Responsibility.

► TRANSGENDER PERSONS (PROTECTION OF RIGHTS) ACT, 2019

The Act to provide for protection of rights of transgender persons and their welfare. Issues related to transgender persons are dealt by the Department of Social Justice and Empowerment under Ministry of Social Justice and Empowerment.

SALIENT FEATURES

- **Transgender** is a person whose gender does not match with the gender assigned to that person at birth and includes trans-man or trans-woman (whether or not such person has undergone Sex Reassignment Surgery or hormone therapy or laser therapy or such other therapy), person with intersex variations, genderqueer and person having such socio-cultural identities as kinner, hijra, aravani and jogta.
- **Prohibition against discrimination:** The Act prohibits the discrimination against a transgender person, including denial of service or unfair treatment in relation to: (i) education; (ii) employment; (iii) healthcare; (iv) access to, or enjoyment of goods, facilities, opportunities available to the public; (v) right to movement; (vi) right to reside, rent, or otherwise occupy property; (vii) opportunity to hold public or private office; and (viii) access to a **government or private establishment** in whose care or custody a transgender person is.
- **Transgenders have the following rights** - residence, employment, education, health facilities to transgender persons including separate HIV surveillance centres, and sex reassignment surgeries.
- **Insurance Scheme** - The government should make provision for coverage of medical expenses by a comprehensive insurance scheme for Sex Reassignment Surgery, hormonal therapy, laser therapy or any other health issues of transgender persons.
- **Certificate of identity for a transgender person to be issued by District Magistrate.**
- **Offences and penalties:** The Act recognizes the following offences against transgender persons: (i) forced or bonded labour (excluding compulsory government service for public purposes), (ii) denial of use of public places, (iii) removal from household, and village, (iv) physical, sexual, verbal, emotional or economic abuse. Penalties for these offences vary between **six months and two years, and a fine.**

- **National Council for Transgender persons (NCT):** The NCT will consist of: (i) Union Minister for Social Justice (Chairperson); (ii) Minister of State for Social Justice (Vice- Chairperson); (iii) Secretary of the Ministry of Social Justice; (iv) one representative from ministries including Health, Home Affairs, and Human Resources Development.
- Other members include representatives of the NITI Aayog, and the National Human Rights Commission. State governments will also be represented. The Council will also consist of five members from the transgender community and five experts from non-governmental organisations.

FUNCTIONS OF NCT

- Advise the Central Government on the formulation of policies, programs, legislation and projects for transgenders.
- Monitor and evaluate the impact of policies and programs designed for achieving equality and full participation of transgender persons.
- Review and coordinate the activities of all the departments of Government and other Governmental and non-Governmental Organisations dealing with transgender persons.
- redress the grievances of transgender persons.

► MUSLIM WOMEN (PROTECTION OF RIGHTS ON MARRIAGE) ACT, 2019

This act aims to protect the rights of married Muslim women and to prohibit divorce by pronouncing talaq by their husbands.

SALIENT PROVISIONS

- **Talaq-e-biddat** or any other similar form of talaq having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband upon his wife by words, either spoken or in electronic form or in any other manner will be void and illegal.
- The husband pronouncing such a talaq will be **punished with imprisonment for a term of three years, and shall be liable to fine also.** It will be cognizable and compoundable offence.

- **No bail for the accused under the act unless Magistrate** on an application filed by accused and after hearing the married Muslim women upon whom talaq is pronounced, is satisfied that there reasonable grounds for granting bail to such person.

Married Muslim women upon whom instantaneous talaq is pronounced shall be entitled to:

- 1) receive from her husband such amount of subsistence allowance, for her and dependent children, as may be determined by Magistrate.
- 2) custody of her minor children in the event of pronouncement of talaq by her husband, in such manner as may be determined by Magistrate.

► PLACES OF WORSHIP ACT

The Supreme Court has asked the central government to respond to a plea challenging a special law enacted in 1991, which freezes the status of places of worship as it was on August 15, 1947.

ABOUT THE PLACES OF WORSHIP (SPECIAL PROVISIONS) ACT, 1991

- The law seeks to maintain the “religious character” of places of worship as it was in 1947 — except in the case of Ram Janmabhoomi-Babri Masjid dispute, which was then pending in Court.
- The law was brought in at the peak of the Ram Mandir movement, exactly a year before the demolition of the Babri Masjid to curb communal tension in those times.

IMPORTANT PROVISIONS

- The Act prohibits conversion of any place of worship and provide for the maintenance of the religious character of any place of worship as it existed on the 15th day of August, 1947.
- The Act froze the religious character of place of worship as on 15th August, 1947 and prohibited conversion of religious denomination or places of worship.
- All suits, appeals or other proceedings regarding conversion of places of worship that were pending on 15th August, 1947 shall stand abated and no fresh proceedings could be filed.
- However, legal proceedings can be initiated with respect to the conversion of the religious character of any place of worship after the commencement of the Act if the change of status took place after the cut-off date of August 15, 1947.

THE ACT DOES NOT APPLY TO (EXCEPTIONS)

- Any place of worship which is an ancient and historical monument or an archaeological site or remains covered by the Ancient Monuments and Archaeological Sites and Remains Act, 1958.
- Any Court proceedings finally decided, settled or disposed of by a Court, Tribunal or other authority before the commencement of this Act. (1991)
- Any dispute with respect to any such matter settled by the parties amongst themselves before such commencement.
- Conversion of any such place effected before such commencement by acquiescence (acceptance without protest).
- Any conversion petition barred by limitation (sufficient time has passed and no action was taken).

► IT (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS CODE) RULES, 2021

Intermediary Guidelines 2021 have been enacted under section 87 of the Information Technology Act, 2000 and it replaces the 2011 Intermediary Guidelines.

Guidelines Related to Social Media will be Administered by Ministry of Electronics and Information Technology. Digital Media Ethics Code Relating to Digital Media and OTT Platforms will be administered by Ministry of Information and Broadcasting.

The Guidelines also establishes Three Tier Grievance Redressal Mechanism for news publishers and OTT Platforms and digital media.

The term “Intermediaries” has been defined in Section 2 (w) of The Information Technology Act, 2000 - Intermediary, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

- It defines ‘**significant social media intermediaries**’ as those having number of registered users above a certain threshold (to be notified later).
- **Additional due diligence** to be observed by **significant social media intermediaries**’ – (i) appointing a Chief Compliance Officer to ensure compliance with the IT Act and the Rules, (ii) appointing a grievance officer

residing in India, and (iii) publishing a monthly compliance report.

- **Due Diligence by Intermediaries** - to be observed by intermediaries includes: (i) informing users about rules and regulations, privacy policy, and terms and conditions for usage of its services, (ii) blocking access to unlawful information within 36 hours upon an order from the Court, or the government, and (iii) retaining information collected for the registration of a user for 180 days after cancellation or withdrawal of registration. Intermediaries are required to report cybersecurity incidents and share related information with the Indian Computer Emergency Response Team.
- It provides for **Code of Ethics for Digital Media Publishers** - (i) news and current affairs content providers, and (ii) online curated content providers (also known as OTT platforms).
- For news and current affairs, the following existing codes will apply: (i) norms of journalistic conduct formulated by the Press Council of India, (ii) program code under Cable Television Networks Regulation Act, 1995.
- For OTT platforms, the requirements include: (i) classifying content in age-appropriate categories as specified, (ii) implementing an age verification mechanism for access to adult content, and access control measures such as parental controls, and (iii) improving accessibility of content for disabled persons.
- **Grievance Redressal Mechanism** - The Rules require the intermediaries and digital media publishers to provide for a grievance redressal mechanism.
- The intermediaries are required to designate a grievance officer to address complaints against violation of the Rules. Complaints must be acknowledged within 24 hours and disposed of within 15 days.
- **Digital Media Publishers (news and OTT) - Three-tier grievance redressal mechanism will be in place** for dealing with complaints regarding content: (i) self-regulation by the publishers, (ii) self-regulation by the self-regulating bodies of the publishers, and (iii) oversight mechanism by the central government.
- The publisher will appoint a grievance redressal officer based in India and address complaints within 15 days.
- As part of the **Oversight Mechanism, the Ministry of Information and Broadcasting (MIB)** will establish an Inter-Departmental Committee to hear grievances not

addressed by self-regulatory bodies and also oversee adherence to the code of ethics.

- **Blocking Content in case of Emergency** - authorised officers may examine digital media content and the Secretary, MIB may pass an interim direction for blocking of such content. The final order for blocking content will be passed only after the approval by the Inter-Departmental Committee. In case of non-approval from the Committee, the content must be unblocked.
- **Self-Classification of Content:** The OTT platforms, called as the publishers of online curated content in the rules, would **self-classify the content into five age based categories** - U (Universal), U/A 7+, U/A 13+, U/A 16+, and A (Adult).
- **Parental Locks** - Platforms would be required to implement parental locks for content classified as U/A 13+ or higher and reliable age verification mechanisms for content classified as "A".
- **Identifying the First Originator of Information - Significant social media intermediaries** providing services primarily in the nature of messaging shall enable identification of the first originator of the information that is required only for the purposes of prevention, detection, investigation, prosecution or punishment of an offence related to sovereignty and integrity of India, the security of the State, friendly relations with foreign States, or public order or of incitement to an offence relating to the above or in relation with rape, sexually explicit material or child sexual abuse material punishable with imprisonment for a term of not less than five years.

► DIGITAL MEDIA CONTENT REGULATORY COUNCIL

- It is a self-regulatory body created by Indian Broadcasting and Digital Foundation (IBDF) to create a credible, robust and practical code for content, with an inclusive and fair governance structure for digital OTT Platform. Former Supreme Court judge Justice Vikramjit Sen has been appointed as Chairman of DMCR along with six other eminent industry members.
- The Council constitutes prominent personalities from the Media & Entertainment industry and Online Curated Content Providers (OCCPs), with experience in IPR, programming and content creation.
- DMCR is formed as per the mandate of *Information Technology (Intermediary Guidelines and Digital Media*

Ethics Code) Rules, 2021 with active consultation amongst the creative industry fraternity.

► ARBITRATION AND CONCILIATION (AMENDMENT) ACT, 2021

It amends the Arbitration and Conciliation Act, 1996 and replaces Arbitration and Conciliation (Amendment) Ordinance, 2020 promulgated under clause (1) of article 123 of the Constitution.

IMPORTANT FEATURES

The Arbitration and Conciliation (Amendment) Bill, 2021 which seeks to replace the aforesaid Ordinance, inter alia, provides for the following:

- (i) Grant unconditional stay of enforcement of arbitral awards, where the underlying arbitration agreement, contracts or arbitral award is induced by fraud or corruption.
- (ii) Omit Eighth Schedule of the Act which laid down the qualifications, experience and norms for accreditation of arbitrators.
- (iii) Specify by regulations the qualifications, experience and norms for accreditation of arbitrators and the said amendment is consequential in nature.

► NEED TO ERADICATE MANUAL SCAVENGING

The Madras High Court has directed the State Government to come up with meaningful measures to completely eradicate the practice of manual scavenging by prescribing harsh penalty to perpetrators as a deterrent. The judges also on the need to substantially increase the compensation paid for deaths due to manual scavenging.

DIRECTIONS ISSUED BY MADRAS HIGH COURT

- **Fresh Report** - It has called for a status report from the government in four weeks.
- **Fresh Enumeration** - It also impressed upon the need for a fresh enumeration of the people involved in manual scavenging in the State.
- **Increased Compensation** - It agreed for increased compensation in case of deaths caused due to manual scavenging from present Rs. 10 lakhs which was fixed in 2014 to Rs. 50 Lakhs.
- **Awareness** - The Court also asked the state to educate those involved in manual scavenging and erase the impression from their minds that they cannot take up any other vocation.

LEGAL SAFEGUARDS PROVIDED FOR MANUAL SCAVENGERS AND SAFAI KARAMCHARIS IN INDIA

1. Protection of Civil Rights Act, 1955

- Based on **Article 17** to abolish the practice of untouchability against Scheduled Castes/Dalits, government enacted [The Protection of Civil Rights \(PCR\) Act, 1955](#).
- It punishes the preaching and practice of Untouchability and enforcement of any disability against any member of the society.

2. The Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

- Now, the PCR Act covered offences of untouchability, but not of atrocities against members of Scheduled Castes (SCs) and the Scheduled Tribes (STs).
- So, the government enacted **Prevention of Atrocities Act** to prevent commission of offences against members of Scheduled Castes and Scheduled Tribes and also to provide relief and rehabilitation of victims of such offences.
- The Act punishes anyone who compels or employs a member of Scheduled Caste or Scheduled Tribe to carry human or animal carcasses or for manual scavenging. Further, the Act post amendment also established [Special Courts](#) and [Exclusive Special Courts](#) for trial of offences punishable under the Act.

3. Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993

- The act prohibits the employment of manual scavengers, manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines.
- It seeks to rehabilitate manual scavengers and provide for their alternative employment. Each local authority, cantonment board and railway authority is responsible for surveying insanitary latrines within its jurisdiction.
- They shall also construct a number of sanitary community latrines. It provided for imprisonment of up to a year and a fine. Though the construction of dry latrines has drastically reduced, the number of deaths in manholes, sewers and septic tanks continues to remain high.

4. National Commission for Safai Karamcharis Act, 1993

- NCSK Act established National Commission for Safai Karamcharis with powers to investigate grievances & take suo moto notice of matters relating to

- However, the Act lapsed in 2004 and now the National Commission for Safai Karamcharis is functioning as a Non-Statutory body of the Ministry of Social Justice and Empowerment whose tenure is extended from time to time through Government Resolutions. Cabinet has extended the term of NCSK till 2025.

ROLE AND RESPONSIBILITIES

- Give recommendations to Government regarding programs for welfare of Safai Karamcharis,
- Study & evaluate existing welfare programs for Safai Karamcharis, investigate cases of grievances etc.
- To monitor implementation of Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 and advice for its effective implementation to Centre and State Governments and enquire into complaints regarding contravention/non-implementation of the provisions of the Act.

► MEDIATION BILL, 2021

Parliament has introduced the Mediation Bill 2021 which aims to promote and facilitate mediation, especially institutional mediation for resolution of commercial or other disputes, enforce mediated settlement agreements, provide for a body for registration of mediators, to encourage community mediation and to make online mediation as acceptable and cost effective process. The standalone law on mediation contemplates the international practice of using the terms 'conciliation' and 'mediation' interchangeably as India is a signatory to the Singapore Convention on Mediation.

DIFFERENCE BETWEEN ARBITRATION, MEDIATION & CONCILIATION

- Arbitration, mediation and conciliation are the main Alternative Dispute Resolution Mechanism which is generally adopted to resolve disputes in an informal manner.
- The primary difference between arbitration, conciliation and Mediation is based on the role played by the third party who is selected by the parties seeking a settlement, in consensus.
- Arbitration is the process by which parties select an independent person, who renders a decision regarding the case.
- Conversely Conciliation attempts to make parties come to an agreement about the problem at hand.
- In Mediation, the mediator acts as a facilitator who helps the parties in agreeing.

• The 2021 Mediation Bill aims to:

- Promote, encourage and facilitate mediation especially institutional mediation for resolution of commercial disputes.
- Enforce domestic and international mediation settlement agreements.
- Provide for a body for registration of mediators
- Encourage community mediation
- Make online mediation as an acceptable and cost-effective process.

IMPORTANT HIGHLIGHTS OF THE BILL

- **Definition** - Mediation shall be a process, whether referred to by the expression mediation, pre-litigation mediation, online mediation, community mediation, conciliation or an expression of similar import, whereby party or parties, request a third person referred to as mediator or mediation service provider to assist them in their attempt to reach an amicable settlement of a dispute.
- **Mediator** is a person who is appointed to be a mediator to undertake mediation, and includes a person registered as mediator with the Council.
- **Conflict of Interest of Mediator must be disclosed** - A mediator is supposed to be neutral and free from bias to ensure impartial conduct during mediation process. Thus, the Bill makes it mandatory for mediator to disclose in writing any conflict of interest which may question or doubt mediator's impartiality.
- **"Institutional Mediation"** means mediation conducted under the aegis of a mediation service provider.
- **Mediation Service Provider** means a body or organisation that provides for the conduct of mediation under this Act and rules and regulations made thereunder, and are recognised by the Council.
- **Court Annexed Mediation** means mediation including pre-litigation mediation conducted at the mediation centres established by any court or tribunal.
- **Pre-Litigation Mediation** - Irrespective of any mediation agreement, any party before filing any suit or proceedings of civil or commercial nature in any court shall try to settle the disputes by pre-litigation mediation.
- **International Mediation** means mediation undertaken under this Act and relates to a commercial dispute arising out of a legal relationship, contractual or otherwise, under any law for the time being in force in India, and where at least one of the parties, is:
 - (i) an individual who is a national of, or habitually resides in, any country other than India.

- (ii) a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India.
- (iii) an association or body of individuals whose place of business is outside India.
- (iv) the Government of a foreign country.
- **Enforcement** - A mediated settlement agreement resulting from mediation signed by the parties and authenticated by the mediator shall be final and binding on the parties. The mediated settlement agreement shall be enforced in accordance with the provisions of the Code of Civil Procedure, 1908, in the same manner as if it were a judgment or decree passed by a court.
- **Mediation Council of India** - The Central Government shall establish a Council to be known as the Mediation Council of India to regulate Mediation activities in India. The Council shall comprise of a Chairperson, two full time members, three Members ex-officio and a Part time Member.
- **Disputes or matters not fit for mediation** - Mediation under this Act shall not be conducted for resolution of any dispute or matter contained in the indicative list under the First Schedule. However, a Court may refer any dispute to mediation relating to compoundable offences or matrimonial offences connected with or arising out of civil proceedings between the parties.
- **Interim relief by court or tribunal** - In cases of exceptional circumstances, party to the mediation can approach Court or Tribunal to seek interim relief.

► MENTAL HEALTHCARE ACT 2017

- Repealed The Mental Health Act of 1987.
- It provided for concept of '**Advanced directive**', i.e., a person (suffering from mental illness) shall have right to specify the way he/she wishes to be treated or not to be treated.
- Person shall have right to **nominate representative** to take decisions on his/her behalf regarding treatment.
- Prohibits use of **electro-convulsive therapy** without the use of muscle relaxants and anesthesia
- Prohibits **electro-convulsive therapy for minors**.
- **Decriminalized the attempt to suicide** which hitherto was criminal offence under section 309 of IPC.
- Provides for establishment of **central and state mental health authority**.

► PERSONAL DATA PROTECTION BILL 2019

- In a landmark judgment (**Justice K. S. Puttaswamy (Retd) Vs Union of India**) Supreme Court held that Indians have a constitutionally protected fundamental **right to privacy** that is an intrinsic part of **life and liberty under Article 21**.
- Government appointed Justice **B N Srikrishna committee** that submitted its report in July 2018 along with a draft Data Protection Bill.
- Currently, the usage and transfer of personal data of citizens is regulated by the Information Technology (IT) Rules, 2011, under the IT Act, 2000.

SALIENT FEATURES OF THE BILL

- Bill provides definition of certain terms
 - 1) **Personal data** - Any information which renders an individual identifiable
 - 2) **Sensitive personal data** - Certain kind of personal data like sexual orientation, transgender status, caste, religious belief etc.
 - 3) **Critical personal data**- Anything that the government at any time can deem critical, such as military or national security data.
 - 4) **Data processing**- Any operation, including collection, manipulation, sharing or storage of data.
 - 5) **Data principal** - Individual whose personal data is being processed.
 - 6) **Data fiduciary**- Entity or individual who decides the means and purposes of processing data
 - 7) **Data processor**- Entity or individual who processes data on behalf of the fiduciary.
- **Applicable** to government and private entities incorporated in India as well as overseas, which are dealing with the processing of personal data.
- Fiduciaries can process the data only if **consent** is provided by the individual. However, in certain circumstances, processing of data may be permitted without the consent of the individual for ex- if data is required by the State for providing benefits to the individual, if required under law or for compliance with any court judgment etc
- The Bill specifies more **stringent grounds** for processing of **sensitive personal data**, such as seeking explicit consent of an individual prior to processing, to be stored only in India, can be processed abroad but only after approval of data protection agency (DPA).

- The central government may also notify certain categories of personal data as **critical personal data**, which may be processed only in servers located in India.
- The Bill provide certain **rights to the data principal** whose data is being processed, such as, the right to obtain a summary of personal data held with the data fiduciary, the right to seek correction of personal data, the right to transfer the data to any other data fiduciary in certain circumstances and the right to be forgotten.
- Certain **exemptions** have been provided to data processing activities on the grounds of National security, Journalistic purpose etc.
- The Bill provides for the establishment of a **Data Protection Authority (DPA)**. It shall consist of a chairperson and six members, with knowledge of at least ten years in the field of data protection and information technology.
- The bill provides for appellate tribunals to be set up by central government to appeal against the orders of DPA. Appeals from tribunal will go to the Supreme Court.
- Bill provides for **severe penalties** both for entities and individuals, who found to be indulged in breach of provision of laws. (5 crore or 2% of worldwide turnover for fiduciary and 5 years jail or 3 lakhs fine for individuals).

► NDPS ACT

- **National Policy on Narcotic Drugs and Psychotropic Substances** is based on **Directive Principles, contained in Article 47** of the Constitution, which direct the State to endeavour to bring about prohibition of the consumption, except for medicinal purposes, of intoxicating drugs injurious to health.
- **India is a signatory to:**
 - **UN Single Convention on Narcotics Drugs 1961,**
 - **Convention on Psychotropic Substances, 1971**
 - **Convention on Illicit Traffic in Narcotic Drugs and Psychotropic Substances, 1988**

which prescribe various forms of control aimed to achieve the dual objective of limiting the use of narcotics drugs and psychotropic substances for medical and scientific purposes as well as preventing the abuse of the same.
- **Broad legislative policy to control drug abuse is contained in the three Central Acts namely:**
 1. Drugs and Cosmetics Act, 1940

2. Narcotic Drugs & Psychotropic Substance Act, 1985
3. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.

INVOLVEMENT OF MULTIPLE MINISTRIES

- The responsibility of drug abuse control, which is a central function, is carried out through several Ministries, Departments and Organisations. These include the Ministry of Finance, Department of Revenue which has the nodal co-ordination role as administrator of the Narcotic Drugs and Psychotropic Substances Act, 1985 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
- The aspect of drug supply reduction is looked after by various enforcement agencies under the Ministry of Finance, Ministry of Home Affairs and State Governments.
- The aspect of drug demand reduction is handled by the Ministry of Social Justice & Empowerment and that of treatment of drug addicts and their rehabilitation falls under the domain of the Ministry of Health.

SALIENT FEATURES OF THE ACT INCLUDE

- The Central Government may constitute **The Narcotic Drugs and Psychotropic Substances Consultative Committee** to advise the Central Government on such matters relating to the administration of this Act as are referred to it by that Government from time to time.
- The Central Government may constitute a Fund to be called the **National Fund for Control of Drug Abuse**.
- The Fund shall be used by the Central Government to meet the expenditure incurred for the following:
 - Combating illicit traffic in narcotic drugs, psychotropic substances or controlled substances.
 - controlling the abuse of narcotic drugs and psychotropic substances
 - identifying, treating, rehabilitating addicts
 - preventing drug abuse
 - educating public against drug abuse
 - supplying drugs to addicts where such supply is a medical necessity.
- The government may constitute **Special Courts** for the purpose of providing speedy trial of the offences under NDPS Act.

- A Special Court shall consist of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

► NARCOTICS CONTROL BUREAU

Narcotics Control Bureau is the apex coordinating agency and functions as an enforcement agency. It collects data regarding seizures of narcotic drugs and psychotropic substance, study trends, modus operandi, collect and disseminate intelligence and work in close cooperation with the Customs, State Police and other law enforcement agencies.

FUNCTIONS

- Co-ordination with various offices, state governments & other authorities under N.D.P.S. Act, Customs Act, Drugs and Cosmetics Act and any other law in connection with enforcement provisions of the NDPS Act, 1985.
- Implementation of counter measures against illicit traffic under various international conventions.
- Assistance to concerned authorities in foreign countries & international organisations to facilitate coordination and universal action for prevention and suppression of illicit traffic in these drugs and substances.
- Coordination of actions taken by the other concerned Ministries, Departments in respect of drug abuse.

► CRIMINAL PROCEDURE (IDENTIFICATION) BILL

Criminal Procedure (Identification) Bill, 2022 authorises taking "measurements" of convicts and other persons for the purposes of identification and investigation in criminal matters and also provides for preservation of such records. The Bill aims to replace the IDENTIFICATION OF PRISONERS ACT, 1920. The editorial highlights that certain provisions of the Bill raises privacy and data safety concerns and hence requires further scrutiny.

The Bill defines Measurement includes finger- impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination of accused by the medical practitioner at the request of police officer or examination of person accused of rape by medical practitioner.

THE BILL SEEKS TO

- **Expand Scope of "measurements"** to include finger- impressions, palm-print and foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, etc.
- **Empower the National Crime Records Bureau** to collect, store and preserve the record of measurements and for sharing, dissemination, destruction and disposal of records.
- **Empower a Magistrate** to direct persons accused of criminal activities to give measurements.
- **Empower police or prison officer** to take measurements of any person who resists or refuses to give measurements.

NATIONAL CRIME RECORDS BUREAU (NCRB) TO COLLECT SUCH MEASUREMENTS

- National Crime Records Bureau shall for interest of prevention, detection, investigation & prosecution of any offence under any law for the time being in force:
- **Collect the record of measurements** from State Government or Union territory Administration or any other law enforcement agencies.
- **Store, preserve and destroy** the record of measurements at national level.
- **Process such records** with relevant crime and criminal records.
- **Share and disseminate such records** with any law enforcement agency.
- The record of measurements shall be retained in digital or electronic form **for a period of 75 years** from the date of collection of such measurement.
- **Destruction of Records:** A person whose measurements were taken but
 - has not been previously convicted of an offence punishable under any law with imprisonment for any term; and
 - is released without trial or discharged or acquitted by the court after exhausting all legal remedies.

Then all records of measurements so taken shall be destroyed from records unless directed otherwise by the Magistrate.

► KERALA LIMITS LOKAYUKTA'S POWERS

Kerala Government seeks to amend the Kerala Lokayukta Act, 1999 through an Ordinance which has been approved by the Governor under Article 213. This move has been opposed on grounds of dilution of powers of the Lokayukta

and being violative of certain constitutional and legal principles.

LOKPAL & LOKAYUKTA ACT, 2013

- It establishes Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries.
- It provides for an Enquiry Wing and a Prosecution Wing to deal with cases of corruption.
- **The Inquiry Wing** conducts preliminary inquiry into alleged cases of corruption against public servants under Prevention of Corruption Act, 1988.
- **The Prosecution Wing** files cases before the **Special Court** to prosecute public servants under Prevention of Corruption Act, 1988.
- **Section 63** of the Act empowers state government to establish the office of Lokayukta through a law made by respective state legislature to deal with complaints relating to corruption against certain public functionaries,
- There are some states like Kerala and Maharashtra who has constituted the office of Lokayukta prior to the enactment of the legislation to investigate cases of corruption against public servants.

PROPOSED CHANGES IN KERALA LOKAYUKTA ACT

- **Powers given to Competent Authority** - The amended Act makes it obligatory for the competent authority to review the “declaration of guilt” by the Lokayukta under Section 14 of the Act before acting against the culpable official. Within three months, the competent authority could accept or reject the ombudsman’s finding.
- **Any Retired Judge can be Appointed as Lokayukta** - The Ordinance also repealed the regulation that only retired Supreme Court justices or former Chief Justices of High Courts could assume the office of Lokayukta. Instead, the amendment gives the State government the authority to appoint any retired judge as the Ombudsman.

REASONS FOR CHANGE ACCORDING TO STATE GOVERNMENT

- **Against Article 163 and 164** - The Government has defended the proposed ordinance on the ground that the section amounts to removal of a Minister duly appointed by the Governor on the advice of the Chief Minister and violates Articles 163 and 164 of the Constitution.
- **No Provision for Appeal** - There is no provision for appeal for such public authorities and resignation is the only alternative.

- **Decisions of Lokayukta can be Reviewed** - The proposed amendment will allow the government or authority to decide on the Lokayukta’s finding within three months.

ESTABLISHMENT OF LOKPAL

- Lokpal consists of a chairperson, who is or has been a Chief Justice of India or is or has been a Judge of the Supreme Court or an eminent person,
- It shall have a maximum of eight members of which half shall be judicial members.
- **The Chairperson and Members shall be appointed by the President after obtaining the recommendations of a Selection Committee consisting of—**
 - **Prime Minister—Chairperson.**
 - **Speaker of the House of the People—Member.**
 - **Leader of Opposition in the House of the People—Member.**
 - **Chief Justice of India or a Judge of the Supreme Court nominated by him—Member.**
 - **One eminent jurist, as recommended by the Chairperson and Members**
- The Chairperson and every Member shall, on the recommendations of the Selection Committee, be **appointed by the President by warrant under his hand and seal** and hold office as such for a **term of five years or until he attains 70 years of age** (whichever is earlier).

WHAT ARE THE JURISDICTIONS AND POWERS OF LOKPAL?

- Lokpal has jurisdiction to inquire allegations of corruption against Prime Minister, Ministers, members of Parliament, officers belonging to Group A, B, C and D and officials of Central Government.
- The Lokpal on receipt of a complaint, may **order preliminary inquiry** against any **public servant** by its Inquiry Wing or any agency including the Delhi Special Police Establishment.
- Lokpal shall refer complaints of corruption against public servants to Central Vigilance Commission and the CVC after making preliminary enquiry –
 - In respect of public servants belonging to **Group A and Group B** - shall submit its report to the **Lokpal**.
 - In case of public servants belonging to **Group C and Group D** - the **Commission** shall proceed in accordance with the provisions of the **Central Vigilance Commission Act, 2003**.

- Lokpal can also inquire against any society or trust or body that receives foreign contribution above Rs.10 lakh.
- Lokpal Act creates **Special Courts** to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the Lokpal Act involving public servants.
- The Special Courts shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court.

PROBE AGAINST PRIME MINISTER

- The Lokpal cannot inquire into any corruption charge against the Prime Minister if the allegations are related to international relations, external and internal security, public order, atomic energy and space unless a full Bench of the Lokpal, consisting of all members, considers the initiation of a probe necessary and is approved by at least two-thirds of the members of Lokpal.
- Such a hearing should be held privately and if the complaint is dismissed, **the records shall not be published or made available to anyone.**

► EXTENDING TENURE OF CBI & ED CHIEFS

Central Vigilance Commission (Amendment) Bill, 2021 and Delhi Special Police Establishment (Amendment) Bill, 2021 respectively has extended the tenure of Director of Enforcement Directorate and Central Bureau of Investigation one year at a time, maximum up to five years. The Bills replaces the ordinance issued by the central government in November 2021.

Central Vigilance Act, 2003	Central Vigilance Commission (Amendment) Bill, 2021
<ul style="list-style-type: none"> • <u>Director of Enforcement</u> is appointed by the central government, on the recommendation of a Committee chaired by the Central Vigilance Commissioner. • Other Members of the Selection Committee includes <ul style="list-style-type: none"> ◦ <u>other Vigilance</u> 	<ul style="list-style-type: none"> • The Amendment provides that in <u>public interest</u>, the tenure of Director of ED can be extended up to 1 year at a time on the recommendation of the <u>Committee in writing.</u> • The bill extends the tenure up to a maximum period of 5 years in total including

<p><u>Commissioners.</u></p> <ul style="list-style-type: none"> ◦ <u>Secretaries from the Ministries of Home Affairs, Personnel, and the Revenue Department.</u> <ul style="list-style-type: none"> • Director of ED shall hold office for a period of <u>not less than 2 years</u> from the date of appointment. 	<p>the period mentioned in the initial appointment.</p> <ul style="list-style-type: none"> • This means that the Director apart from his fixed tenure of two-years, can get three extensions of 1 year each by the central government.
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Delhi Police Establishment Act, 1946	Delhi Special Police Establishment (Amendment) Act, 2021
<ul style="list-style-type: none"> • Under section 4A, the Director of CBI is appointed by a selection committee chaired by the Prime Minister. • Other Members of the Selection Committee includes = <ul style="list-style-type: none"> ◦ <u>Leader of Opposition, or Leader of the single largest Opposition Party in that House and</u> ◦ <u>Chief Justice of India (CJI) or Judge of the Supreme nominated by the CJI.</u> • Under Section 4B - The Director of shall continue to hold office for a period of not less than two years from the date on which he assumes office. 	<ul style="list-style-type: none"> • The Amendment provides that in <u>public interest</u>, the tenure of Director of CBI can be extended up to <u>1 year at a time</u> on the recommendation of the Committee in writing. • The amendment extends the tenure up to a <u>maximum period of 5 years in total including the period mentioned in the initial appointment.</u> • This means that the Director of CBI apart from <u>his fixed tenure of 2 years</u>, can get <u>three extensions of 1 year each</u> by the central government.

GOVERNANCE & LOCAL BODIES

► PM-CARES NOT UNDER RTI

Government of India submitted in Delhi High Court that PM-CARES Fund is not a fund of Government of India. The submission was made in response to a petition seeking that PM-CARES Fund be declared as 'The State' under Article 12 of the Constitution.

PM-CARES

- **Type of Organisation** - Created as a Public Charitable Trust where individuals and corporates can donate.
- **Purpose of creation** - undertake and support relief or financial assistance relating to a public health emergency other emergencies, calamity or distress - either man-made or natural, creation or upgradation of healthcare or pharmaceutical facilities, other necessary infrastructure, funding relevant research or any other type of support.
- **Members of the Trust:** Prime Minister is the Chairman of the trust and its members include Defence Minister, Home Minister and Finance Minister.
- **Tax Exemption** - Donations to this fund has 100% exemption from income tax under section 80(G).
- **Part of CSR** - Donations made to PM-CARES counted as part of Corporate Social Responsibility.
- **FCRA Exemption** - enables individuals and organizations based in foreign countries to donate to PM-CARES.

PUBLIC AUTHORITIES UNDER RTI

- *Private University Receiving Significant Government Funding*
- *NGOs Substantially Financed by Govt.*
- *Office of CJI under RTI*
- *Political Parties*

► J&K IMPLEMENTS FOREST RIGHTS ACT

J&k government has decided to implement Forest Rights Act, 2006 after a long delay. Forest dwellers like Gujjars or Bakarwals have been demanding extension of Forest Rights Act to J&K against threat of eviction from forest land along with livelihood issues.

THE SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT OF 2006- AIM & OBJECTIVE

- The 2006 Act is also referred as Forest Rights Act (FRA) recognises and vest the forest rights and occupation in forest land to such **Scheduled Tribes living in forest area** and **other traditional forest dwellers** who have been residing for generations but whose rights could not be recorded.
- FRA provides for a framework to record forests rights by having relevant evidence of such residence in forest lands.
- It provides such Scheduled Tribes living in forest area and other traditional forest dwellers responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance.
- It also ensures livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.
- The act Grants legal recognition to the rights of traditional forest dwelling communities and makes a beginning towards giving communities and the public a voice in forest and wildlife conservation.

PROVISIONS OF FRA

- **Types of rights:**
 - **Title rights:** It gives FDST and OTFD the right to ownership to land farmed by tribals or forest dwellers subject to a maximum of 4 hectares. Ownership is only for land that is actually being cultivated by the concerned family and no new lands will be granted.
 - **Use rights:** The rights of the dwellers extend to extracting Minor Forest Produce, grazing areas etc.
 - **Relief and development rights:** To rehabilitate in case of illegal eviction or forced displacement and to basic amenities, subject to restrictions for forest protection.
 - **Forest management rights:** It includes the right to protect, regenerate or conserve or manage any community forest resource which they have been traditionally protecting and conserving for sustainable use.
- **Who can claim rights** - The Act recognizes and vest the forest rights and occupation in Forest land in Forest Dwelling Scheduled Tribes (FDST) and Other Traditional Forest Dwellers (OTFD) by any member or community who has for at least three generations (75 years) prior to the 13th day of December, 2005 primarily resided in forests land for bona fide livelihood needs.

- **Authority for claiming rights** - Gram Sabha is the authority to initiate a process to vest rights on marginally and tribal communities after assessment of the extent of their needs from forest lands.
- **Procedure for claiming right** -
 - Gram Sabha after its assessment, receives claims of the communities, consolidates and verify these to help them exercise their rights
 - Gram Sabha then passes such a resolution to sub-divisional level committee (formed by the state governments.)
 - If one or more communities are not satisfied by such a resolution, may file a petition to sub-divisional level committee
 - Sub-Divisional Level committee after its assessment, passes the resolution to Sub-divisional officer to district level committee for its final decision
 - The district-level committee's decisions are considered final and binding
 - A state-level monitoring committee is constituted by the state government to monitor the process of recognition of these rights

► SUMMIT FOR DEMOCRACY

Summit brought together representing governments, multilateral institutions, activists, journalists, parliamentarians, human rights defenders, mayors, business and labor leader and other actors essential to accountable, inclusive, and transparent governance and the rule of law.

IMPORTANT HIGHLIGHTS

- **USA conducted** this summit where leaders from 100 governments announced a wide range of commitments and pledges in support of democratic renewal centered on the Summit's three themes of:
 1. Strengthening democracy and defending against authoritarianism.
 2. Fighting corruption; and
 3. Promoting respect for human rights

PRESIDENTIAL INITIATIVE FOR DEMOCRATIC RENEWAL

- President Biden announced the establishment of **Presidential Initiative for Democratic Renewal** to bolster democracy, fight corruption, and defend human rights worldwide.
- In line with the Summit's themes, these efforts will center on five areas of work:

1. Supporting a free and independent media.
2. Fighting corruption
3. Bolstering democratic reformers
4. Advancing technology for democracy &
5. Defending free and fair elections and political processes

► INFORMATION-MONITORING, EVALUATION AND SOCIAL AUDIT

Ministry of Social Justice & Empowerment (MOSJE) has formulated a scheme Information-Monitoring, Evaluation & Social Audit (I-MESA).

I-MESA

- Social Audits are to be conducted for all the schemes of the Department starting FY 2021-22.
- These social audits are done through Social Audit Units (SAU) of the States and National Institute for Rural Development and Panchayati Raj.
- Even the Department of Rural Development has institutionalized social audits in major schemes of Rural Development, starting with National Social Assistance Program and Pradhan Mantri Awas Yojana-Gramin.

ABOUT SOCIAL AUDIT

- Social audit is a process of reviewing official records and determining whether state reported expenditures reflect the actual monies spent on the ground.
- Social audit is a process in which, details of the resource, both financial and non-financial, used by public agencies for development initiatives are shared with the community, often through a public platform.
- Review of official records also helps to determine the gap in state reported expenditure and accrual money spent on ground. This overall helps to **enforce accountability and transparency** and enable public to **scrutinise development initiatives** especially at local level in Panchayats and Municipalities.

INSTITUTIONALISING SOCIAL AUDIT IN GOVT. SCHEMES

- **National level** - Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was the first Act to mandate Social Audits by the Gram Sabha of all the projects taken up in the Gram Panchayat.
- **State level** - Few States have taken up social audit-

- Pradhan Mantri Awas Yojana-Gramin (PMAY-G) audits are done in Uttar Pradesh, Meghalaya and West Bengal.
- National Social Assistance Program (NSAP) audits are done in Andhra Pradesh and West Bengal.
- Meghalaya Legislature has enacted 'The Meghalaya Community Participation and Public Services Social Audit Act, 2017' which mandates social audit in 26 different schemes in Education, Health, Rural Development and other areas.

► E-PRISON PROJECT

e-Prisons have been operationalised across all states and Union Territories by the Ministry of Home Affairs. The e-prison data has been integrated with Police and court system under the Inter-Operable Criminal Justice System.

The system can be accessed through the secure National Informatics Centre (NIC) network, exclusively by authorising officials of law enforcement agencies and prisons through inter-operable Criminal Justice System (CIS)

WHAT ARE E-PRISONS?

- The e-Prisons application suite integrates all the activities related to prison and prisoner management.
- It provides vital information about the inmates lodged in the prisons in a real-time environment to the courts, prison officials and other entities, involved in the Criminal Justice System.
- It facilitates online visit requests and grievance redressal.

ABOUT E-PRISON PROJECT

- The e-Prisons Project of Ministry of Home Affairs aims at computerization of the functioning of prisons in the country including digitisation and availability of prisoner's data (convicts, under-trials, detainees etc.) in an electric platform which will be accessible to designated authorities of central and state governments.
- e-Prisons Project will help in creating centralised standard information database.
- e-Prisons uses data maintained by the States and Union Territories on the [National Prisons Information Portal](#) as per protocols notified for e-Prisons.

COMPONENTS OF E-PRISON PROJECT

- **E-Prisons Management Information System (MIS)** – Management Information System used at the prisons for their day to day regular activities.

- **National Prisons Information Portal (NPIP)** – It is a citizen-centric portal that displays statistical data from the country's numerous prisons. Visitors can use this portal to schedule visits with their wards inside the prison; grievances about their wards can also be submitted using the portal.
- **Kara Bazaar** – Portal for showing and selling things made by convicts in various jails across the country. All of the state prison departments now have access to the necessary technology for onboarding.

Users of the e-Prisons Suite



INTER-OPERABLE CRIMINAL JUSTICE SYSTEM

- Inter-operable Criminal Justice System (ICJS) aims to integrate the Crime and Criminals Tracking Network and Systems (CCTNS) project with the e-courts and e-prisons databases, as well as with other pillars of the criminal justice system such as Forensics, Prosecution, and Juvenile homes in a phased manner.
- ICJS is thus a common platform for information exchange and analytics of all the pillars of the criminal justice system comprising of Police, Forensics, Prosecution, Courts & Prisons.
- Invested under the CCTNS project of the MHA, the ICJS enables a nationwide search on police, prisons & courts databases across all States/ UTs in the country.
- CCTNS is a Mission Mode Project under the National e-Governance Plan (NeGP) of Govt. of India.

► TELECOM REGULATORY AUTHORITY OF INDIA – TRAI

TRAI was established in 1997 by an Act of Parliament namely **the Telecom Regulatory Authority of India Act, 1997**, to regulate telecom services, including fixation/revision of tariffs for telecom services which were earlier vested in the Central Government.

AIMS & OBJECTIVES

- Create and nurture conditions for growth of telecommunications to enable India to play a leading role in emerging global information society.
- Provide a fair and transparent policy environment which promotes a level playing field and facilitates fair competition.
- TRAI has issued various regulations, orders and directives for the evolution of Indian telecom market from a Government owned monopoly to a multi operator multi service open competitive market.
- The directions, orders and regulations issued cover a wide range of subjects including tariff, interconnection and quality of service as well as governance of the Authority.

TSDAT

- The TRAI Act was amended in January 2000 to establish a Telecommunications Dispute Settlement and Appellate Tribunal (TSDAT) to take over the adjudicatory and disputes functions from TRAI.
- TSDAT was set up to adjudicate any dispute between a licensor and a licensee, between two or more service providers, between a service provider and a group of consumers, and to hear and dispose of appeals against any direction, decision or order of TRAI.
- Appeal from UIDAI can be filed before TSDAT.
- A person or entity in the Aadhaar ecosystem aggrieved by an order of the Adjudicating Officer under THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016 may prefer an appeal to the Appellate Tribunal within a period of forty-five days from the date of receipt of the order appealed against.

► UNIQUE IDENTIFICATION AUTHORITY OF INDIA – UIDAI

UIDAI is constituted under **THE AADHAAR (TARGETED DELIVERY OF FINANCIAL AND OTHER SUBSIDIES, BENEFITS AND SERVICES) ACT, 2016**.

- **Composition** - UIDAI consist of a Chairperson, appointed on part-time or full-time basis, two part-time Members, and the chief executive officer who shall be Member-Secretary of the Authority, to be appointed by the Central Government.
- **Tenure** - The Chairperson and the Members of UIDAI shall hold office for a term of 3 years from the date on which they assume office and shall be eligible for re-appointment. However, no person shall hold office as

the Chairperson or Member after he has attained the age of sixty-five years.

POWERS & FUNCTIONS OF UIDAI

- Specifying demographic information and biometric information required for enrolment and the processes for collection and verification thereof.
- Collecting demographic information and biometric information from any individual seeking an Aadhaar number in such manner as may be specified by regulations.
- Appointing of one or more entities to operate the Central Identities Data Repository.
- Generating and assigning Aadhaar numbers to individuals.
- Performing authentication of Aadhaar numbers.
- Maintaining and updating the information of individuals in the Central Identities Data
- Omitting and deactivating of an Aadhaar number and information relating thereto in such manner as may be specified by regulations.**
- Specifying the manner of use of Aadhaar numbers for the purposes of providing or availing of various subsidies, benefits, services and other purposes for which Aadhaar numbers may be used.
- Specifying terms and conditions for appointment of Registrars, enrolling agencies and service providers and revocation of appointments thereof.
- Establishing, operating and maintaining of the Central Identities Data Repository.
- Sharing the information of Aadhaar number holders, subject to the provisions of this Act.
- Calling for information and records, conducting inspections, inquiries and audit of the operations for the purposes of this Act of the Central Identities Data Repository, Registrars, enrolling agencies and other agencies appointed under this Act.
- Specifying various processes relating to data management, security protocols and other technology safeguards under this Act.
- Specifying the conditions and procedures for issuance of new Aadhaar number to existing Aadhaar number holder.
- Levying and collecting the fees or authorising the Registrars, enrolling agencies or other service providers to collect such fees for the services provided by them under this Act in such manner as may be specified by regulations.

- (p) Appointing such committees as may be necessary to assist the Authority in discharge of its functions for the purposes of this Act.
- (q) Promoting research and development for advancement in biometrics and related areas, including usage of Aadhaar numbers through appropriate mechanisms.
- (r) Evolving of, and specifying, by regulations, policies and practices for Registrars, enrolling agencies and other service providers.
- (s) Setting up facilitation centres and grievance redressal mechanism for redressal of grievances of individuals, Registrars, enrolling agencies and other service providers

► SCHEDULED TRIBE COMPONENT (STC) / TRIBAL SUB-PLAN (TSP)

Ministry of tribal affairs reports considerable improvements in living conditions of the Scheduled Tribes (STs):

- **Periodic Labour Force Survey (PLFS)** report (July 2019 - June 2020) by the **National Statistical Office (NSO)** reveals that literacy rate for STs increased to 70.1%.
- **Unified District Information System for Education (UDISE) Plus reports** published by **Ministry of Education** suggests Gross Enrolment Ratio (GER) for ST students at Senior Secondary (classes IX-X) level has increased from 62.4% in 2012-13 to 76.7% in 2019-20.
- **National Family Health Surveys (NFHS)** conducted by **Ministry of Health and Family Welfare**, in respect of Scheduled Tribes suggests
 - Infant Mortality Rate has declined from 62.1 (2005-06) to 44.4 (2015-16)
 - Under Five Mortality Rate has declined from 95.7 (2005-06) to 57.2 (2015-16)
 - Institutional Delivery has increased from 17.7% in 2005-06 to 68.0 % in 2015-16.
 - Percentage of Underweight (weight-for age) ST children under age five years has declined from 54.5 in 2005-06 to 45.3 in 2015-16.

ABOUT SCHEDULED TRIBE COMPONENT/ TRIBAL SUB-PLAN

- **Purpose** - The Tribal Sub-Plan (TSP) aims to bridge the gap between the Schedule Tribes (STs) and the

general population with respect to all socio-economic development indicators in a time-bound manner.

- **Origin** - Tribal Sub-Plan came into existence in 1974-75 as a strategy for the development of areas having tribal concentration. After merger of Plan and Non-Plan, the TSP was renamed as **Scheduled Tribe Component (STC)** by Ministry of Finance.
- **Implementation-**
 - Besides, Ministry of Tribal Affairs, 40 Central Ministries / Departments have been obligated by NITI Aayog for earmarking certain percentage of their total Scheme allocation every year as TSP funds for tribal development.
 - State Governments are also supposed to earmark TSP funds in proportion to ST population (Census 2011) in the State with respect to total State Plan.
 - In addition, Ministry of Tribal Affairs also provides funds under its schemes to supplement the efforts of tribal development by other Ministries/ Departments.
- **Objective** - The basic objective of Schedule Tribe Component is to channelize/monitor the flow of outlays and benefits from the general sectors in the Central Ministries/Departments for the development of Schedules Tribes at least in proportion to their population.
- **Eligibility** - TSP is not applicable to states where tribals represent more than 60% of the population.
- **Monitoring of TSP** -Ministry of Tribal Affairs has developed **STC MIS Portal** for monitoring of Tribal Sub-Plan (TSP) / Schedule Tribe Component (STC) funds of obligated Ministries/Departments.
- **Benefits of TSP/STC Strategy for Tribal Population-**
 - Infrastructural development
 - Creating livelihood opportunities
 - Reducing poverty and unemployment
 - Raising nutritional levels
 - Improving literacy and health
 - Improving sanitation, provision of clean drinking water, housing

► AFFINITY TEST

- Bombay High Court in the case of *Shilpa Vishnu Thakur* held that the **affinity test is an integral part of the determination of the correctness of the claim of the caste certificate.**
- It helps to determine **whether a person genuinely belongs to a designated Scheduled Tribe**, the Scrutiny

Committee must ensure that the applicant has satisfied the affinity test.

► PVTG

Governor of Telangana travelled deep inside the Nallamala forest to interact with Chenchu tribe in their habitation. Chenchu Tribe has been categorised as PVTG, Ministry of Tribal Affairs.

CRITERIA FOR IDENTIFYING PARTICULARLY

VULNERABLE TRIBAL GROUPS ARE:

- Pre-agricultural level of technology
- Low level of literacy
- Economic backwardness
- A declining or stagnant population.

CENTRALLY SPONSORED SCHEME FOR PVTGS

Ministry of Tribal Affairs implements a scheme called 'Development of Particularly Vulnerable Tribal Groups (PVTG)' specifically for the PVTG population.

The scheme covers the 75 identified PVTGs in 18 States, and Union Territory of Andaman & Nicobar Islands.

This is a Centrally Sponsored Scheme having a provision of 100% Central assistance to 18 states and Union territory of Andaman & Nicobar Islands where 75 communities identified as PVTGs reside.

► BRASILIA DECLARATION ON ROAD SAFETY

- **2010 - (Reduce Road Accidents by 50% by 2020)** - United Nations General Assembly adopted the Global Plan for the Decade of Action for Road Safety 2011-2020 aimed at reducing fatalities in road accidents by 50% by the year 2020.
- **2015 - Brasilia Declaration** was finalised at the Second Global High-Level conference on Road Safety held in Brazil. It laid down recommendations on strengthening existing legislations, adopting sustainable transport and strengthening post-crash response. In the declaration, participants reasserted their commitment to reduce the deaths caused due to traffic accidents to half by the year 2020. This target was set under the 2030 Agenda for Sustainable Development Goal 3.6.
- **2020 - (Reduce Road Accidents to Zero by 2030)** - Third High Level Global Conference on Road Safety for Achieving Global Goals 2030' — where it was conceptualised to have **zero road fatalities** in India by 2030.

► INDIA'S ANTI-TRUST LAW

Various anti-trust lawsuits have been filed in USA and EU against Big Tech Companies (Facebook, Google, Amazon, Apple etc.) on their anti-competitive practices.

INDIA'S ANTI-TRUST LAW - COMPETITION ACT, 2002

- The **SVS Raghavan Committee (1999)** enquired into the matter of competition law and policy and suggested the formation of Competition Law in India in 2001.
- Based on the Report, the government enacted **The Competition Act, 2002** to regulate anti-competitive practices.
- The Act also constitutes the **Competition Commission of India (CCI)** and a **Competition Appellate Tribunal** for hearing grievances.

THE MANDATE OF COMPETITION LAW IN INDIA IS THREE-FOLD NAMELY

1. To check Anti-Competitive agreements
2. Prohibit Abuse of dominance by strong companies over weak organisations, and
3. To regulate Mergers and Acquisitions or Takeovers taking place in the market.

COMPETITION ACT PROVIDES FOR THE ESTABLISHMENT OF A COMPETITION COMMISSION FOR THE FOLLOWING

1. To prevent practices having adverse effect on competition,
2. To promote and sustain competition in markets,
3. To protect the interests of consumers and
4. To ensure freedom of trade carried on by other participants in Indian market.

WHAT CONSTITUTES ANTI-COMPETITIVE AGREEMENTS?

- Any association of enterprises, person or association of persons entering into any agreement in respect of production, supply, distribution, storage, acquisition or control of goods or provision of services, which causes or is likely to cause an appreciable adverse effect on competition within India.

HAVING APPRECIABLE ADVERSE EFFECT ON COMPETITION

Any agreement between associations, person, cartel etc. engaged in identical or similar trade of goods or provision of services, which -

- directly or indirectly determines purchase or sale prices.

- limits or controls production, supply, markets, technical development, investment or provision of services.
- shares the market or source of production or provision of services by way of allocation of geographical area of market, or type of goods or services, or number of customers in the market or any other similar way.
- directly or indirectly results in bid rigging or collusive bidding,

Shall be presumed to have an appreciable adverse effect on competition.

- Any agreement amongst enterprises or persons at different stages or levels of the production chain in different markets, in respect of production, supply, distribution, storage, sale or price of, or trade in goods or provision of services, including –
 - (a) **tie-in arrangement.**
 - (b) **exclusive supply agreement.**
 - (c) **exclusive distribution agreement.**
 - (d) **refusal to deal.**
 - (e) **resale price maintenance**

shall also cause an appreciable adverse effect on competition in India.

- **Bid Rigging** - means any agreement, between enterprises or engaged in identical or similar production or trading of goods or provision of services, which has the effect of eliminating or reducing competition for bids or adversely affecting or manipulating the process for bidding.
- **Predatory price** - means the sale of goods or provision of services, at price, which is below the cost, as may be determined by regulations, of production of the goods or provision of services, **with a view to reduce competition or eliminate the competitors.**

UNDERSTANDING ABUSE OF DOMINANT POSITION

- India's Competition Act clearly stipulates that **No enterprise or group shall abuse its dominant position.**
- **Dominant Position** means a position of strength, enjoyed by an enterprise, in the relevant market, in India, which enables it to –
 - (i) operate independently of competitive forces prevailing in the relevant market; or
 - (ii) affect its competitors or consumers or the relevant market in its favour

- **Abuse of Dominant Position** – happens if an enterprise or group directly or indirectly, imposes unfair or discriminatory
 - condition in purchase or sale of goods or service; or
 - price in purchase or sale (including predatory price) of goods or service.

► NATIONAL PROGRAM & PROJECT MANAGEMENT POLICY FRAMEWORK

- NITI Aayog & Quality Council of India (QCI) launched the 'National Program and Project Management Policy Framework' (NPMPF), envisaged to bring radical reforms in the way infrastructure projects are executed in India.
- NPMPF will help in realizing the vision of an Aatmanirbhar Bharat by building a stronger India which will fulfill the need for good quality infrastructure and help in reducing costs and waste material, without compromising on the environment and ecology.
- NPMPF will prove useful for mega projects like Bharatmala and Sagarmala. It will also help to ensure accountability, transparency and a corruption-free system, along with a fast-track decision-making process.

► MISSION KARMAYOGI

Aim of "Mission Karmayogi" is to impart futuristic vision to civil services which could effectively determine the roadmap for next 25 years and shape the Century India of 2047.

ENHANCING GOVERNANCE THROUGH CIVIL SERVICES CAPACITY BUILDING

- National Program for Civil Services Capacity Building ('NPCSCB') – "Mission Karmayogi" has been launched with the objective of enhancing governance through Civil Service Capacity Building.
- Mission Karmayogi aims to prepare the Indian Civil Servant for the future by making them more creative, constructive, imaginative, innovative, proactive, professional, progressive, energetic, enabling, transparent and technology enabled. Empowered with specific role-competencies, the civil servant will be able to ensure efficient service delivery of the highest quality standards.
- The aim of Mission Karmayogi is to ensure "Ease of Living" for common man, "Ease of Doing Business"

and Citizen-Centricity that is reducing the gap between the government and the citizens.

MISSION KARMAYOGI WILL HAVE THE FOLLOWING SIX PILLARS

- (i) Policy Framework,
- (ii) Institutional Framework
- (iii) Competency Framework,
- (iv) Digital Learning Framework (Integrated Government Online Training Karmayogi Platform (iGOT-Karmayogi),
- (v) electronic Human Resource Management System (e-HRMS), and
- (vi) Monitoring and Evaluation Framework.

INSTITUTIONAL FRAMEWORK APPROVED TO IMPLEMENT & MONITOR THE PROGRAM

- **Prime Minister's Public Human Resource Council (PMHRC):** A Council under the chairmanship of Hon'ble Prime Minister is conceived to be the apex body for driving and providing strategic direction to civil service reforms and capacity building.
- **Cabinet Secretariat Coordination Unit:** It will monitor the implementation of NPCSCB, align stakeholders and provide mechanism for overseeing capacity building plans.
- **Capacity Building Commission:** It will be set up for functional supervision of training institutions and facilitate in preparation of annual capacity building plans.
- **Special Purpose Vehicle (SPV, an autonomous company) under Section 8 of the Companies Act, 2013:** It will own and operate all the digital assets created for NPCSCB on behalf of the Government of India.
- **Program Management Unit (PMU) -** It will provide Program Management and Support services to the Department.

IGOT-KARMAYOGI PLATFORM

- The platform brings the scale and state-of-the-art infrastructure to augment the capacities of over two crore officials in India.
- The platform is expected to evolve into a vibrant and world-class marketplace for content where carefully curated and vetted digital e-learning material will be made available.
- Besides capacity building, service matters like confirmation after probation period, deployment, work assignment and notification of vacancies etc.

would eventually be integrated with the proposed competency framework.

- The Program will be delivered by setting up an **Integrated Government Online Training-iGOTKarmayogi** Platform.

► ISLAND DEVELOPMENT AGENCY

While launching the submarine Optical Fibre Cable (OFC) connecting Andaman & Nicobar Islands to the mainland, Prime Minister highlighted that the Island Development Agency (IDA) which was formed in 2017 has been reviewing the progress of the important works carried out in the islands of Andaman and Nicobar Islands and in the Lakshadweep islands.

- Island Development Agency (IDA) was setup under the chairmanship of Home Ministry with CEO, NITI Aayog as its convener.
- IDA focuses on holistic Development of 10 islands of India.
- It aims at developing India's maritime economy while preserving the natural eco-system and addressing the security concerns.
- Ministry has emphasized upon the need for sustainable development of Islands with people's participation.
- Other Members of the IDA including Cabinet Secretary, Home Secretary, Secretary (Environment, Forests and Climate Change), Secretary (Tourism) and Secretary (Tribal Welfare)

► NATIONAL RECRUITMENT AGENCY (NRA)

In the Budget for the year 2020-21, an announcement was made that the National Recruitment Agency (NRA) would be set up as an independent, professional and specialist organization for conduct of a computer-based online Common Eligibility Test (CET) for recruitment to non-Gazetted posts.

RECENT DEVELOPMENTS - NRA

- It has been envisaged that the CET would screen /shortlist candidates for certain categories of posts in Central Government for which recruitment is carried out through the Staff Selection Commission (SSC), Railway Recruitment Boards (RRBs) and Institute of Banking Personnel Selection (IBPS).
- Based on the screening done at CET score level, final selection for recruitment shall be made through

separate specialized tests/examinations, to be conducted by the respective recruitment agencies.

- An Expert Advisory Committee has since been setup by NRA to recommend, inter-alia, the common Syllabus and scheme for the CET.

WHICH EXAMS WILL BE INCLUDED?

- It will organise a CET to screen/shortlist **candidates for the Group B and C (non -technical) posts**, which are now being conducted by the Staff Selection Commission (SSC), Railways Recruitment Board (SSC) and Institute of Banking Personnel Selection (IBPS). Later, more exams may be brought under it.
- It will have representatives from SSC, IBPS and RRB.
- The test will be conducted for three levels: graduate, higher secondary (12th pass) and the matriculate (10th pass) candidates.
- However, **the present recruitment agencies- IBPS, RRB and SCC — will remain in place.**
- Based on the screening done at the CET score level, final selection for recruitment shall be made through separate specialised Tiers (II, III, etc.) of examination which shall be conducted by the respective recruitment agencies. The curriculum for CET would be common.

► CABINET SECRETARIAT & ITS FUNCTIONS

The Cabinet Secretariat functions directly under the Prime Minister. The administrative head of the Secretariat is the Cabinet Secretary who is also the ex-officio Chairman of the Civil Services Board. The business allocated to Cabinet Secretariat under Government of India (Allocation of Business) Rules, 1961 includes (i) Secretarial assistance to the Cabinet and Cabinet Committees; and (ii) Rules of Business.

RESPONSIBILITIES OF CABINET SECRETARIAT

- **Administration of the Government of India (Transaction of Business) Rules, 1961 and Government of India (Allocation of Business) Rules, 1961.**
- **Facilitating smooth transaction of business in Ministries/ Departments.**
- **Provides Secretariat assists in decision-making in Government by ensuring**
 - Inter-Ministerial coordination for removing difficulties and delays
 - ironing out differences amongst Ministries/Departments and

- Evolving consensus among various Committees.
- Co-ordination in administrative actions and policies
- **Participates in managing major crisis situations and coordinates with ministries/departments to solve the crisis.**

PROVIDES SECRETARIAL ASSISTANCE TO THE CABINET AND CABINET COMMITTEES IN THE FORM OF

- **Convening of the meetings of the Cabinet & its Committees on the orders of the Prime Minister.**
- **Preparation and circulation of the agenda.**
- **Circulation of papers related to the cases on the agenda.**
- **Preparation of record of discussions.**
- **Circulation of the record of discussions after obtaining the approval of the Prime Minister.**
- **Monitoring implementation of decisions taken by the Cabinet and its Committees.**

► FUNCTIONS OF CHIEF SECRETARY

Chief Secretary is at the apex of administrative hierarchy of a state. He is the head of the State Secretariat. He oversees General Administration Department which forms part of portfolio of Chief Minister. Chief Secretary is Chief or head of all the Secretaries of the State and is also called the "Kingpin of the Secretariat".

CONDUCT OF BUSINESS OF GOVT. OF STATE

- The Indian Constitution does not define or provide for his powers and functions. His functions are defined under the Rules of Business (**Article 166 - Conduct of business of the Government of a State**) which each state government frames for itself. These are amended from time to time. Some of the functions of Chief Secretary have also evolved through custom and conventions.
- **Article 166(3)** - *The Governor shall make rules for the more convenient transaction of the business of the Government of the State, and for the allocation among Ministers of the said business in so far as it is not business with respect to which the Governor is by or under this Constitution required to act in his discretion.*

THE PRINCIPAL FUNCTIONS OF CHIEF SECRETARY ARE:

- Principal Advisor to the Chief Minister in all matters of state administration.

- He acts as the Secretary to the Council of Ministers.
- Administrative head of the State Secretariat and attends the meetings of Cabinet and its sub-committees.
- Exercises general supervision and control over the entire Secretariat.
- He is the Secretary to the State Cabinet and prepares agenda of Cabinet Meetings and keeps records of its proceedings.
- Acts as the head of the State Civil Services and deals with appointments, transfers, promotion of senior state civil servants.
- Acts as the chief co-coordinator of the state administration and ensures inter-departmental coordination.
- Acts as the Chairman of coordination committees set up to look into inter-departmental disputes.
- Presides over the meetings of Departments Secretaries, Divisional Commissioners, District Collectors and head of departments of district administrations to coordinate work and review performances.
- He is the main channel of communications between his government and the central or other state governments.
- He receives all important and confidential communications from the Union government and submits them to the Chief Minister.

► INTEGRITY PACT AS PART OF GOVERNMENT CONTRACT

The Integrity Pact (IP) is an anti-corruption tool to help government to fight corruption in the field of public contracting and procurement.

- **It consists of an agreement between a government department and all bidders for a contract.**
- **The IP sets out their rights and obligations** to the effect that
 - neither side will pay, offer, demand or accept bribes or
 - collude with competitors to obtain the contract, or
 - while carrying out the contract with the government.
- As per integrity pact, only those vendors/ bidders, who commit themselves to such a Pact with the

buyer, would be considered competent to participate in the bidding process.

- So, entering into this Pact must be preliminary criteria for all contracts and procurements involving public offices.

INTEGRITY PACT IN INDIA

- **Central Vigilance Commission (CVC) has recommended adoption of Integrity Pact for all the Government departments as well as PSUs** - realizing the importance of IP as a vigilance tool in controlling corruption in public contracting and procurement.
- **CVC has provided basic guidelines for its implementation in respect of major procurements in the Government Organizations.**
- **CVC has also issued Standard Operating Procedure** spelling out all the details.
- **Even the 2nd ARC in its report on "Ethics in Governance" has recommended that all the government department and PSUs should adopt Integrity Pact** to bring in accountability and transparency in Government procurement.
- **Such a mechanism would enable India curb corruption in government contract.**
- **However, so far the adoption of IP is voluntary in India.**

► CPGRAMS

Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice brought Report on 'Strengthening of Grievance Redressal Mechanism of Government of India'. The Committee suggested measures to facilitate effective and efficient redressal of public grievances. The Committee believes that an efficient and effective grievance redressal mechanism ensures accountability and increases citizen satisfaction, both of which are key elements of good governance.

IMPORTANCE OF GRIEVANCE REDRESSAL MECHANISMS

1. Grievance Redressal Mechanism of an organisation is an instrument to measure its efficiency and effectiveness.
2. Provides important feedback on the working of the organisation.
3. Ensures timely delivery of services

GRIEVANCE REDRESSAL MECHANISM OF THE GOVERNMENT OF INDIA AT THE APEX LEVEL

- There are primarily two designated nodal agencies in the Central Government handling these grievances. These agencies are:

1. Department of Administrative Reforms and Public Grievances, Ministry of Personnel, Public Grievances and Pensions
2. Directorate of Public Grievances, Cabinet Secretariat.

DEPARTMENT OF ADMINISTRATIVE REFORMS & PUBLIC GRIEVANCES (DARPG)

- **It is the nodal agency** in respect of policy initiatives on public grievances redress mechanism and citizen centric initiatives.
- **Role of DARPG** - undertake citizen centric initiatives in the fields of administrative reforms and public grievances to
 - ensure quality delivery of public services to the citizen in a hassle-free manner and
 - eliminate the causes of grievances.
- **The Allocation of Business Rules, 1961**, allocates to DARPG the responsibility for ***Policy, Coordination and Monitoring*** of issues relating to
 - (a) Redress of Public Grievances in general and
 - (b) Grievances pertaining to Central Government Agencies, in particular.
- In accordance with the federal principle of governance, the grievances relating to States are forwarded to concerned State Government for appropriate action.
- Towards this end, DARPG has established the **Centralised Public Grievance Redress and Monitoring System (CPGRAMS)**.

DIRECTORATE OF PUBLIC GRIEVANCES (DPG)

- DPG was set up in the Cabinet Secretariat in April 1988.
- DPG was set up initially to look into individual complaints pertaining to four Central Government Departments, but now is handling grievances pertaining to 16 Central Government Organisations.
- DPG has been envisaged as an appellate body investigating grievances where the complainant had failed to get redress at the hands of internal machinery and the hierarchical authorities.
- Unlike the Department of AR&PG, DPG has been empowered to call for the files and officers for discussion to ensure grievance handling has been done in a fair, objective and just manner.

- DPG can also suggest suitable recommendations to be adopted by the concerned Ministry/department which must implement them within one month.

GRIEVANCE REDRESSAL MECHANISM (CPGRAMS)

- CPGRAMS is an online portal available to public 24x7 to lodge their grievances against the authorities on any subject related to service delivery. It is a single portal connected to all the Ministries/Departments of Government of India and States.
- CPGRAMS also facilitates tracking grievances through a system generated Unique Registration Number.
- The system enables Ministries/ Departments to take appropriate action and upload the Action Taken Report (ATR) on the system which can be viewed by the citizens online with the help of the unique registration number.
- **Public grievances usually come in two forms: 1. Through the CPGRAMS; and 2. Through post.**
- The grievances received by post are digitized and sent both through the System as well as by post to the Ministry/ Department/ State Government concerned.

► CORPORATE SOCIAL RESPONSIBILITY

Section 135 of Companies Act, 2013, provides for concept of Corporate Social Responsibility (CSR) where a company is required to spend on social welfare programs for the benefit of Indian society.

RELATION OF CSR WITH SOCIAL PHILANTHROPY

- The idea of CSR emanated from the concept of social philanthropy, and it helps in achieving the purpose set out in Part IV of the Indian Constitution especially ideas enshrined in Article 38 and 39.
- **Article 38** mentions about ***promotion of welfare of people by securing and protecting the social order, by minimizing the inequalities in income, status, facilities and opportunities.***
- **As per Article 39, the state shall ensure for its citizens**
 - adequate means of livelihood,***
 - proper distribution of community resources for the welfare of all specially the weak,***
 - distribution of wealth equitably in the society for the common good of all.***
- Thus, the concept of CSR instills in a company the idea of social responsibility integrated with its motive of profit making. CSR activities also help them to

integrate *ethical, social, and environmental concerns of our society with their day-to-day work.*

WHICH COMPANIES QUALIFY FOR CSR ACTIVITIES?

- A company meeting the following requirements as prescribed under the Companies Act is liable to contribute **2%** of its **average net profit** for social welfare during any financial year
 1. If a company has a **net worth of Rs. 500 crores or more**, or
 2. If the **turnover** of a company is **Rs. 1,000 crores or more**, or
 3. If the **net profit** of a company is **Rs. 5 crore or more**
- Such a company shall constitute a '**Corporate Social Responsibility Committee**' of the Board consisting of three or more directors, out of which at least one director shall be an **independent director**.

ROLE OF CORPORATE SOCIAL RESPONSIBILITY COMMITTEE

- The Corporate Social Responsibility Committee shall
 - i. formulate and recommend to the Board, a **CSR Policy** which shall indicate the activities to be undertaken by the company as specified in Schedule VII of the Companies Act, 2013
 - ii. recommend the amount of expenditure to be incurred on such activities.
 - iii. monitor the CSR Policy of the company from time to time.
- The Board shall approve the CSR Policy for its company and disclose contents of such Policy in its report and place it on the company's website.
- In pursuing its activities towards CSR, company shall give preference to the local area and adjacent areas around it where it operates.

AREAS PROVIDED FOR CSR ACTIVITIES BY A COMPANY

- **Schedule VII of the Companies Act, 2013 provides an inclusive list of areas such as:**
 - To eradicate extreme hunger and poverty
 - To promote education
 - Promotion of gender equality and women empowerment
 - Reducing child mortality and improving maternal health
 - Combating human immunodeficiency virus, acquired immune deficiency syndrome, malaria and other diseases
 - Ensuring environmental sustainability

- employment enhancing vocational skills
- social business projects
- contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government or the State Governments for socio-economic development and relief
- Contribution for the welfare of the Scheduled Castes, the Scheduled Tribes, other backward classes, minorities and women
- Since the list provided is an inclusive list and not an exhaustive list, **hence a company can also spend on other activities for the welfare of the society as approved by its Board of Directors which is not prohibited under the Act or Rules framed by the government.**

ACTIVITIES NOT TREATED UNDER CSR

- Such works which the company generally undertake in their normal course of business.
- Any welfare projects, programs or activities pursued by a company beyond Indian Territory shall not be construed as expenditure incurred towards CSR.
- Activities which benefit only the employees of the company and their families shall not be considered as CSR activity.
- Contribution of any amount directly or indirectly to any political party shall not be considered as CSR activity.

► NATIONAL EDUCATIONAL POLICY, 2020

Union Cabinet has approved National Education Policy 2020 based on the recommendations of Dr. Kasturirangan Committee. NEP is based on the pillars of "access, equity, quality, affordability, accountability" and transform India into a "vibrant knowledge hub".

REFORMS IN STRUCTURE & CURRICULUM OF SCHOOL EDUCATION

- The NEP 2020 suggests a slew of reforms to school education, with a focus on **flexibility of subjects and eliminating silos between streams of learning**. Another goal of the NEP is to achieve **100 percent Gross Enrolment Ratio in preschool to secondary level by 2030**.
- First off, the NEP **changes the existing 10+2 structure** of school education **to a 5+3+3+4**, covering children between the ages of 3-18.
- This structure, when broken up into corresponding grades, is:

- **The foundation stage is** three years of anganwadi or preschool + two years in primary school in grades 1-2 covering ages 3 to 8 years
- **The 'preparatory stage'** covering ages 8 to 11 years or grades 3-5
- **The 'middle stage'** covering ages 11 to 14 years or grades 6-8
- **The 'secondary stage'** covering ages 14 to 18 years in two phases – grades 9-10 in the first and grades 11-12 in the second
- The NEP aims to **reduce the curriculum content to its core essentials**, focussing on key concepts and ideas in order that children are able to **practice more critical thinking** and among other things, more **analysis-based learning**.
- The NEP also states that there will be **no hard separation among 'curricular', 'extra-curricular', or 'co-curricular' areas**, among 'arts', 'humanities', and 'sciences', or between 'vocational' or 'academic' streams. During grades 6-8, students will be required to take a course which will provide hands-on experience of several important vocational crafts as well.
- In fact, children will also be given **increased flexibility in the choices of subjects** they wish to study, especially in the secondary stage.

CHANGES TO EXAMINATIONS & FOCUS ON MULTILINGUALISM IN SCHOOLS

- The policy also aims to **promote multilingualism and a learning of native languages**. There will also be reforms to the assessment system.
- According to the policy, **board exams will be made 'easier', testing 'primarily core capacities/competencies'** rather than rote learning.
- The NEP will implement **standardised school exams to be taken in grades 3, 5 and 8 to track progress of education** throughout school years rather than just at the end.
- One of the biggest changes the NEP seeks to **bring about is a focus on languages** in school.
- According to the policy, *wherever possible, "the medium of instruction until at least grade 5, but preferably till grade 8 and beyond, will be the home language/mother tongue/local language/regional language"*, to be followed in both public and private schools.
- The policy will also implement **the three-language formula**, but with **some flexibility and without imposing** any language on a state.

- Essentially, it means that students will learn three languages, based on the states, regions and the choice of the students themselves, as long as at least two of the three languages are native to India.
- One of the languages offered in this **three-language formula will be Sanskrit**. The latter will be offered at all levels of school and higher education, as will other classical languages such as Tamil, Telugu, Kannada, Malayalam, Odia, Pali, Persian, and Prakrit.
- **Foreign languages** such as Korean, Japanese, Thai, French, German, Spanish, Portuguese, and Russian, will also be offered **at the secondary level**, the policy states.

REFORMING TRAINING OF TEACHERS

- The policy not only aims to **transform education but also to improve the skills** of those facilitating that education – teachers.
- Teachers will also be offered **local, regional, state, national, and international workshops** as well as online teacher development modules so that they are able to improve their skills and knowledge.
- The policy states that by 2030, **teacher education will be moved into multidisciplinary universities**, and by the same year, the minimum degree qualification for teaching will be a four-year integrated BEd.

REFORMS IN THE HIGHER EDUCATION SYSTEM


- A goal of the NEP is also to **increase the Gross Enrolment Ratio in higher education**, including vocational education from 26.3 percent as of 2018 to 50 percent by 2035.
- One of the main aims of NEP is to **overhaul the fragmented nature of India's existing higher education system** and instead bring together higher education institutions (HEIs) into **large multidisciplinary universities, colleges, and HEI clusters/knowledge hubs**.
- One change that the NEP brings about is that the undergraduate degree will be of **either a three or four-year duration**, with multiple exit options within this period, with appropriate certifications for those dropping out at a certain point in the course. HEIs will also be able to offer masters courses of different designs, based on the undergraduate degree of the student.
- **The MPhil program has been discontinued by the NEP 2020.**
- The NEP is seeking to implement is an **"Academic Bank of Credit (ABC)"**, which will be able to digitally

store academic credits earned from various recognised HEIs. This will allow degrees from an HEI to be awarded taking into account credits earned.

- While the NEP states that a system of granting graded autonomy based on accreditation will be adopted for colleges, **eventually, the aim is to transform them into an autonomous degree-granting college, or a constituent college of a university.**
- A change has also been to the regulatory system, **with the National Higher Education Regulatory Council (NHERC) set to function as one single regulator for the higher education sector**, including teacher education, but excluding medical and legal education.

► POLICE COMMISSIONERATE SYSTEM

This aimed at improving the law and order since the population in both the cities has exceeded 10 Lakh. In order to achieve this, the police are also given decision-making powers, thus centralising power.

POWERS UNDER POLICE COMMISSIONER	
Under the new system, the commissioner of police will have a number of powers which the district magistrate had till now	
<ul style="list-style-type: none"> ► It will be the commissioner of police (CP) who will issue orders to maintain public peace, such as imposition of section 144 and ordering curfew ► CP can directly enforce Goonda Act or Gangster Act against criminals ► All powers to initiate action under Immoral Traffic (Prevention) Act, 1956 will be under CP ► CP can direct to neutralise an animal if, in his opinion, it would be cruel to keep the animal alive, under Prevention of Cruelty to Animals Act, 1960 ► Power to regulate manufacture and issue licences for explosives also with CP 	 <ul style="list-style-type: none"> ► CP can slap penalty if prohibited items are taken into prison or rules for communication with prisoners are violated ► Under Act for prevention against and safety from fire, CP can issue penalty to violators, award compensation and introduce safety measures in buildings ► CP can take action against suspected foreigners staying in hotels, their departure or documents with them under Foreigners Act, 1946

CORE

► FRAMING OF THE CONSTITUTION OF INDIA

- The idea of “Constituent Assembly” for India was mooted **for the first time by MN Roy in 1934.**
- The Constituent Assembly’s demand was **first accepted by the British in August Offer (1940).** However, it was **in Cripps Mission** that the British **accepted for the Constitution Assembly consisting entirely of Indians.**
- The Constituent Assembly was set-up in November, 1946 as per the **Cabinet Mission Plan of 1946.**
- The Cabinet Mission Plan discarded full adult franchise for elections to the Constituent Assembly and instead **suggested indirect elections by members of the recently elected Provincial Legislative Assemblies.**
- **(i) 292 members were elected through the Provincial Legislative Assemblies; (ii) 93 members represented the Indian Princely States; and (iii) 4 members represented the Chief Commissioners’ Provinces.**
- The total membership of the Assembly thus was to be 389. However, as a result of the **partition under the Mountbatten Plan of 3 June, 1947,** a separate Constituent Assembly was set up for Pakistan and representatives of some Provinces ceased to be members of the Assembly.
- **Consequently, the membership of the Constituent Assembly was reduced to 299.**
- On 13 December, 1946, Pandit Jawaharlal Nehru moved the Objectives Resolution.
 - Its **first meeting** was held on **9th December, 1946** with **Sachidanand Sinha as the interim President.**
 - **On 11th December, 1946, Dr Rajendra Prasad was elected as the President** of the Constituent Assembly. Objective Resolution was moved by Jawaharlal Nehru.
 - The **Drafting Committee** was appointed, with **Dr BR Ambedkar as the Chairman.**
 - The Constituent Assembly took almost **2 Years, 11 Months and 18 days** to complete its historic task of drafting the Constitution for Independent India.
 - On **26th November, 1949,** the people of India through the Constituent Assembly **adopted, enacted and gave themselves the Constitution of India.**
 - The Constitution **came into full operation with effect from 26th January, 1950.**
 - When the **Constitution of India came into force on 26th January, 1950,** it repealed *the Indian Independence Act, 1947.*
 - India ceased to be a dominion of the British Crown and became a sovereign, democratic and republic.
 - 15 Female Members of Constituent Assembly:
 - **Durgabai Deshmukh:** Also member of the Planning Commission after Independence.
 - **Rajkumari Amrit Kaur:** First cabinet ranking female Minister in the First Cabinet. First Health Minister.
 - **Hansa Mehta:** She was Indian representative at the UN for UN Declaration on Human Rights. She advocated for changing “all men are born free and equal” to “all human beings are born free and equal”.

- o **Begum Aizaz Rasul:** Only female muslim member of the Constituent Assembly. She argued against separate electorates (Punjab).
- o **Ammu Swaminathan:** She demanded for a small constitution to be able to fit in the pocket.
- o **Dakshayani Velayudhan:** She was only female from the Dalit Community in the Constituent Assembly. (Tamil Nadu)
- o **Kamla Chaudhary**
- o **Leela Roy**
- o **Malati Chowdhary**
- o **Purnima Banerjee**
- o **Renuka Ray**
- o **Sarojini Naidu**
- o **Sucheta Kripalani**
- o **Vijayalakshmi Pandit:**
- o **Annie Mascarene:** (From Kerala)

FUNCTIONS PERFORMED BY THE CONSTITUENT ASSEMBLY

- It adopted the **National flag** on 22nd July, 1947.
- It ratified India's, **membership of Commonwealth** in the May, 1949.
- It elected **Dr Rajendra Prasad as the first President** of India on 24th January, 1950.
- It **adopted the National Anthem and National song** on 24th January, 1950.

Committee on the Rules of Procedure	Rajendra Prasad
Steering Committee	Rajendra Prasad
Ad hoc Committee on the National Flag	Rajendra Prasad
Finance and Staff Committee	Rajendra Prasad
Credential Committee	Alladi Krishnaswami Ayyar
House Committee	B. Pattabhi Sitaramayya
Order of Business Committee	K.M. Muni
Committee on the Functions of the Constituent Assembly	G.V. Mavalankar
States Committee	Jawaharlal Nehru
Advisory Committee on	Vallabhbhai Patel

Fundamental Rights, Minorities and Tribal and Excluded Areas	
Minorities Sub-Committee	H.C. Mookherjee
Fundamental Rights Sub-Committee	J.B. Kripalani
North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee	Gopinath Bardoloi
Union Constitution Committee	Jawaharlal Nehru
Drafting Committee	B.R. Ambedkar

► SOURCES OF INDIAN CONSTITUTION

US Constitution	Fundamental rights, independence of judiciary, judicial review, impeachment of the President, removal of supreme court and high court judges and post of Vice President
British Constitution	Parliamentary government, Rule of Law, Legislative procedure, single citizenship, cabinet system, prerogative writs, Parliamentary privileges and bicameralism.
Irish Constitution	Directive Principles of State Policy, nomination of members
Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course and joint sitting of the two Houses of Parliament
Canadian Constitution	Federation with a strong Center, vesting of residuary powers in the center, appointment of State governors by the Center and advisory jurisdiction of the Supreme Court
Weimar Constitution of Germany	Suspension of Fundamental Rights during Emergency
Australian Constitution	Concurrent List, freedom of trade, commerce and inter-course and joint sitting of the two Houses of

	Parliament.
Soviet Constitution (USSR, now Russia)	Fundamental duties and the ideal of justice (social economic and political) in the Preamble
French Constitution	Republic and the ideals of liberty, equality and fraternity in the Preamble.
South African Constitution	Procedure for amendment of the Constitution and election of members of Rajya Sabha

Government of India Act 1935	Federal Scheme, Office of Governor, Judiciary, Public Service Commission Emergency provisions and administrative details
Japanese Constitution	Procedure established by Law.

▶ CONSTITUTION OF INDIA

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SEVENTH SCHEDULE	UNION LIST, STATE LIST & CONCURRENT LIST	Article 246
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TWELFTH SCHEDULE	MUNICIPALITY <i>The Constitution (Seventy-fourth Amendment) Act, 1992</i>	Article 243W

► PREAMBLE

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

- The vision given in the Preamble of our Constitution is the guiding light for ensuring the spread and reach of the political, economic and social democracy in the country.
- The word **Socialist, Secular, & integrity** were added by **Constitution 42nd Amendment**. (The preamble has been amended only once so far)
- Preamble does not grant any power but it gives a direction purpose to the Constitution and also outlines its objectives.

- The Preamble contains the fundamentals of the Constitution and serves the following important purposes:
 - Contains the enacting clause which brings the constitution into force
 - Declares the rights and freedoms intended for its people
 - Declares the basic type of government and polity which is sought to be established in India
 - Throws light on the source of the Constitution viz. the *People of India*
- Thus, the source of the Constitution are the people themselves from whom the Constitution derives its ultimate sanction. The People of India thus constitutes the sovereign political body who hold the ultimate power and who conduct the government of the country through their elected representatives.

IS THE PREAMBLE PART OF THE CONSTITUTION?

- The Preamble of the constitution was added after rest of the constitution was already enacted.
- SC in the Berubari Union Case (1960) said that the preamble is not the part of the constitution. However, in the Kesavananda Bharati case (1973), the Supreme Court overturned its previous decision and held that preamble is a part of constitution and can be amended under article 368.

- In the SR Bommai case, the Supreme Court held that preamble indicates basic structure of the constitution.

NOTE: "Objectives resolution" introduced by Jawahar Lal Nehru was later Modified as a preamble of India.

WHAT PROVISIONS OF INDIAN CONSTITUTION CAME INTO FORCE FROM 26th NOVEMBER 1949?

- Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949 itself.
- The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the 'date of its commencement', and celebrated as the Republic Day.

THE UNION AND ITS TERRITORY

► CONSTITUTIONAL PROCESS TO CREATE STATE / UNION TERRITORIES

- **Part I of the Constitution of India** provides for formation of new States and Union Territories and alteration of areas, boundaries or names of existing States or Union Territories.
- **Article 3 empowers the Parliament to**
 - Form new states or Union Territories
 - Alter areas, boundaries or names of existing states or Union Territories
- Now, regarding **Article 3**, the first thing to understand is about the Explanation-I and Explanation-II provided thereunder which we generally miss.

Explanation I - In this article -- in clauses (a) to (e) -- "State" includes a **Union territory**, -- but in the proviso - "State" does not include a Union territory.

Explanation II - The power conferred on Parliament by clause (a) includes the **power to form a new State or Union territory** by uniting a part of any State or Union territory to any other State or Union territory. (This case is applicable for J&K to be divided into two UTs.)

So, after understanding the Explanations, let us go through the Provisions of Article 3

Article 3 - It says that Parliament may by law -

- form a new State (or UT) by separation of territory from any State or by uniting two or more States (or UT) or parts of States or by uniting any territory to a part of any State (or UT)
- increase the area of any State
- diminish the area of any State
- alter the boundaries of any State
- alter the name of any State

Proviso Clause - (Here State does not include Union Territory)

- The Bill to be introduced for reorganisation of states, recommendation of the President is necessary.
- Where proposals contained in the Bill affect the areas, boundaries, or name of any of the States, the Bill must be referred by the President to the Legislature of that State for expressing its views within a prescribed timeframe.

Article 2 - Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Article 4 - Laws made under articles 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental, incidental and consequential matters. No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

► PART-III: FUNDAMENTAL RIGHTS (F.R.)

Rights can be classified into **Natural Rights, Human Rights, Fundamental Rights, Constitutional Rights and Statutory Rights**

- **Natural Rights** - Natural Rights are universal in nature inherent to all living things.
- **Human Rights** - They are similar to natural rights i.e. they are universal in nature but inherent only to humans.
- **Constitutional Rights** - These are rights provided by the constitution to the people. Example: Article 326 provides for universal adult franchise.
- **Statutory Rights** - These are rights provided to people by various laws passed by the legislature. Example: NATIONAL FOOD SECURITY ACT, MGNREGA etc.
- **Fundamental Rights** - These are provided in Part-III of the Indian Constitution.

- The entrenched Fundamental Rights have a dual aspect. One, they confer justiciable rights on the people which can be enforced through the Courts against the government. Second, they also constitute restrictions and limitations on government actions. Thus, a government cannot take any action, administrative, legislative or punitive by which any fundamental right is infringed.
- Entrenchment means that the guaranteed rights under Part III of the Constitution cannot be taken by ordinary law and such law curtailing any fundamental rights would be declared unconstitutional on judicial review.
- However, fundamental rights are not absolute rights and are subject to reasonable restrictions imposed in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.
- Supreme Court laid down the relevant tests to determine the existence of State agency or instrumentality:
 - If the entire share capital of the corporation is held by Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of Government.
 - Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation, it would afford some indication of the corporation being impregnated with governmental character.
 - Whether the corporation enjoys a monopoly status which is State conferred or State protected.
 - Whether the State has a 'deep and pervasive' control over it.
 - If the functions of the entity are of public importance and closely related to governmental functions.
 - If a department of Government itself is transferred to a corporation.

The Fundamental Rights in the Indian Constitution have been grouped under the following heads:

Right to Equality	Article 14 – 18
Right to Freedom	Article 19 – 22
Right Against Exploitation	Article 23 – 24
Right to Freedom of Religion	Article 25 – 28
Cultural and Educational Rights	Article 29 – 30
Right to Constitutional Remedies	Article 32 – 35

► STATE (ARTICLE 12)

- According to Article 12, 'the state' includes the
 - Government and Parliament of India.
 - Government and Legislature of States.
 - All local or state authorities such as municipalities, panchayats, district boards, improvement trusts, etc within the territory of India or under the control of Government of India.
- Supreme Court have emphasised that the concept of agency or instrumentality of the Government is not limited to a corporation created by a statute but is equally applicable to a company or a society.

However, the Supreme Court added that these tests were not exclusive and were merely indicative. The matter must be decided on case basis whether on facts the body is **financially, functionally, and administratively** dominated by, or under the control of the Government and such control must be **pervasive** and **not mere regulatory**. If these conditions are met, then a body can be called 'State' under Article 12.

► LAWS INCONSISTENT WITH FUNDAMENTAL RIGHTS & JUDICIAL REVIEW (ARTICLES 13)

ARTICLE 13 - LAWS INCONSISTENT WITH OR IN DEROGATION OF THE FUNDAMENTAL RIGHTS

- Article 13 gives teeth to the fundamental rights and makes them justiciable.
- Article 13(1) declares that all pre-Constitution laws shall be void to the extent to the extent of their inconsistency with Fundamental Rights.
- According to **Article 13(2)**, the State 'shall not make any law' which takes away or abridges the fundamental rights and any law made by the state contravening any fundamental right shall to the extent of such inconsistency be void. This provision deals with post-Constitutional laws.
- So, Article 13 empowers judiciary, especially the Supreme Court to act as the guardian, protector and

the final interpreter of the Fundamental Rights. Supreme Court has also said that **judicial review is also one of the 'basic feature'** of the Constitution.

- Parliament cannot curtail the power of judicial review by passing any legislation or through a constitutional amendment.

► RIGHT TO EQUALITY (ARTICLES 14-18)

ARTICLE 14 (EQUALITY BEFORE LAW)

- Article 14 says that state shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.
- Art. 14 is available to any person including legal persons viz. statutory corporation, companies, etc.
- Art. 14 is taken from the concept of equal protection of laws has been taken from the Constitution of USA.
- The concept of the rule of law is a negative concept while the concept of equal protection of laws is a positive concept.
- The concept of equality before the law is equivalent to the second element of the concept of the 'rule of law' propounded by A.D. Dicey, the British jurist. But certain exceptions to it are, the president of India, state governors, Public servants, Judges, Foreign diplomats, etc., who enjoy immunities, protections, and special privileges.

ARTICLE 15

- Article 15 of the Constitution **prohibits discrimination** against any citizen on the grounds of *race, religion, caste, sex, or place of birth*.
- However, as per **Article 15(4)**, the government may make any special provision for the advancement of any **socially and educationally backward classes of citizens** or for the **Scheduled Castes and the Scheduled Tribes**.
- **Article 15(5)** provides that state may make law for the advancement of any **socially and educationally backward classes of citizens** or for the **Scheduled Castes or the Scheduled Tribes** in so far as such special provisions relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State, other than the minority educational institutions (referred in Article 30).
- **The Constitution (One Hundred and Third Amendment) Act, 2019** has added a new provision – **Article 15(6)**, whereby

(a) State can make any special provision for the advancement of any “economically weaker sections of citizens”

(b) State can make any special provision for the advancement of any “economically weaker sections of citizens” relate to their admission to educational institutions including private educational institutions, whether aided or unaided by the State.

(c) However, such reservation will not apply to minority educational institutions.

(d) Reservation to such educational institutions would be in addition to the existing reservations and subject to a maximum of **10 per cent**.

ARTICLE 16

- Article 16 of the Constitution prohibits discrimination in employment in any government office. However, as per **Article 16(4)**, the state may make any provision for the reservation of appointments or posts in favour of **any backward class of citizens** which, in the opinion of the State, is **not adequately represented** in the **services under the State**.
- **The Constitution (One Hundred and Third Amendment) Act, 2019** has added a new provision - **Article 16(6)** where the state may make any provision for the reservation of appointments or posts in favour of any **economically weaker sections of citizens** in addition to the existing reservation and subject to a maximum of **10 per cent**.
- The reservation of up to 10% for “economically weaker sections” in educational institutions and public employment will be in addition to the existing reservation.

ARTICLE 17 (ABOLITION OF UNTOUCHABILITY)

Article 17 says that Untouchability is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offense punishable by law.

ARTICLE 18 (ABOLITION OF TITLES)

- Article 18 says that no title, not being a military or academic distinction, shall be conferred by the State. No citizen of India shall accept any title from any foreign state.
- The awards, Bharat Ratna, Padma Vibhushan, Padma Bhushan and Padma Shri, called as The National Awards would not amount to title within the meaning of Article 18.

► RIGHT TO FREEDOM (ARTICLES 19-22)

ARTICLE 19 FREEDOM & RESTRICTIONS

- All citizens shall have the right
 - To freedom of speech and expression.
 - To assemble peacefully and without arms.
 - To form associations or unions and cooperatives
 - To move freely throughout the territory of India.
 - To practice any profession or to carry on any occupation, trade or business.
- However, the freedoms guaranteed by Article 19 (1) are not absolute and each of these rights is liable to be controlled, curtailed and regulated to some extent by laws made by Parliament or respective State Legislatures.
- Accordingly clauses (2) to (6) of Article 19 lay down the grounds and the purposes for which a legislature can impose 'reasonable restrictions' on the rights guaranteed by Article 19(1).
- Restrictions imposed under Article 19 (2) to (6) serves two purpose:
 - i. they specify that these freedoms are not absolute but are subject to regulation
 - ii. they put a limitation on the power of a legislature to restrict these freedoms.
- Three important characteristics of reasonable restrictions imposed are:
 1. The restrictions can be imposed only by or under the authority of law. No restriction can be imposed by executive action alone without a corresponding law
 2. Each restriction must be reasonable
 3. There must be a purpose for which such restrictions are imposed
- **Reasonable Restriction open to Judicial Review** - Whether a restriction is reasonable or purposeful is to be determined finally by Courts when a law is challenged as unconstitutional. Hence, restrictions imposed by the legislature on freedom are not final or conclusive and is open to Judicial Review.

IS RIGHT TO INTERNET ACCESS A FUNDAMENTAL RIGHT?

- Supreme Court declared that access to the internet is protected under Article 19 of the Constitution.
- SC affirmed that the right to freedom of speech and expression, as guaranteed to all citizens under the first section of that article, covers the right to go online.

- In effect, even if left unsaid, this would make net access a fundamental right.

ARTICLE 20 (PROTECTION IN RESPECT OF CONVICTION FOR OFFENSES)

- No person shall be convicted of any offence except for violation of a law in force at the time of the commission of the Act.
- No person shall be prosecuted and punished for the same offence more than once.
- No person accused of any offence shall be compelled to be a witness against himself.

ARTICLE 21

- No person shall be deprived of his life or personal liberty except according to procedure established by law.
- However, procedure established by law will have the same meaning as that of due process of law as held in Maneka Gandhi case 1978.

ARTICLE 21A

The State shall provide free and compulsory education to all children of the age of 6-14 years in such manner as the State may, by law, determine.

ARTICLE 22

- Any person who is arrested and detained in custody must be informed about the grounds of his arrest. The person arrested shall not be denied the right to consult, and to be defended by a legal practitioner of their choice.
- Every person who is arrested and detained in custody shall be produced before the nearest magistrate **within a period of twenty-four hours** of such arrest.
- However, the protection guaranteed under Article 22 shall not be allowed to
 - any person who for the time being is an **enemy alien**
 - to any person who is arrested or detained under any law providing for **preventive detention**
- Preventive detention shall not be authorised for a period longer than three months unless approved by an Advisory Board.

► RIGHT AGAINST EXPLOITATION (ARTICLES 23-24)

ARTICLE 23

Prohibition of traffic in human beings and forced labour - Traffic in human beings and beggar and other similar forms of forced labour are prohibited and any

contravention of this provision shall be an offence punishable in accordance with law.

ARTICLE 24

Prohibition of employment of children in factories, etc.—No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment.

► RIGHT TO FREEDOM OF RELIGION (ARTICLES 25-28)

ARTICLE 25

Freedom of conscience and free profession, practice and propagation of religion - All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. However, this right is subject to subject to public order, morality and health.

However, the state can make any law to

- regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice;
- provide for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus.

The wearing and carrying of *kirpans* shall be deemed to be included in the profession of the Sikh religion.

ARTICLE 26

Freedom to manage religious affairs - Subject to public order, morality and health, every religious denomination or any section thereof shall have the right

- (a) to establish and maintain institutions for religious and charitable purposes;
- (b) to manage its own affairs in matters of religion;
- (c) to own and acquire movable and immovable property; and
- (d) to administer such property in accordance with law

ARTICLE 27

Freedom as to payment of taxes for promotion of any particular religion — No person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination.

ARTICLE 28

Freedom as to attendance at religious instruction or religious worship in certain educational institutions

Institution	Religious Instruction
Government	Not Permitted
Private (Aided)	Permitted (Voluntary Basis)
Private (unaided)	Permitted (Voluntary Basis)
Administered by State (Established under religious Endowment Act)	Religious Instruction can be indoctrinated. Ex. Madrasas, Christian Missionary Schools

► CULTURAL AND EDUCATIONAL RIGHTS (ARTICLES 29-30)

ARTICLE 29

Protection of interests of minorities

- Any section of the citizens residing in the territory of India or any part thereof having a distinct **language, script or culture** of its own shall have the right to conserve the same.
- No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

ARTICLE 30

Right of minorities to establish and administer educational institutions

- All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice.
- The State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

ARTICLE 31

- Repealed by 44th CAA 1978; placed under Art. 300A Providing for ordinary Legal Rights; Art. 31A; 31B; 31C were inserted into the Constitution.
- Article 31A
- Inserted by 1st CAA saves certain categories of Laws (related to Agrarian reforms) on grounds of being violative of Article 14; 19 & 31.
- (Presently only Art. 14 & 19)

ARTICLE 31B

- 1st CAA 1951; IXth schedule; completely immune from Judicial review; any category of law, **I.R. Coelho case**; complete Blanket immunity against Basic Structure;

subject to Judicial review post 24th March 1973 on grounds of Basic structure Doctrine

ARTICLE 31C

- 25th CAA 1971; Laws to give effect to Article 39(b) & (c) saved even if violative of Article of Article 14, 19 & 31 (presently Article 14 & 19); scope of Article 31C enlarged to entire DPSP by 42nd CAA; Minerva mills case struck down the enlarged scope; Doctrine of Harmonics Balance.

► RIGHT TO CONSTITUTIONAL REMEDIES (ARTICLE 32)

It deals with the right to move to the Supreme Court for the enforcement of Fundamental Rights including the Writs of (i) Habeas corpus, (ii) Mandamus, (iii) Prohibition, (iv) Certiorari and (V) Quo warranto.

WRIT	LOCUS STANDI	AGAINST WHOM
Habeas Corpus	No	State & Private Individuals
Mandamus	No	Public Authorities
Prohibition	Yes	Judicial & Quasi-Judicial
Certiorari	Yes	Judicial & Quasi-Judicial
Quo Warranto	No	Public Authorities

► RIGHTS OUTSIDE PART III

There are certain other rights contained in other parts of the Constitution. **These rights are known as constitutional rights or legal rights or non-fundamental rights.** They are:

1. No tax shall be levied or collected except by authority of law (**Article 265**).
2. No person shall be deprived of his property save by authority of law (**Article 300-A**).
3. Trade, commerce and intercourse throughout the territory of India shall be free (**Article 301**)
4. The **elections** to the Lok Sabha and the State Legislative Assembly shall be **on the basis of adult suffrage (Article 326)**.

Even though the above rights are also equally justiciable, they are different from the Fundamental Rights. In case of violation of a Fundamental Right, the aggrieved person can directly move the Supreme Court for its

enforcement under Article 32, which is in itself a fundamental right. But, **in case of violation of the above rights, the aggrieved person cannot avail this constitutional remedy.** He can move the High Court by an ordinary suit or under Article 226 (writ jurisdiction of high court).

► DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP)

- Borrowed from the constitution of Ireland.
- The fundamental rights and the directive principles have a common origin but are differentiated on grounds of justifiable and **non-justifiable rights** respectively. DPSP along with Fundamental Rights have been called **Conscience of the Constitution by Granville Austin**.
- Basically, the idea is that the “state” should keep these DPSPs in mind while framing laws, policies, ordinances etc. They are basically a code of conduct for the legislature and administrators of the country. They are non-justiciable in nature.
- DPSP's laid the foundation of **Welfare State** in India. Welfare State is defined as a state which guarantees certain minimum level of access to services such as health, education and economic security to all citizens.

► DPSP CLASSIFICATION

They are classified into 3 broad categories—Socialistic, Gandhian and Liberal-intellectual.

SOCIALISTIC

Principal among this category of directives are:

- a) securing welfare of the people (Art. 38)
- b) Securing proper distribution of material resources of the community as to best sub serve the common-good, equal pay for equal work, protection of childhood and youth against exploitation. etc. (Art.39),
- c) Equal justice and free legal aid (Art. 39A, added by 42nd Amendment)
- d) Securing right to work, education etc. Art. (41),
- e) Securing just and humane conditions of work and maternity relief (Art. 42) etc.
- f) Participation of workers in management of industries (Art 43A, added by 42nd Amendment)
- g) Promotion of Co-operative societies (Art 43B, added by 97th Amendment)

GANDHIAN

Principal among such directives are:

- a) to organize village panchayats (Art. 40),
- b) to secure living wage, decent standard of life, and to promote cottage industries (Art.43),
- c) to provide free and compulsory education to all children up to 14 years of age (Art. 45),
- d) to promote economic and educational interests of the weaker sections of the people, particularly, the scheduled castes and scheduled tribes,
- e) To enforce prohibition of intoxicating drinks and cow-slaughter and to organize agriculture and animal husbandry on scientific lines (Arts. 46-48).

LIBERAL-INTELLECTUAL

- a) to secure **uniform civil code throughout the country (Art.44)**,
- b) Protection and improvement of environment and safeguarding of forests and wildlife (Art48A, added by 42nd Amendment)
- c) to separate the judiciary from the executive (Art.50),
- d) to protect monuments of historic and national importance, and
- e) To promote international peace and security.

AMENDMENTS TO DPSP

ARTICLE	CONSTITUTIONAL AMENDMENT ACT (CAA)	YEAR
Article 38(2)	44 th	1978
Article 39 (f); Article 39 A; Article 43 A; Article 48 A	42 nd	1976
Article 45	86 th	2002
Article 43B	97 th	2011

► DIRECTIVES OUTSIDE PART IV

There are some other Directives contained in other Parts of the Constitution. They are:

1. The claims of the members of the Scheduled Castes and the Scheduled Tribes shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection

with the affairs of the Union or a State (**Article 335 in Part XVI**).

2. **Instruction in mother tongue:** It shall be the endeavour of every state and every local authority within the state to provide adequate facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups (**Article 350-A in Part XVII**).
3. **Development of the Hindi Language:** It shall be the duty of the Union to promote the spread of the Hindi language and to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India (**Article 351 in Part XVII**). The **above Directives are also non-justiciable in nature**. However, they are also given equal importance and attention by the judiciary on the ground that all parts of the constitution must be read together.

► FUNDAMENTAL DUTIES (F.D.)

- The Fundamental Duties of citizens were added to the Constitution by the 42nd Amendment in 1976, upon the **recommendations of the Swaran Singh Committee**. They are mentioned in the **Article 51A, Part IVA** of the Indian Constitution.
- It was on the Soviet model that fundamental duties were added. They non-justiciable in nature.
- They were originally ten in number; the Fundamental Duties were increased to eleven by the 86th Amendment in 2002.

List of Fundamental Rights

It shall be the duty of every citizen of India —

1. to **abide by the constitution** and respect its ideal and institutions;
2. to cherish and follow the noble ideals which inspired our **national struggle for freedom**;
3. to uphold and **protect the sovereignty, unity and integrity of India**;
4. to defend the country and render national service when called upon to do so;
5. to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional diversities, to renounce practices derogatory to the dignity of women;

6. to value and preserve the rich heritage of our composite culture;
7. to protect **natural environment** including forests, lakes, rivers, and wild-life and to have compassion for living creatures;
8. to develop the **scientific temper, humanism and the spirit of inquiry and reform**;
9. to **safeguard public property and to abjure violence**;
10. To strive towards excellence in all spheres of individual and collective activity, so that the nation constantly rises to higher levels of endeavor and achievement.
11. Who is a parent or guardian, to provide opportunities for education to his child, or ward between the age of 6 to 14 years. (added by 86th amendment act)

► PRESIDENT

- There shall be a President in whom the executive power of the Union shall be vested.
- The President shall be elected by the members of an electoral college consisting of:
 - Elected members of both Houses of Parliament; and
 - The elected members of the Legislative Assemblies (LA) of the States including LA of National Capital Territory of Delhi and the Union territory of Pondicherry.

OATH OR AFFIRMATION

President shall make and subscribe before the Chief Justice of India or, in his absence, the senior-most Judge of the Supreme Court an oath or affirmation.

TENURE

The President shall hold office for a term of five years from the date on which he enters upon his office and can be eligible for re-election to that office.

QUALIFICATIONS

Is a citizen of India, has completed thirty-five years of age is qualified for election as a member of the House of the People.

RESIGNATION

President may, by writing under his hand addressed to the Vice-President, resign his office.

IMPEACHMENT

- The charge to impeach the President shall be preferred by either House of Parliament and the

other House shall investigate the charge; at least 14 days-notice has to be given in writing signed by not less than one-fourth of the total number of members of the House.

- Such resolution has to be passed by a **majority of not less than two-thirds of the total membership of the House**.
- If as a result of the investigation a resolution is passed by a **majority of not less than two-thirds of the total membership of the House** by which the charge was investigated or caused to be investigated, declaring that the charge preferred against the President has been sustained, such resolution shall have the effect of removing the President from his office as from the date on which the resolution is so passed.

► VICE-PRESIDENT

Vice-President of India is the *ex-officio* Chairman of the **Council of States** and shall not hold any other office of profit.

ELECTION: Vice-President is elected by the members of an electoral college consisting of the **members of both Houses of Parliament** in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot.

QUALIFICATION: Citizen of, India must have completed 35 years of age and is qualified for election as a member of Council of States.

TENURE: Shall hold office for five years from the date on which he enters upon his office.

RESIGNATION: Vice-President may, by writing under his hand addressed to the President, resign his office.

REMOVAL: Vice-President may be removed from his office by a resolution of the Council of States passed by a **majority of all the then members of the Council** and agreed to by the House of the People. However, at least fourteen days' notice must be given of the intention to move such resolution.

OATH: Vice-President shall make and subscribe before the President an oath or affirmation.

→ OTHER IMPORTANT POINTS

DISPUTES ARISING OUT OF ELECTIONS

Disputes arising out of the election of a President or Vice-President shall be inquired into and decided by the **Supreme Court** whose decision shall be final.

► COUNCIL OF MINISTERS

- Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice
- However, President **may** require the Council of Ministers to reconsider such advice.
- President **shall** act in accordance with the advice tendered after such reconsideration.
- The total number of Ministers, including the Prime Minister, in the Council of Ministers shall not exceed fifteen percent of the total number of members of the House of the People.
- President shall administer to a Minister the **oaths of office and of secrecy** according to the forms set out for the purpose in the **Third Schedule**.
- The Council of Ministers shall be collectively responsible to the **House of the People**.

PRIME MINISTER

The Prime Minister shall be appointed by the **President** and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

COMPARATIVE STUDY BETWEEN PRIME MINISTER AND CHIEF MINISTERS

PRIME MINISTER	CHIEF MINISTER
Appointed by President (Article 75)	Appointed by Governor (Article 164)
Based on advice of PM, President appoints other ministers.	Based on advice of CM, governor appoints other ministers.
Oath Administered by President	Oath Administered by Governor
Holds Office during pleasure of the President	Pleasure of the Governor.
Note: They can't be removed by President and Governor as long as they enjoy majority in the Lok Sabha & State Legislative Assembly.	

COMPARATIVE STUDY BETWEEN PARLIAMENTARY SYSTEM AND PRESIDENTIAL SYSTEM

	PARLIAMENTARY SYSTEM	PRESIDENTIAL SYSTEM
1.	Political Party with majority forms the Govt. Ex. PM leader of major	President directly elected by the People

	party.	
2.	Executives part of the legislature (No-separation of Powers)	Executives are not part of the legislature.
3.	Executive Accountable to Legislature	Executives are not Accountable.
4.	Lower House can be dissolved before expiry of the term.	House can't be dissolved.
5.	Less stable	More stable
6.	Dual Executive	Real Executive.

COMPARATIVE STUDY BETWEEN INDIAN PARLIAMENTARY SYSTEM AND BRITISH PARLIAMENTARY SYSTEM

	INDIAN PARLIAMENTARY SYSTEM	BRITISH PARLIAMENTARY SYSTEM
1.	Republic (Head of the State - Elected)	Monarchy
2.	Supremacy of the Constitution	Parliamentary Sovereignty
3.	Any person can be appointed as Ministers (Max. 6 months)	Only MP can be appointed as Ministers.
4.	PM can be from any House.	PM should be from only Lower House.
5.	No-tradition of Shadow cabinet	Tradition of Shadow cabinet.

COMPARATIVE STUDY BETWEEN UNION COUNCIL OF MINISTERS AND STATE COUNCIL OF MINISTERS

	UNION COUNCIL OF MINISTERS	STATE COUNCIL OF MINISTERS
1.	Article 74 – Aid & Advice President	Article 163 – Aid and advice to Governor.
2.	Article 75 : (a) PM to be appointed by President (b) Other Ministers on the advice of the PM (c) Total Ministers not more than 15% of the total members of	Article 164 – CM to be appointed by the Governor. (a) CM to be appointed by the Governor. (b) Other Ministers by Governor on the advice of CM.

House of People. [91 st CAA, 2003]	(c) Total Ministers not more than 15% of total members of state Legislative Assembly [Minimum at least 12] [91 st CAA, 2003]
(d) If disqualified under XI th Schedule not to be appointed as Minister for the term (or) till he gets re-elected.	(d) If disqualified under defection as minister for the term (or) till he gets re-elected (whichever is earlier)
(e) Hold office during pleasure of the President	(e) Pleasure of the Governor
(f) Oath administered by President	(f) Oath Administered by Governor
(g) Salaries and allowances to be determined by Parliament.	(g) Salaries; allowances are determined by State legislature
(h) Collectively responsible to House of People	(h) Collectively responsible to state legislative assembly.
(i) Important decisions are taken by cabinet	(i) Important decisions are taken by Cabinet

Courts	state.
(c) Perform other legal duties assigned time to time by President.	(c) Legal matters referred by Governor.
7. Privileges	Privileges
(a) Right to audience all courts in territory of India.	(a) Audience within the territory of the state (Article 177)
(b) Attend Parliamentary Proceedings; speak and take part in the proceedings of the committee; No right to vote.	(b) Similar position in State Legislature
(c) Right to Private practice (Criminal case prior permission from the govt.)	

COMPARATIVE STUDY BETWEEN ATTORNEY GENERAL AND ADVOCATE GENERAL

	ATTORNEY GENERAL	ADVOCATE GENERAL
1.	Article 76 – President appoints	Article 165 – governor appoints
2.	Highest Law Officer of the Union Govt.	Highest Law officer of the State Govt.
3.	Eligible to be appointed as Judge of SC	Eligible to be appointed as Judge of H.C.
4.	Holds office during the Pleasure of the President	Holds office during Pleasure of the Governor.
5.	Remuneration decided by President	Remuneration decided by the Governor.
6.	Duties & Functions of Attorney General (a) Advice GOI on legal matters. (b) Represent GOI in	Duties & Functions of Advocate General (a) Advice concerned state govt. (b) Represent concerned

► PARLIAMENT

There shall be a Parliament for the Union which shall consist of the **President** and two Houses to be known respectively as the **Council of States (Rajya Sabha)** and the **House of the People (Lok Sabha)**.

► LOK SABHA

- **Composition:** representatives of the people chosen by direct election on the basis of the **adult suffrage**.
- The maximum strength of the House envisaged by the Constitution is 552, which is made up by election of up-to **530 members to represent the States**.
- Up-to **20 members to represent the Union Territories** and **not more than two members of the Anglo-Indian Community** to be nominated by the Hon'ble President, if in his/her opinion, that community is not adequately represented in the House.
- The total elective membership is distributed among the States in such a way that the ratio between the number of seats allotted to each State and the population of the State is, so far as practicable, the same for all States.

- Lok Sabha shall continue for a **period of five years** unless dissolved earlier. However, if **proclamation of emergency** is in operation, the duration of Parliament may be extended to **not more than one year at a time** and will not extend **beyond six months** after the proclamation has ceased to operate.

► RAJYA SABHA

- The origin can be traced to **Montague-Chelmsford Report of 1918**.
- **The Government of India Act, 1919** provided for the creation of a '**Council of State**' as a second chamber of the then legislature with a restricted franchise which actually came into existence in 1921.
- **Article 80** of the Constitution lays down the maximum strength of Rajya Sabha as 250, out of which 12 members are nominated by the President and 238 are representatives of the States and of the two Union Territories of Delhi and Puducherry having state legislative assembly.
- The members nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service.
- The **Fourth Schedule** to the Constitution provides for allocation of seats to the States and Union Territories in Rajya Sabha.
- The allocation of seats is made on the basis of the **population** of each State. Punchhi Commission recommended that all States should have equal representation in Rajya Sabha (Similar to US Senate).
- The representatives in the Rajya Sabha are elected by the method of **indirect election**.
- The representatives of each State and two Union territories are elected by the **elected members of the Legislative Assembly of that State** and by the **members of the Electoral College for that Union Territory**, in accordance with the system of **proportional representation by means of the single transferable vote**.
- The Council of States **shall not be subject to dissolution**, but as nearly as possible **one-third** of the members thereof shall retire as soon as may be on the expiration of every second year.

QUALIFICATION FOR LOK SABHA

is a citizen of India; not less than 25 years of age

QUALIFICATION FOR RAJYA SABHA

is a citizen of India; not less than 30 years of age and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the **Third Schedule**

DISQUALIFICATIONS

A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament if:

- if he holds any **office of profit** under the Government of India or the Government of any State, other than an office declared by Parliament by law
- if he is of unsound mind and stands so declared by a competent court
- if he is an undischarged insolvent
- if he is not a citizen of India, or has voluntarily acquired the citizenship of a foreign State, or is under any acknowledgement of allegiance or adherence to a foreign State
- If he is so disqualified by or under any law made by Parliament.
- If he is disqualified under Tenth Schedule.

As per the **Tenth Schedule**, a member may be disqualified

- if he voluntarily gives up the membership of his political party; or
- if he votes or abstains from voting in the House contrary to any direction issued by the political party to which he belongs unless such voting or abstention has been condoned by the political party within fifteen days.
- A member elected as an independent candidate shall be disqualified if he joins any political party after his election.

► PRESIDING OFFICERS

- Chairman & Deputy Chairman of Council of States (Article 89)
 - Vice President is ex-officer chairman of Rajya Sabha.
 - Deputy Chairman is elected from among the members of the council.
 - (a) May resign anytime by addressing resignation to chairman.
 - (b) Removed by Effective majority; 14 days prior notice; (Article 90)

- Vacancy of office of Chairman and Deputy Chairman (Article 90 & 95)
 - Chairman Office vacant; Deputy Chairman acts as Chairman.
 - Deputy Chairman also vacant; President may appoint any Member of Rajya Sabha
 - During absence of Chairman and Deputy Chairman; anyone according to rules of the House or anyone determined by Rajya Sabha may preside.
- Chairman and Deputy Chairman not provide while resolution for his removal is under consideration. (Article 92 & Article 96 - Speaker)
- While resolution for removal is introduced; No right to Preside; Right to present; speaks and take part in the proceedings without right to vote.
- Speaker and Deputy Speaker (Article 93)
 - Two members to be chosen from house speaker and Deputy Speaker (as soon as possible)
- Vacation; Resignation and removal of Speaker & Deputy Speaker (Article 94)
 - Shall vacate; if he ceases to be a member of the house.
 - Resign at any time (speaker to Deputy Speaker and Deputy Speaker to Speaker)
 - Removed by a resolution (effective majority)
- Article 98 – Secretariat of Parliament [common post creation, law of parliament; until then rules made by President in consultation with chairman and speaker]
- To take oath before assuming office (Every member)
- All question in any sitting of either house or joint sitting; shall be decided by majority of votes of the members present and voting; excluding speaker and chairman (or someone acting as speaker and chairman). Ex. Selection of speaker; Deputy Speaker; Deputy Chairman etc.
- Chairman / Speaker; not to vote in first Instance; vote in case of equality of votes.
- Quorum (1/10th of the total members of the house); until parliament by law otherwise provides.
- Presiding officer; adjourn or suspend until there is a quorum.
- Penalty for sitting or voting (without oath, not qualified or disqualified) (Article 104)
- Powers & Privileges (Article 105 & 194)
 - Rights and immunities enjoyed by members of parliament collectively and individual capacity.
 - To maintain Independence and dignity of the Institution and also to carry out their functions effectively.
 - i) Right to freedom of speech
 - ii) Publication of the proceedings. Regulated by law of parliament; until; similar to that at the Government of the Constitution.
 - Such Privileges to other dignities as well
 - Ex. Attorney & Advocate General

POWERS OF THE PRESIDING OFFICERS

SPEAKER

- a) Complete powers to regulate proceedings of the House (Article 122)
- b) Certifying money bills
- c) Presiding the joint sitting (Article 108)
- d) Disqualification of members on grounds of Defection
- e) Voting powers in case of Equality of vote.

CHAIRMAN

Chairman of Rajya Sabha enjoys almost similar powers to that of Speaker, Lok Sabha.

Exceptions:

- a) The chairman has no power to certify the Money Bills.
- b) He has no power to preside over the joint sitting.

Note: Salaries; Allowances of members of Parliament are to be determined by Parliament by a Law.

► CONDUCT OF BUSINESS BY PARLIAMENT

DURATION BETWEEN SESSIONS

- The parliament ordinarily meets in three sessions in a year (By convention). These are the Budget Session, Monsoon session and Winter session.
- According to the Constitution, President shall from time to time summon each House of Parliament but **six months** shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.

SPECIAL ADDRESS BY THE PRESIDENT

- At the commencement of the first session after
 - Each general election to the House of the People and
 - At the commencement of the first session of each year,

- President shall address both Houses of Parliament (LS + RS) assembled together and inform Parliament of the causes of its summons.

ADJOURNMENT

Adjournment of a house does not terminate the session of the house. It merely postpones the proceedings of the house to a future date. But prorogation brings an end to a session of the house.

CHAIRMAN, DEPUTY CHAIRMAN AND VICE-CHAIRMAN

- The Presiding Officers of Rajya Sabha have the responsibility to conduct the proceedings of the House.
- The Vice-President of India is *ex-officio* Chairman of Rajya Sabha.
- Rajya Sabha also chooses from amongst its members, a Deputy Chairman.

REMOVAL OF DEPUTY CHAIRMAN OF COUNCIL OF STATES

- He shall vacate his office if he ceases to be a member of the Council
- He may at any time, by writing under his hand addressed to the Chairman, resign his office.
- He may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council
- At least 14 days' notice must be given of the intention to move the resolution for his removal.
- Both the Chairman and Deputy Chairman shall not preside over while any resolution for their removal is under consideration.
- The Chairman shall have -
 - a right to speak,
 - take part in the proceedings of their removal but, shall not be entitled to
 - vote at all on such resolution or
 - on any other matter during such proceedings.

RIGHT TO PARTICIPATE IN PARLIAMENTARY PROCEEDINGS

- Every Minister and the Attorney-General of India shall have the right to speak in, and otherwise to take part in the proceedings of -
 - either House,
 - any joint sitting of the Houses, and
 - any committee of Parliament of which he may be named a member.

► BILLS

INTRODUCTION AND PASSING OF BILLS

A Bill is a draft statute which becomes law after it is passed by both the Houses of Parliament and assented by the President. All legislative proposals are brought before Parliament in the forms of Bills.

Bills are broadly divided into two categories

a) Public bills: These bills are presented (necessarily) by a minister. Public bill is a reflection of government policies. The introduction of public/government bill requires seven days' notice

b) Private bill: It is a type of bill which is introduced by any member of the parliament other than a minister. It is a reflection of stand of a political party or sentiment of the opposition party. Introduction of private bill requires one month's notice. The first private member bill to become a law was the Muslim Wakfs Bill, 1952

Procedurally, Bills can be classified as:

1. Ordinary Bill
2. Money Bill
3. Finance Bill
4. Ordinance replacing Bill
5. Constitution Amendment Bill

MONEY BILL

Under Article 110 (1) of the Constitution, a Bill is deemed to be a Money Bill if it contains only provisions on all or any of the following:

- imposition, abolition, remission, alteration or regulation of any tax
- regulation of borrowing by the government;
- custody of the **Consolidated Fund** or **Contingency Fund** of India, and payments into or withdrawals from these Funds
- appropriation of moneys out of the Consolidated Fund of India;
- declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure;
- Receipt of money on account of the Consolidated Fund of India or the public account of India or the custody or issue of such money or the audit of the accounts of the Union or of a State. According to the Supreme Court, Speaker's judgement to qualify a bill as a money bill is not absolute. There can be judicial review of such decision.

MONEY BILL IN RAJYA SABHA

- Once a Money Bill is passed by Lok Sabha, it goes to Rajya Sabha along with Speaker's certificate that it is a Money Bill for its recommendations.
- However, Rajya Sabha can neither reject nor amend such Bill but can only recommend changes in the Bill.
- Rajya Sabha must return the Bill within 14 days, after which Lok Sabha may accept or reject all or any of its recommendations. In either case, the Bill is deemed to have been passed by both Houses.
- Under Article 109 (5), if Rajya Sabha fails to return the Bill to Lok Sabha within 14 days, it is deemed to have been passed anyway.

FINANCE BILL

- Any Bill which deals with revenue or expenditure of the Government is a Finance Bill.
- Finance Bill is accompanied by a Memorandum explaining the provisions included in it.
- However, only those Finance Bills which are endorsed by the Speaker under Article 110 (4) become a Money Bill.
- The rest can be categorised as
 - Financial Bill (I) and Financial Bill (II).

FINANCE BILL (I)

- As under Article 117(1) = [includes any matters mentioned in the Money Bill] + [any other matters related to revenue or expenditure of the Government]
- Can only be introduced in the Lok Sabha on the recommendation of the President.
- However, once it has been passed by the Lok Sabha, it is like an ordinary Bill and there is no restriction on the powers of the Rajya Sabha on such Bills.

FINANCE BILL (II)

- Is just like other Ordinary Bills that contain provisions involving expenditure from the Consolidated Fund as specified in Article 117 (3).
- Can be introduced in either House of Parliament.

ORDINARY BILL

Thus, every Bill other than a Money Bill and Financial Bill (I) introduced in the Parliament acts like an Ordinary Bill.

ORDINANCE REPLACING BILL

- Ordinance replacing Bills are brought before Parliament to replace an Ordinance, with or without modifications, promulgated by the President under Article 123 of the Indian Constitution.

- Ordinance to become a law needs to be passed by both the Houses of Parliament and assented to by the President within six weeks of the reassembly of Parliament.

CONSTITUTION AMENDMENT BILL

- A Constitution Amendment Bill under article 368 can be introduced in either House of Parliament.
- As per the procedure laid down in the Constitution under Article 368, Constitution Amendment Bills can be of three types:
 1. Amendment requiring **simple majority** for their passage in each House
 2. Amendment requiring **special majority** for their passage in each House.

Special Majority = Majority of the total membership of a House and by a majority of not less than two-thirds of the members of that House present and voting (article 368)
 3. Amendment which needs to be passed by **Legislatures of not less than half of the States** along with **special majority** for certain constitutional provisions relating to the federal character which may be categorised as **entrenched provisions**.

ENTRENCHED PROVISION

It includes:

- Election of President, Manner of election of President, Extent of executive power of the Union, Extent of executive power of the State, High Courts for Union Territories
- Union Judiciary under The Union, The High Courts in the States under The States or Legislative Relations under Relations between the Union and the States, or
- Any of the Lists in the Seventh Schedule, or
- The representation of States in Parliament, or
- Any change in Article 368 itself.

► OTHER PARLIAMENTARY PROCESS**QUESTION HOUR**

- The first hour of every sitting of Parliament is generally reserved for the asking and answering of questions.
- Parliamentary question is a technique of parliamentary surveillance over functioning of the government.

- Members of Parliament are free to ask questions to elicit information on matters of public importance and concern from ministers of the government.
- The members of the government are bound to answer every question asked in the Question Hour.
- Questions enable Ministries to gauge the popular reaction to their policy and administration.

ZERO HOUR

The time immediately following the Question Hour has come to be known as "Zero Hour". It starts at around 12 noon (hence the name) and members can, with prior notice to the Speaker, raise issues of importance during this time.

TYPES OF QUESTIONS

Questions are of four types - Starred, Unstarred, Short Notice Questions and Questions addressed to private Members.

- **Starred Question** is one to which a member desires an oral answer in the House and which is distinguished by an asterisk mark. Supplementary questions can be asked thereon.
- **Un-starred Questions** - which desires written answer to whom it is addressed.
- **A Short Notice Question** relates to a matter of urgent public importance and can be asked with shorter notice than the period of notice prescribed for an ordinary question. Like a starred question, it is answered orally followed by supplementary questions.
- **Question addressed to Private Member** is asked when the subject matter pertains to any Bill, Resolution or any matter relating to the Business of the House for which that Member is responsible.

► MOTIONS AND RESOLUTIONS

Parliamentary proceedings have gained importance especially after the trend of washout of sessions by opposition to fulfil some of their demands. Let us understand how Members of Parliament raise their voice on the floor of the House and what are the different mechanisms which they can employ to address their issues during Parliamentary proceedings.

MOTION

- A motion is a proposal brought before the House for eliciting decision or for expressing the opinion of the House.
- Every question to be decided by the House must therefore be proposed by a Member as a Motion.

- Motions are the basis of Parliamentary proceedings.

KIND OF MOTIONS: 3 CATEGORIES

→ SUBSTANTIVE MOTION

- It is a self-contained independent proposal submitted for the approval of the House and drafted in such a way as to be able of expressing the decision of the House.
- It neither depends nor arises out of any other motion.
- Ex. Motion of thanks of President addressed by Prime Minister, Motion of Adjournment, Motion of No-confidence, Motion for removal of Speaker/Deputy Speaker.

→ SUBSTITUTE MOTION

- Motions moved in the substitutions of the original motions and proposing an alternative to it are called Substitute Motions.
- Discussion is held on both original and substitute motions together but vote of the House is taken only on Substitute motion.
- Further if a substitute motion is adopted through vote, then it supersedes the original motion.

→ SUBSIDIARY MOTION

- It depends upon or relate to other motions.
- They by themselves have no meaning and are not capable of stating the decision of the House without reference to original motion or proceedings of the House.
- Subsidiary Motion are of three types namely 1. Ancillary Motion 2. Superseding Motion and 3. Amendments
- **Ancillary motions** are recognised by the practice of the House as a regular way of proceedings with various kinds of business.
- **Superseding Motions** are moved in a course of debate or another question and seek to supersede that question. Ex. Motion seeking recommitment of Bill to a Committee.
- **Amendments** seek to modify or substitute only a part of the original motion. It is moved during the course of a debate and if accepted the original questions stands amended.

RESOLUTION

A resolution is also one of the procedural means available to the members of the House and Ministers to raise a discussion in the House on a matter of general public interest. A resolution is in fact a substantive motion.

RESOLUTION V. MOTION

- All resolutions come into the category of Substantive Motion but all substantive motions are not resolutions.
- Further all motions are not necessarily put to vote but **all resolutions are required to be voted upon.**

NO-CONFIDENCE MOTION (RULE 198 OF LOKSABHA)

- The Council of Ministers remains in office as long as it enjoys the confidence of Lok Sabha according to **Article 75(3)** of the Indian Constitution. No-confidence motion is not mentioned in the Constitution.
- The moment, it expresses a lack of confidence in the Council of Ministers, the government is **constitutionally bound to resign** whether or not the Prime Minister recommends a dissolution of the House.
- In order to ascertain this confidence, the rules provide for moving a motion to this effect which is called No-Confidence motion.
- A motion of no-confidence once admitted has to be taken up **within ten days of the leave being granted.**
- Notice of no-confidence motion can also be withdrawn by members concerned by sending letters of withdrawal signed by all the signatories to the notice before the item is taken up in the House.
- **Rajya Sabha is not empowered** to entertain a motion of no-confidence because the government is collectively responsible under the Constitution only to the directly elected Lok Sabha.

CENSURE MOTION

- Whereas a motion of no-confidence need not specify any grounds on which it is based, a **Censure Motion must set out the grounds or charges** on which it is based and is moved for specific purpose for censuring the government for certain policies and actions.
- Censure motion can be moved against the Council of Ministers or an individual minister for their failure of commission or omission.
- No leave of the House is required to move a Censure motion.

ADJOURNMENT MOTION

- A matter of urgent public importance can be brought before the house through an Adjournment motion by interrupting the regular business, if the Speaker agrees to do so.

- The Speaker after the Question Hour calls upon the concerned member to ask for leave of the House to move the adjournment motion.

► PARLIAMENTARY COMMITTEES**TYPES OF PARLIAMENTARY COMMITTEES IN INDIA**

1. **Standing Committees:** Standing Committees are those which are elected by the House or nominated by the Speaker/Chairman every year or from time to time and are permanent in nature.
2. **Ad Hoc Committees:** Ad Hoc Committees are those constituted by the House or by the Speaker/Chairman to consider and report on specific matters and expires as soon as they have completed their work on allocated matters.

→ STANDING COMMITTEES

In each House may be categorised in terms of the nature of their functions as follows:

FINANCIAL COMMITTEES

Ex. Committee on Estimates of the Lok Sabha, Committee on Public Accounts and Committee on Public Undertakings

STANDING JOINT COMMITTEES

Departmentally related Standing Joint Committees of the two Houses

HOUSE COMMITTEE

Committees relating to day-to-day business of the House. Ex. Committees on Absence of Members from Sittings of the House, Business Advisory Committee, Committee on Private Members' Bills and Resolution and Rules Committee.

ENQUIRY COMMITTEE

Ex. Committee on Petitions and Committees on Privileges

SCRUTINY COMMITTEES

Ex. Committee on Government Assurances, Committee on Subordinate Legislation, Committee on Papers Laid on Table and Committee on the Welfare of Scheduled Castes and Scheduled Tribes

SERVICES COMMITTEES

Committees concerned with the provision of various services and facilities to members. Ex. General Purposes Committees, House Committee, Library Committee and Joint Committee on salaries and Allowances of Members of Parliament.

AD HOC COMMITTEES

May be broadly classified into two categories:

- 1. The Select or Joint Committees on Bills** which are appointed to consider and report on particular Bills. These Committees are distinguished from the other ad hoc Committees in as much as they are concerned with Bills and the procedure to be followed by them is laid down in the Rules of Procedure and Directions by the Speaker/Chairman.
- Committees which are constituted from time to time either by the two Houses on a motion adopted in that behalf, or by the Speaker/Chairman to inquire into a report on a specific subject. Ex. Railway Convention Committee is appointed from time to time, Joint Committee on Offices of Profit and any other Committee appointed by the House or by the Speaker/Chairman for some specific purpose are other examples of such committees.

► IMPORTANT COMMITTEES**ESTIMATES COMMITTEE**

- Consists of 30 members of Lok Sabha
- Makes detailed examination of annual budget estimates
- Acts as a deterrent on extravagance of the government on public expenditure

PUBLIC ACCOUNTS COMMITTEE

- Oldest financial committee
- Consists of 22 members [15 members of Lok Sabha + 7 members of Rajya Sabha]
- As a matter of practice, a member of the opposition is being appointed as the Chairman of the Committee.
- It scrutinizes the reports of CAG over misuse of public funds and reports to Parliament.

COMMITTEE ON PUBLIC UNDERTAKINGS

- Consists of 22 members [15 members of Lok Sabha + 7 members of Rajya Sabha]
- Examine reports and accounts of all the public undertakings of the government

DEPARTMENTAL COMMITTEES

- There are 24 Departmental Committees
- Consider demands for grants of respective ministries
- Examine Bills referred by the Chairman or Speaker
- Consider annual report of ministries
- Consider any policy documents referred by the Chairman or Speaker

COMMITTEE ON PRIVILEGES

- Consists of 25 members [15 members of Lok Sabha + 10 members of Rajya Sabha]
- Looks into matters pertaining to privileges of members of the House under Article 105 of the Indian Constitution.

BUSINESS ADVISORY COMMITTEE

- Help the presiding officer in the Planning of the Business of the House.

COMMITTEE ON GOVT. ASSURANCES

- Makes Govt. accountable on any assurances given in the houses of the parliaments.

COMMITTEE ON SUBORDINATE LEGISLATION

- Ensures executives accountable on various subordinate legislations.

RULES COMMITTEE

- Frames the rules of the House; Procedure and conduct of the House.

ETHICS COMMITTEE

- Oversee Moral and Ethical conduct of Members
- Prepares Code of conduct for the members
- Look into cases concerning alleged breach of code of conduct.
- Ethics committee are formed in both houses.

GENERAL PURPOSE COMMITTEE

- To look into and advice on those matters referred to it by the Presiding officer from time to time.

→ FINANCIAL MATTERS**► ANNUAL FINANCIAL STATEMENT****- ARTICLE 112**

- The President shall in respect of every financial year cause to be laid before both the Houses of Parliament a statement of the **estimated receipts and expenditure** of the Government of India for that year, referred to as the "Annual Financial Statement".
- The estimates of expenditure embodied in the annual financial statement shall show separately-
 - Sums required to meet expenditure charged upon Consolidated Fund of India (CFI)
 - Sums required to meet other expenditure proposed to be made from the Consolidated Fund of India.
 - And shall distinguish expenditure on revenue account from other expenditure

EXPENDITURE CHARGED UPON CFI

Estimates as relates to expenditure charged upon CFI **shall not be submitted to the vote** of Parliament.

DEMAND FOR GRANT→ **Article 113**

- Estimates of expenditure from the CFI shall be submitted in the form of Demand for Grants which **shall be voted** upon by Lok Sabha.
- Demand for Grants shall be made on the recommendation of the President.
- The Demands for Grants are presented to the Lok Sabha along with the Annual Financial Statement.
- Generally, one Demand for Grant is presented in respect of each Ministry or Department.
- With regard to Union Territories without Legislature, a separate Demand is presented for each of such Union Territories.

APPROPRIATION BILL→ **Article 114**

- All **Demands for Grants** voted upon and **Charged Expenditure** is introduced in the Lok Sabha as **Appropriation Bill**.
- The Bill gives legal authority to the government to appropriate expenditure from CFI.
- No money can be withdrawn from the CFI except under an Appropriation Act passed by the Parliament.

CONSOLIDATED FUNDS AND PUBLIC ACCOUNTS OF INDIA AND OF THE STATES (ARTICLE 266)

- Article 266(i) provides for consolidated fund of the union and states
- Article 266 (2) Public accounts of India and State.
- No money from consolidated fund of India or State shall be appropriated except in accordance with law.

CONTINGENCY FUND OF THE INDIA (ARTICLE 267)

- Parliament may by law establish contingency fund of India; such sum as determined by law.
- Fund are taken out to meet unforeseen expenditure.
- Expenditure at the Disposal of President.
- Money can be taken out pending Authorisation of the Legislature.

Note: It also provides for contingency fund of the state [Article 267(2)]

▶ STATE LEGISLATURE

Constitution of Legislature of the States:

- (i) Governor
- (ii) Legislative Assembly
- (iii) Legislative Council (only in certain states)

ABOLITION OR CREATION OF LEGISLATIVE COUNCIL (ARTICLE 169)

- Parliament may by a law determine provided State Legislative Assembly of the State passes a resolution to that effect; special majority
- Not to be considered on Constitutional Amendment Act under Article 368

COMPOSITION OF LEGISLATIVE COUNCIL (ARTICLE 171)

- Not more than 1/3rd of members of Legislative Assembly and not less than 40.
- Composition (unless Parliament otherwise provides)
- **Electoral College**
 - i. 1/3rd Electorates comprising members of Municipalities, District boards and other local authorities (Parliament may by law specify)
 - ii. 1/3rd by elected members of Legislative Assembly.
 - iii. 1/12th by Electorates consisting of graduates (3 years in possession of degree)
 - iv. 1/2nd of Electorates consisting of teachers not less than secondary level.
 - v. 1/6th to be nominated by the Governor.
 - vi. (Art; Literature; Science; Social Service & Co-operatives)

COMPOSITION OF LEGISLATIVE ASSEMBLY (ARTICLE 170)

- i) Not > 500; < 60 members; Direct Election from territorial constituencies.
- ii) 1971 Census – Number of seats in Legislative Assembly.
2001 Census – Adjustment of territorial constituencies.

DURATION OF STATE LEGISLATIVE ASSEMBLY – 5 YEARS

- **Article 172** provides for duration of State Legislatures which shall be for a period of five years unless sooner dissolved. It further says that expiration of the period of five years shall operate as dissolution of the Assembly automatically.
- **Important Point** – The period of 5 years for a Legislative Assembly was substituted for a period of 6 years by Constitution 42nd Amendment. However, Constitution 44th Amendment changed the duration back to 5 years.

CAN DURATION OF LEGISLATIVE ASSEMBLY BE EXTENDED?

- As per **Article 172**, duration of legislative assembly can be extended beyond 5 years while a Proclamation of Emergency under Article 352 is in operation.
- The duration of State Legislative Assembly (SLA) can be extended by Parliament by law for a period not exceeding one year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.

So, in a nutshell, duration of SLA can be extended beyond 5 years while a Proclamation of Emergency under Article 352 is in operation.

WHAT ABOUT LEGISLATIVE COUNCIL?

→ According to **Article 172 (2)** - the Legislative Council of a State shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire on the expiration of every second year in accordance with the provisions made in that behalf by Parliament by law.

Article 173 - Qualification for membership of the State Legislature

- A person shall not be qualified to be chosen to fill a seat in the Legislature of a State unless he
- (a) is a citizen of India and makes and subscribes before some person authorised in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule.
 - (b) is, in the case of a seat in the Legislative Assembly, not less than 25 years of age and, in the case of a seat in the Legislative Council, not less than 30 years of age. &
 - (c) Possesses such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

So, after the duration of 5 years of State Legislative Assembly, it becomes mandatory for Election Commission to conduct elections in such states as per the Constitution of India. This is because, expiration of 5 years for SLA results in their dissolution and this makes way for new SLA to be chosen by citizens of India through voting.

POWERS OF LEGISLATIVE COUNCIL WITH REGARD TO ORDINARY BILLS (ARTICLE 197)

- When Bill is passed from Legislative Assembly to Council.
 - i. Accept the Bill

- ii. Reject the Bill
 - iii. Don't take any action for 3 months
 - iv. Make amendments and send it back to assembly which is not acceptable to Assembly
- In case (ii), (iii) & (iv) the Assembly can again sent the bill to the Council; in this case the council can at the maximum delay the Bill by one month.
 - After one month it will be deemed to be passed in the same manner as passed by Assembly.

Note: Even if they are rejected and council suggest Amendments second time.

▶ EMERGENCY PROVISIONS

The Constitution envisages three types of Emergencies:

1. Emergency arising from threat to security of the nation or a part thereof - Article 352
2. Breakdown of Constitutional machinery in a State - Article 356
3. Financial Emergency - Article 360

▶ ARTICLE-352

GROUND

- President on his/her satisfaction proclaim emergency on the whole of India or part thereof can declare proclaim emergency on grounds of-
 - War
 - External Aggression
 - Armed Rebellion
- A proclamation can be made before the actual occurrence of war, external aggression or armed rebellion.
- Constitution 38th Amendment allows President to issue more than one proclamation at the same time.

BEFORE 44TH AMENDMENT

Before 44th Amendment, Emergency could be declared on grounds of

- War
- External aggression
- **Internal Disturbance**

But **Constitution 44th Amendment** substituted Internal Disturbance with Armed Rebellion.

ROLE OF CABINET

President can issue Proclamation of Emergency or its Revocation only if-

- Union Cabinet including Prime Minister has communicated to the President of such intention in **writing**.
- Thus, the decision has to be taken **collectively** by the Union Cabinet.

APPROVAL

- The proclamation need to be approved by both Houses of Parliament within one month.
- Thus, the proclamation if not approved by both Houses of Parliament within one month shall cease to operate.
- Prior to 44th Amendment, the time require for approval by both Houses of Parliament was 2 months. Constitution 44th Amendment reduced it to 1 month.
- The proclamation approving emergency has to be passed by each House by a **total membership of each House and not less than 2/3rd of the majority of membership present and voting in each House**.
- Prior to 44th Amendment, proclamation was passed by simple majority in both Houses of Parliament.

TENURE

- Once approved by Parliament, the proclamation remains in force for **6 months**, unless it is revoked earlier.
- For continuation of emergency beyond 6 months, the proclamation needs to be approved again by both Houses of the Parliament.

REVOCAION

- It has to be revoked by President once **Lok Sabha** passes its revocation by **simple majority of the members of the House present and voting**.
- If 1/10th of the total members of Lok Sabha has given in writing their intention to revoke proclamation of emergency
 - to the Speaker in writing if the House is in session;
 - to the President if the House is not in session
 - a special sitting of the House shall be convened within 14 days.

EFFECT

- Parliament becomes empowered to make laws with respect to any matter enumerated in State List under Schedule VII.
- Article 19 remains suspended.

- Right to move Court under Part III of the Indian Constitution shall remain suspended except Article 20 and 21.
- Parliament can extend the life of Lok Sabha beyond its normal period of 5 years by 1 year each time subject to a maximum period of 6 months after the proclamation has cease to operate.

► ARTICLE 356 - FAILURE OF CONSTITUTIONAL MACHINERY IN STATE

GROUND

If the President on receipt of report from Governor of a state or otherwise is satisfied that a situation has arisen in which the Government of the State **cannot be carried on in accordance with Constitutional Provisions**, the President may assume to himself

- all or any of the functions of the Government of the State
- all or any of the powers vested in or exercisable by the Governor
- declare that the powers of State Legislature are to be exercised by Parliament
- President may even suspend in whole or in part the provision of the Constitution relating to anybody or authority in the State.
- President cannot assume to himself powers of High Court

APPROVAL

- Every such proclamation shall be laid before each House of Parliament.
- Such proclamation needs to be approved within 2 months by each House of Parliament by simple majority.

TENURE

- The proclamation once approved shall be in force for a period of 6 months.
- The life of proclamation can be extended for further 6 months if both Houses approves its continuance by passing it.
- **Maximum time** for which such a proclamation remains in force is for **3 years**.

CONSTITUTION 44TH AMENDMENT

As per 44th Amendment, the following conditions must be fulfilled for the proclamation to be carried beyond 1 year-

- Proclamation for emergency under Article 352 must be in operation in the whole of India, or the concerned State or in part of the State.
- Election Commission certifies that continuation in force of proclamation under Article 356 is necessary on account of holding elections to the concerned Legislative Assembly.

EFFECT

State Legislature ceases to function as it is either dissolved or is kept in suspended animation.

► FINANCIAL EMERGENCY – ARTICLE 360

GROUND

- If the President is satisfied that financial stability or credit of India or any part thereof is threatened, he may by proclamation under Article 360 make a declaration.
- A proclamation under Article 360 can be revoked by a subsequent proclamation.

APPROVAL**Such proclamation**

- Shall be laid before each House of Parliament.
- Shall cease to operate at the expiration of **2 months**, unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament by **simple majority**.

EFFECT

- Reduction of salaries and allowances of government employees
- All Money Bills, Finance Bills or other Bills involving expenditure from State Consolidated Fund shall be reserved for consent of the President after being passed by State Legislature

MARTIAL LAW VS NATIONAL EMERGENCY

MARTIAL LAW	NATIONAL EMERGENCY
It affects only Fundamental Rights	It affects not only Fundamental Rights but also Center-State relations, distribution of revenues and Legislative powers between Center and States and may extend the tenure of the Parliament.
It suspends the government and	Position of the government and ordinary law courts in

ordinary law courts.	unaffected.
It is imposed to restore the breakdown of law and order due to any reason.	It can be imposed only on three grounds -wars, external aggression or armed rebellion.
It is imposed in some specific area of the country	It is imposed either in the whole country or in any part of it.
It has no specific provision in the Constitution . It is implicit.	It has specific and detailed provision in the Constitution. It is explicit.

JUDICIARY

► SUPREME COURT

The Constitutional provisions related to the Supreme Court are contained in Part V from Articles 124 to 147. Initially, there was a Chief Justice and seven other Judges in the Supreme Court and now the number has increased to 34 judges including the Chief Justice of India in 2019. The Parliament has given the power to increase the number of Supreme Court judges, according to the needs and circumstances.

APPOINTMENT OF SC JUDGES

- The Chief Justice is **appointed by the President** after consultation with such Judges of the Supreme Court and High Court as he/she deems necessary.
- The other judges are appointed by the President after consultation with the Chief Justice and such other judges of the Supreme Court, and High Courts as he/she deems necessary.
- The **consultation with the Chief Justice is obligatory in the case of appointment of judge other than Chief Justice**.

QUALIFICATIONS FOR SC JUDGES

- A person shall not be qualified for appointment as a Judge of the Supreme Court unless he/she
 - is a citizen of India, and
 - has been for at least five years a judge of a High Court or a two such Courts in succession; or has been for **at least ten years an advocate of a High Court or of two or more such Courts in succession**;
 - Is, in the **opinion of the President, a distinguished jurist**.

- A Judge of the Supreme Court continues to hold the office till he/she **attains the age of 65 years**.
- A Judge of the Supreme Court may tender his/her **resignation to the President** even before he/she reaches age of 65 years.
- A Judge of Supreme Court, **after retirement, shall not do legal practice in any court** in the territory of India and shall not plead before any authority under the Government.

REMOVAL OF A SC JUDGE

Procedure of Removal of Judge of Supreme Court (Article 124(4)) (Under Judges Enquiry Act, 1968)



Judge of Supreme Court can only be removed on the grounds of proved misbehavior or incapacity.



A motion seeks to remove judge can be presented in either house of Parliament.



Such removal motion shall be signed by 100 members if it is introduced in Lok Sabha or 50 members in case of Rajya Sabha.



The Speaker or Chairman, as the case may be, may admit or refuse to admit the motion.



If admitted the speaker / chairman will appoint a committee comprising of (a) Chief justice or a judge of Supreme Court, (b) Chief Justice of a high court and (c) a distinguished jurist, to investigate the charges on the judge.



The Committee should submit its report to the house which appointed such committee. The report is also shared with other house. However recommendation of such committee is not binding on the Parliament.



The motion, if taken for consideration by the house, has to be passed by special majority



If the bill is passed it is sent to second house for their consideration.



(Such motion must be passed by both houses separately with special majority. There is no provision of joint sitting.)



If, the other house also passes the motion with special majority, then it is addressed to the President



Finally, President passes the order to remove removing judge.

POWERS AND JURISDICTION OF SUPREME COURT

- (i) Original Jurisdiction
- (ii) Appellate Jurisdiction
- (iii) Writ Jurisdiction
- (iv) Extraordinary powers
- (v) Power to review its own orders
- (vi) Law declared by Supreme Court binding on all courts.
- (vii) Rulemaking Power (Article 145)
- (viii) Appeal by Special Leave
- (ix) Advisory Jurisdiction of Supreme Court
- (x) Contempt Powers

ORIGINAL JURISDICTION OF THE SUPREME COURT (ARTICLE 131)

- Government of India v/s State or States
- Government of India and State v/s State / States
- State v/s State (two or more states)

APPELLATE JURISDICTION OF THE SUPREME COURT (ARTICLE 132; ARTICLE 133; ARTICLE 134 & ARTICLE 134A)

- Appeal on Civil, Criminal or other proceedings to Supreme Court; Provided High Court grants a certificate; (Article 134A); it involves substantial question of law relating to interpretation of constitution.
- Appellate Jurisdiction of Supreme Court in Civil Matters [Article 133]; Case involves Substantial question of general importance; High Court opinion is to Supreme Court to divide; certificate issued by High Court (Art. 34A)
- Appeal in cases of Criminal matters; Sentence is Death (Matter of Right); or certified by High Court under article 134A.

POWER TO ISSUE WRITS

- The Supreme Court can issue writs for the protection of Fundamental Rights under Article 32 of the constitution.

- The Supreme Court can issue writs for the protection of Legal Rights apart from Fundamental Rights under article 139 if Parliament by Law empowers the Supreme Court.

EXTRAORDINARY POWERS OF THE SUPREME COURT (ARTICLE 142)

- Article 142 provides discretionary power to the Supreme Court as it states that the court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any cause or matter pending before it.
- Of late, Art 142 has been invoked by the SC during the Ayodhya judgment.

POWERS TO REVIEW ITS OWN ORDERS AND DECISIONS (ARTICLE 137)

- Supreme Court has the power to review its own orders and judgements.
- Subject to
 - (i) Rules made by Supreme Court (Article 145)
 - (ii) Law made by Parliament

LAW DECLARED BY THE SUPREME COURT TO BE BINDING ON ALL COURTS (ARTICLE 141)

Supreme Court decision binding upon all courts within the territory of India.

RULE MAKING POWER OF THE SUPREME COURT

Subject to Law of Parliament; Supreme Court to make rules; with approval of President; regulating general practice and Procedure in the House.

APPEAL BY SPECIAL LEAVE

The Supreme Court under **Article 136** enjoys **the power of granting special leave** to appeal from any Judgement, decree, order or sentence in any case or matter passed by any Court or tribunal except court martial.

- Under the Arbitration and Conciliation Act, 1996, International Commercial Arbitration can also be initiated in the Supreme Court.
- Parliament is authorised to confer on the Supreme Court any further powers to entertain and hear appeals from any judgement, final order or sentence in a criminal proceeding of a High Court.

ADVISORY JURISDICTION

- **Under Article 143**, The *President can refer to the Court either a question of law or a question of fact, provided that it is of public importance*. However, **it is not compulsory for the Court to give its advice**.
- The President is empowered to refer to the Supreme Court for its opinion, disputes arising out of any

treaty, agreement etc., which had been entered into or executed before the commencement of the Constitution.

CONTEMPT POWERS

- Article 129 of the Constitution empowers the SC and HC respectively to punish people for their respective contempt.
- Article 19(2) permits government to impose reasonable restriction on the freedom of speech and expression on grounds of contempt of court.
- Contempt refers to the offence of showing disrespect to the dignity or authority of a court.
- In India, the Contempt of Courts Act, 1971, divides contempt into:

1. Civil contempt: - wilful disobedience to any judgment, decree, direction, order, writ or other processes of a Court or wilful breach of an undertaking given to the court'

2. Criminal contempt: - publication (whether by words, spoken or written, or by signs, or by visible representation, or otherwise) of any matter or the doing of any other act whatsoever which:

- Scandalises the court (Statements or publications which have effect of undermining public confidence in Judiciary).
- Prejudices any judicial proceeding
- Interferes with administration of justice in any other manner.
- An amendment was done to the Contempt of Court act in 2006 clarifies that the Court may impose punishment for contempt only
 - When it is satisfied that the act substantially interferes with the due course of justice.
 - court may permit, in any proceeding for contempt of court, justification by truth as a valid defence if it is satisfied that it is in public interest and the request for invoking the said defence is bona fide.

The limitation period of actions of contempt is one year from the date on which the contempt is alleged to have been committed.

NOTE: HC has similar powers under Article 215

A COURT OF RECORD

- **Article 129** states that the Supreme Court of India shall be a Court of Record. As a Court of Records, the Supreme Court has two powers These are:-
- The Judgements, proceedings and acts of the Supreme Court are recorded for perpetual memory

and testimony. These are recognised as legal precedents and legal references.

- The Supreme Court has power to punish for contempt of court, either with simple imprisonment for a term up to 6 months or with fine up to 2,000 or with both.

► HIGH COURTS

There shall be High Court for each state according to Article 124 of the Constitution.

→ JURISDICTION OF HIGH COURTS

Doesn't provide for any general jurisdiction of the Courts (Article 225); says as it existed at the commencement of the Constitution; subject to Law made by Parliament & State legislature.

ORIGINAL JURISDICTION

- No original jurisdiction in case of Criminal matters; original jurisdiction in certain civil cases of higher value.
- Appellate Jurisdiction
- Both Civil and Criminal Matters
- Letter Patent Appeal in case of High Court of Allahabad; Bombay; Calcutta; Madras and Patna High Courts.

HIGH COURT'S POWER OF SUPERINTENDENCE

(ARTICLE 227)

- Every High Court has superintendence over all courts and tribunals throughout the territories in relation to which it exercises jurisdiction.
- Issue general rules; regulating practicing and proceeding in the courts; prescribe forms in which entries and accounts to be kept.

NOTE:

- Such rules require previous approval of Governor and Not in violation of any law.
- Armed forces Tribunal doesn't fall with the Jurisdiction of High Court.

WRIT JURISDICTION (ARTICLE 226)

- Writ Jurisdiction throughout the territory in relation to which it exercises jurisdiction.
- Not only for violation Fundamental Rights but for other purpose as well (legal rights).

TRIBUNALS

► CENTRAL ADMINISTRATIVE TRIBUNALS (CAT)

- Part XIV-A of the constitution provides for the tribunals. The provision was added through 42nd Amendment Act, 1976. **Article 323A and 323B provide for Administrative Tribunals and Tribunals related to other matters respectively.**
- The Administrative Tribunals Act in 1985 enacted by the Parliament authorises the central government to establish central administrative tribunal and the state administrative tribunals.
- The principal bench of the Central Administrative Tribunals is located at Delhi. In addition to this, there are additional benches in different states. At present there are 17 regular benches and 4 circuit benches.
- **Jurisdiction of CAT** extends over all service matters concerning the following:
 - a) a member of any All-India Service
 - b) a person appointed to any civil service of the Union or any civil post under the union
 - c) a civilian appointed to any defence services or a post connected with defence
- However, **the members of the defence forces, officers, staff of the Supreme Court and the secretarial staff of the Parliament are not covered under the jurisdiction of CAT.**
- **Structure of CAT**
 - a chairman,
 - vice- chairman and
 - other members who are appointed by the President.
- The membership of CAT is filled by members from judicial and administrative fields. **The term of the service is 5 years or until the age of 65 years for chairman and vice- chairmen and 62 years for members, whichever is earlier.**
- The chairman, vice-chairman or any other member may address his resignation to the president in between his term of office.

WORKING OF CAT

- CAT is not bound by the procedure laid down in the Code of Civil Procedure, 1908, but is guided by the principles of natural justice.

- A tribunal has the same powers as are vested in a civil court under the Code of Civil Procedure, 1908.

A person making an application to a tribunal may either appear in person or take the assistance of a legal practitioner.

▶ GOVERNOR

FUNCTIONS OF GOVERNOR

The State Executive consists of the Governor, who is the head of the head of the State, and the Council of Ministers with the Chief Minister at its head. He acts as:

- Constitutional Head of a State under Article 153 and 154, and as
- An agent of the Centre as he holds office during the pleasure of the President under Article 156.

CONTROVERSY

- Controversy arises when both functions of the Governor overlap and the question arises as to which function supersedes which in this era of multi-party system. This dual function of the Governor in recent times has created enough controversies where different parties enjoy power at the Centre and in the States.

WHY THIS DUAL FUNCTION?

- Constituent Assembly adopted the system of centrally nominated, rather than elected Governor as that would keep the Centre in touch with the State and would remove a source of possible "separatist tendencies" of States.
- Hence exercise of discretionary power by Governor as Centre's representative is constitutionally justifiable.

DISCRETIONARY POWERS OF THE GOVERNOR

- The Constitution has not explicitly defined or described Governor's discretionary powers and provides no guidelines for deciding as to which matters may fall under this category and in effect the final judge of the matter is the Governor himself under Article 163(2).
- However, going by the various provisions of the Constitution, one can decipher several categories of actions which the Governor "may" take in his discretion:
 1. Under Article 200, Governor can reserve any Bill for the consideration of the President which in the opinion of Governor derogates from the powers of High Court as to endanger the position which that Court is by this Constitution designed to fill.

2. To reserve any other Bill as he deems fit.
3. To appoint the Chief Minister of State under Article 164(1).
4. To dismiss the ministry as the Chief Minister and other Ministers shall hold office during the pleasure of the Governor under Article 164(1)
5. Governor's report under Article 356 in case of failure of Constitutional machinery in States.
6. Governor's responsibility for certain regions such as the Tribal Areas in Assam and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).

The Governor performs functions **1, 2, 5 and 6 as the agent of the Centre** and **functions 3 and 4 as the Head of the State**. In all other matters, the Governor like the President acts on the advice of his Council of Ministers (COMs) under Article 166(1).

▶ CASE OF DELHI

SC has observed said Delhi's Lieutenant Governor has more power than the governor of a state **as he does not have to act on the aid and advice of the council of ministers all the time**. However, there was **no need for "fundamental concurrence" of LG in every aspect and in case of differences** with the ministers, the LG should refer the matter to the President and must spell out the reasons.

STATUS OF DELHI

Delhi is neither a State, nor a Union Territory. It used to be a full-fledged Union Territory till 1991, when the **69th Constitution Amendment gave it a special status**.

The amendment declared the Union Territory of Delhi to be formally known as **National Capital Territory of Delhi**.

CONSTITUTIONAL PROVISIONS

→ ART 239

- **Article 239** provides for **Administration of Union Territories**.
- As per **Article 239 (1)**.... Union territory shall be administered by the President through an Administrator to be appointed by the President.
- **Article 239 (2)** says that...President may **appoint the Governor of a State** as the administrator of an adjoining Union Territory, and where a Governor is so appointed, he shall exercise his functions as such administrator independently of his Council of Ministers.

→ART 239 A

- **Article 239A** provides for **Creation of local Legislatures or Council of Ministers or both for certain Union Territories**. This article was added by **Constitution (Fourteenth Amendment) Act, 1962**.

- Clause 2 of Article 239A mentions that any law which provides for creation of local legislatures or Council of Ministers or both for certain Union Territories **shall not be deemed to be an amendment** of this Constitution for the purpose of **Article 368** even though certain provisions of the Constitution are amended.

- **Article 239AA** of the Indian Constitution was added by **Constitution (Sixty-ninth Amendment) Act, 1991**. It says that Union Territory of Delhi shall be called the **National Capital Territory of Delhi** and the **Administrator** thereof appointed under Article 239 shall be designated as the **Lieutenant Governor**.

- There shall be a **Legislative Assembly** for the National Capital Territory (NCT) of Delhi and the seats in such Assembly shall be filled by members chosen by **Direct Election** from territorial constituencies in the NCT.

- The **Legislative Assembly of Delhi** shall have power to make laws for the whole or any part of NCT with respect to any matters enumerated in **State List or in the Concurrent List**. However, Legislative Assembly of Delhi **cannot make laws** on the following entries under the **State List**, such as: –

- **Entry 1:** Public Order;
- **Entry 2:** Police (including railway and village police);
- **Entry 18:** Land, that is to say any right in or over land, land tenures including the relation of landlord and tenant, and the collection of rents, transfer and alienation of agricultural land, land improvement and agricultural loans and colonization.

Thus, the government of Delhi does not enjoy all the powers with respect to law making which are enjoyed by other states. Moreover, NCT is primarily a Union Territory which has a legislative assembly

- There shall be a **Council of Ministers** consisting of **not more than ten percent**, of the total number of members in the Legislative Assembly.
- The **Chief Minister** at the head to **aid and advise the Lieutenant Governor** in the exercise to his functions in relation to matters with respect to which the Legislative Assembly has power to make laws, except in so far as he is, by or under any law, **required to act in his discretion**.

- If there is any difference of opinion between the Lieutenant Governor and his Ministers on any matter, the **Lieutenant Governor shall refer it to the President** for decision and **act according to the decision given thereon by the President**.

- However, if the matter sent to the President is pending before the President, then the Lieutenant Governor **can take immediate action** or give such direction if he thinks the matter is of urgency or importance

DELHI LG VS PUDUCHERRY LG

- The LG of Delhi has **“Executive Functions”** that allow him to exercise his powers in matters connected to public order, police and land “in consultation with the Chief Minister, if it is so provided under any order issued by the President under Article 239 of the Constitution”. Simply put, the **LG of Delhi enjoys greater powers than the LG of Puducherry**.

- **Articles 239 and 239AA** of the Constitution, as well as the Government of National Capital Territory of Delhi Act, 1991, clearly underline that Delhi is a UT, where the Centre, whose eyes and ears are the LG, has a much more prominent role than in Puducherry.

► CENTRE STATE RELATIONS

INTER-STATE COUNCIL (ISC)

- Article 263 of the Constitution envisages establishment of an institutional mechanism to facilitate coordination of policies and their implementation between the Union and the State Governments.

- Inter State council is a constitutional body set up on the basis of provisions in Article 263 of the Constitution of India by a Presidential Order dated 28th May, 1990 on recommendation of **Sarkaria Commission**. (Formed during regime of PM V P Singh).

COMPOSITION OF THE INTER-STATE COUNCIL

The Council consists of

- Prime Minister – Chairman
- Chief Ministers of all States – Members
- Chief Ministers of Union Territories having a Legislative Assembly and Administrators of UTs not having a Legislative Assembly – Members

- Six Ministers of Cabinet rank in the Union Council of Ministers to be nominated by the Prime Minister – Members

The Presidential Order of 1990 has been amended twice providing for Governor of a State under President's rule to attend the meeting of the Council and nomination by the Chairman of permanent invitees from amongst the other Union Ministers, respectively.

GOVERNMENT ACCEPTED SARKARIA COMMISSION REPORT

- The Commission on Centre-State Relations under the Chairmanship of Justice R. S. Sarkaria in its report in January 1988 recommended that:

(a) *A permanent Inter-State Council called the Inter-Governmental Council (IGC) should be set up under Article 263.*

(b) *The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263, other than socio-economic planning and development.*

- **Government of India accepted the recommendations of the Sarkaria Commission** to set-up an Inter-State Council and notified the establishment of the Inter-State Council vide Presidential Order dated 28-05-1990.
- **Government also established an Inter-State Council Secretariat in 1991** headed by a Secretary to the Government of India, assisted by two Advisers in the rank of Additional Secretary to the Government of India, two Directors and three officers each in the rank of Deputy Secretary and Under Secretary.

FUNCTIONS AND DUTIES OF ISC

Inter-State Council is a recommendatory body and it investigates and discusses such subjects, in which some or all of the States or the Union and one or more of the States have a common interest, for better coordination of policy and action with respect to that subject. It also deliberates upon such other matters of general interests to the States as may be referred by the Chairman to the Council. Its duties include:

- Inquiring into and advising upon disputes which may have arisen between/among States
- Investigating and discussing subjects in which some or all of the States, or the Union and one or more of the States have a common interest
- Making recommendations upon any such subject for the better coordination of policy and action with respect to that subject.

VISION & MISSION - INTER-COUNCIL SECRETARIAT

The Inter-State Council Secretariat acts as a vibrant organization to support Centre-State and Inter-State coordination and cooperation in India. Thus, the mission is to

- Create a strong institutional framework to promote and support cooperative federalism in the country.
- Activate the Inter-State Council and Zonal Councils by organizing its regular meetings.
- Facilitate consideration of all pending and emerging issues of Centre State and Inter-State relations by the Zonal Councils and Inter- State Council.
- Develop a sound system of monitoring the implementation of the recommendations of the Inter-State Council and Zonal Councils.

FUNCTIONS OF THE INTER-STATE COUNCIL

- **Making recommendations** upon such subject and in particular for better coordination of policy and action regarding any issue or subject matter.
- **Inquiring into and advising upon disputes** which may have arisen between/among States.
- **Investigating and discussing subjects** in which some or all of the States, or the Union and one or more of the States have a common interest.
- **Deliberating upon** other matters of general interest to the states as may be referred by the Chairman.

STANDING COMMITTEE

- In the second meeting of the Inter-State Council held on 15.10.1996, the Council decided to set up a Standing Committee for continuous consultation and processing of matters for consideration of the Council.
- Accordingly, a Standing Committee was set up under the Chairmanship of the Home Minister vide notification dated 5 December 1996.

FUNCTIONS OF STANDING COMMITTEE - THE STANDING COMMITTEE WILL

- Have continuous consultation and process matters for consideration of the Council.
- Process all matters pertaining to Centre-State Relations before they are taken up for consideration in the Inter-State Council.
- Monitor the implementation of decisions taken on the recommendations of the Council. &
- Consider any other matter referred to it by the Chairman/Council.

The Standing Committee may, if necessary, invite experts and persons eminent in specific fields to have

the benefit of their views while deliberating upon the related subjects.

Other Mechanisms for Coordination between Centre and States:

1. NITI Aayog (Governing Council) (Has representation of all State CMs and
2. GST Council (Representation of Centre and States) (Constitutional Body).
3. Finance Commission for distribution of revenues between Centre and States. (Constitutional Body).

► INTERSTATE RIVER WATER DISPUTES ACT (IRWD ACT)

- The Interstate River Water Disputes Act, 1956 (IRWD Act) is an Act of the Parliament of India enacted under Article 262 of Constitution of India on the eve of reorganization of states on linguistic basis to resolve the water disputes that would arise in the use, control and distribution of an interstate river or river valley.
- Article 262 of the Indian Constitution provides a role for the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the state/regional governments. Whenever the riparian states are not able to reach amicable agreements on their own in sharing of an interstate river waters, section 4 of IRWD Act provides dispute resolution process in the form of Tribunal.
- When the tribunal final verdict is issued, based on the deliberations on the draft verdict accepted by the central government and notified in the official gazette, the verdict becomes law and binding on the states for implementation.

BAR OF JURISDICTION FOR THE SUPREME COURT

- Neither the Supreme Court nor any other Court shall have or exercise jurisdiction in respect of any water dispute which may be referred to a Tribunal under The Inter-State River Water Disputes Act, 1956.
- It means that once a matter is referred to the Tribunal, no state can proceed to either the Supreme Court or any other Court **during the course of proceeding** at the Tribunal.

► PANCHAYATS & MUNICIPALITIES

PART IX of the Indian Constitution deals with the Panchayats whereas PART XIA deals with the Municipalities.

GRAM SABHA

Gram Sabha means a body consisting of persons registered in the electoral rolls relating to a village comprised within the area of Panchayat at the village level.

PANCHAYAT

- **Panchayat** means an institution of self-government constituted for rural areas.
- There shall be constituted in every State, Panchayats at the village, intermediate and districts level.
- However, Panchayats at the intermediate level may not be constituted in a State having a population not exceeding twenty lakhs.

ELECTION

- All the seats in a Panchayat shall be filled by persons chosen by **direct election** from territorial constituencies in the Panchayat area.
- Each Panchayat area shall be divided into territorial constituencies in such manner that the **ratio between the population** of each constituency and the **number of seats allotted** to it **shall be the same** throughout the Panchayat area.
- The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats shall be vested in the **State Election Commission**.
- **State Election Commission:** It is a constitutional body created under 73rd CAA (Article 243K). It has entrusted with the powers to direct and control preparation of Electoral rolls and conduct of elections to Panchayats and Municipalities. State Election Commissioner is appointed by the Governor of the State. The procedure for removal of State Election Commissioner is similar to a High Court Judge. SC recently observed that SEC is an independent constitutional body and no serving employees of State Government or Central Government can be appointed to the post to maintain its independence. Conditions of service and tenure of SEC are determined by Governor by rule. During the elections of Panchayats and Municipalities separate electoral rolls are used from those used in the elections to Lok Sabha where electoral rolls made by Election Commission are used.

DURATION

Every Panchayat, unless sooner dissolved under any law for the time being in force, shall continue for five years from the date appointed for its first meeting.

FINANCE COMMISSION

- The Governor of a State shall at the expiration of every fifth year, constitute a Finance Commission to review the financial position of the Panchayats and to make recommendations to the Governor on:
 - The principles which should govern the distribution between the State and the Panchayats of the net proceeds of the taxes, duties, tolls and fees
 - the grants-in-aid to the Panchayats from the Consolidated Fund of the State
 - the measures needed to improve the financial position of the Panchayats

APPLICATION

- The part relating to Panchayat shall not apply to
 - Scheduled areas and Tribal areas as referred to in Article 244.
 - States of Nagaland, Meghalaya and Mizoram
 - Hill areas in the State of Manipur for which District Councils exist

THE SCHEDULED AND TRIBAL AREAS

- Article 244 deals with **'The Scheduled and Tribal Areas'**. Article 244 deals with Administration of Scheduled and Tribal Areas.
- 244(1) – The provisions of Fifth Schedule shall apply to the administration and control of Scheduled Areas and Scheduled Tribes in any state other than the states of Assam, Meghalaya, Tripura and Mizoram.
- 244(2) - The provisions of Sixth Schedule shall apply to the administration of the tribal areas in the state of Assam, Meghalaya, Tripura and Mizoram.
- Thus, Parliament enacted **Panchayat (Extension to the Scheduled Areas) Act, 1996** (PESA) to extend Part IX of the Constitution with certain modifications and exceptions to the Scheduled V areas.

EMPOWERMENT OF GRAM SABHA THROUGH PESA

- Safeguard and preserve the traditions and customs of the people, their cultural identity, customary resources and customary mode of dispute resolution
- Carry out executive functions to approve plans, programs & projects for social and economic development, identify persons as beneficiaries under the poverty alleviation and other programs
- Right to mandatory consultation in land acquisition, resettlement and rehabilitation of displaced persons
- Regulate sale/consumption of intoxicants; ownership of minor forest produce and manage **village market**

► MUNICIPALITY**CONSTITUTION**

There shall be constituted in every State

- Nagar Panchayat (for transitional area from rural to urban)
- Municipal Council (for smaller urban area)
- Municipal Corporation (for larger urban area)

METROPOLITAN AREA

“Metropolitan area” means an area having a population of **ten lakhs or more**, comprised in one or more districts and consisting of two or more Municipalities or Panchayats or other contiguous areas.

ELECTION

- All the seats in a Municipality shall be filled by persons chosen by **direct election** from the territorial constituencies in the Municipal area.
- For this purpose, each Municipal area shall be divided into territorial constituencies to be known as **wards**.
- The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Municipalities shall be vested in the **State Election Commission**.

WARDS COMMITTEE

There shall be constituted Wards Committees, consisting of one or more wards, within the territorial area of a Municipality having a population of **three lakhs or more**.

DISTRICT PLANNING COMMITTEE

District Planning Committee shall be constituted at district level in every State

- To consolidate the plans prepared by the Panchayats and the Municipalities in the district and
- To prepare a draft development plan for the district as a whole.

Not less than **four-fifths** of the total number of members of such Committee shall be elected by, and from amongst,

- the elected members of the Panchayat at the district level and
- of the Municipalities in the district in proportion to the ratio between the population of the rural areas and of the urban areas in the district

METROPOLITAN PLANNING COMMITTEE

- There shall be constituted in every Metropolitan area a Metropolitan Planning Committee to prepare a draft development plan for the Metropolitan area as a whole.

- Not less than **two-thirds** of the members of such Committee shall be elected by, and from amongst,
- The elected members of the Municipalities and Chairpersons of the Panchayats in the Metropolitan area in proportion to the ratio between the population of the Municipalities and of the Panchayats in that area.

FINANCE COMMISSION

The Finance Commission constituted under article 243-I shall also review the financial position of the Municipalities and make recommendations to the Governor

- Regarding distribution between the State and the Municipalities of the net proceeds of the taxes
- Determination of the taxes, duties, tolls and fees which may be assigned to, or appropriated by, the Municipalities.
- Grants-in-aid to the Municipalities from the Consolidated Fund of the State.

► 97th CONSTITUTIONAL AMENDMENT- COOPERATIVE

In fundamental Rights: Article 19(1): Right to form cooperatives

In DPSP: Article 43B: State shall endeavour to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.

► CONSTITUTIONAL BODIES

► PUBLIC SERVICE COMMISSION

- There shall be a Public Service Commission for the **Union** and a Public Service Commission for **each State**.
- Two or more States may agree to have a **Joint Public Service Commission (JPC)** for that group of States
- **Parliament may by law** provide for the appointment of a Joint State Public Service Commission after a resolution to that effect has been passed by the State Legislature or, where there are two Houses, by each House of the Legislature of each of those States.
- An act made by Parliament or State Legislature may extend the functions of Public Service Commissions.

- The expenses of the Service Commission including any salaries, allowances and pensions payable shall be charged respectively on:
 - Consolidated Fund of India - UPSC
 - Consolidated Fund of states - State Public Service Commission

► UNION PUBLIC SERVICE COMMISSION (UPSC)

APPOINTMENT OF MEMBERS

The Chairman and other members of UPSC shall be appointed by the **President**.

OFFICE UNDER THE GOVERNMENT

Nearly as may be one-half of the members of every Public Service Commission shall be persons who have held office either under the Government of India or under the Government of a State for **at least ten years**.

TERM OF OFFICE

A member of UPSC shall hold office for

- a term of **6 years** from the date on which he enters upon his office; or
- Until he/she attains the age of **65 years**

RESIGNATION

A member of UPSC may resign his/her office by writing under his hand addressed to the **President**.

REMOVAL

Chairman or any other member of UPSC shall only be **removed** from his office **by order of the President**

- on the ground of misbehavior; and
- After the **Supreme Court** has on **inquiry** (on reference being made to it by the President) reported that the Chairman or such other member ought to be removed on such grounds.
- The President may also remove a Chairman or Member of UPSC if:
 - They are adjudged insolvent
 - They engage during their term of office in any paid employment outside the duties of their office.
 - They are in the opinion of the President, unfit to continue in office by reason of infirmity of mind or body.

SUSPENSION

The **President may suspend** from office the Chairman or any other member of UPSC in respect of whom a reference has been made to the Supreme Court for enquiry.

HOLDING OF OFFICE

- The Chairman of UPSC shall be **ineligible for further employment** either under the Government of India or under the Government of a State.
- A member other than the Chairman of UPSC **shall be eligible** for appointment as the **Chairman of UPSC**, or as the **Chairman of a State Public Service Commission** --- but shall not be eligible for any other employment either under the Government of India or under the Government of a State.

FUNCTIONS

- To conduct examinations for appointments to the services of the Union
- To assist such states on request in framing and operating schemes of joint recruitment for any services.
- State Commission shall consult UPSC on:
 - Issues relating to methods of recruitment to civil services and for civil posts
 - Principles to be followed in making appointments, promotions and transfers from one service to another
 - On all **disciplinary matters** affecting a person serving under the Government of India or the Government of a State in a civil capacity
 - On any claim by **servicing** or has **served members** under the Government of India or the Government of a State or under the Crown
 - On any claim for the **award of a pension** in respect of injuries sustained by a person while serving under the Government of India or the Government of a State or under the Crown

REPORTS OF UPSC

- It shall be the duty of UPSC to present annually to the President a report as to the work done by the Commission.
- On receipt of such report the President shall cause a copy thereof to be laid before each House of Parliament.

- The Report shall also contain a memorandum explaining where the advice of the Commission was not accepted and the reasons for such non-acceptance.

► JOINT PUBLIC SERVICE COMMISSION (JPC)

APPOINTMENT

The Chairman and other members of JPC shall be appointed by the **President**.

TENURE

A member of JPC shall hold office for:

- a term of **six years** from the date on which he enters upon his office; or
- Until he/she attains the age of **62 years**

RESIGNATION

A member of JPC may resign his/her office by writing under his hand addressed to the **President**.

REMOVAL

Same as members of UPSC

SUSPENSION

The **President may suspend** from office the Chairman or any other member of UPSC in respect of whom a reference has been made to the Supreme Court for enquiry.

REPORTS OF JPC

- It shall be the duty of JPC to present annually to the Governor a report as to the work done by the Commission.
- On receipt of such report the Governor shall cause a copy thereof to be laid before respective Legislature of State.
- The Report shall also contain a memorandum explaining where the advice of the Commission was not accepted and the reasons for such non-acceptance.

	► MEMBERS OF UPSC	► MEMBERS OF SPSC	► MEMBERS OF JPC
Appointment by the	The President	Governor	President
Term of office - A member shall hold office for	a term of 6 years from date of joining or till they attain 65 years of age	a term of 6 years from date of joining or till they attain 62 years of age	a term of 6 years from date of joining or till they attain 62 years of age
Resignation	By writing under his hand addressed to the President	By writing under his hand addressed to the	By writing under his hand addressed to the

		Governor	President
Removal	By order of the President on grounds of misbehavior and after an enquiry by Supreme Court. Can be removed also on the grounds of: Insolvency, outside employment and infirmity of mind and body	Same as of UPSC	Same as of UPSC
Suspension	By the President	By the Governor	By the President

► COMPTROLLER AND AUDITOR GENERAL OF INDIA (CAG)

APPOINTMENT

CAG shall be appointed by the **President** by warrant under his hand and seal.

REMOVAL

CAG shall only be removed from office in like manner and on the like grounds as a **Judge of the Supreme Court**.

(By a majority of the **total membership of that House** and by a **majority of not less than two-thirds of the members of that House present and voting**)

OATH

Every person appointed to be the CAG of India shall make and subscribe before the **President**, or some person appointed in that behalf by him, an **oath or affirmation** according to the form set out for the purpose in the **Third Schedule**.

CONDITIONS OF SERVICE

- The salary and other conditions of service of the CAG shall be determined by **Parliament by law**.
- The CAG **shall not be eligible** for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.

ADMINISTRATIVE EXPENSE

The administrative expenses of the office of CAG including all salaries, allowances and pensions payable to or in respect of the persons serving in that office, shall be *charged upon* the **Consolidated Fund of India**.

DUTIES & POWERS

The CAG shall perform its duties and functions with respect to accounts of the Union and of the States along with Public Sector Undertakings and Public Institutions.

AUDIT REPORTS

- The reports of the CAG relating to the accounts of the Union shall be submitted to the **President**, who shall cause them to be laid before **each House of Parliament**.
- The reports of CAG relating to the accounts of a State shall be submitted to the Governor of the State, who shall cause them to be laid before the Legislature of the State.

► FINANCE COMMISSION

CONSTITUTION

- The **President** shall at the **expiration of every fifth year** or at such earlier time as the President considers necessary, by order constitute a Finance Commission.
- The Finance Commission shall consist of a **Chairman and four other members** to be appointed by the **President**.

SELECTION OF MEMBERS

Parliament may by law determine the qualifications which shall be requisite for appointment as members of the Commission and the manner in which they shall be selected.

DUTY

To make recommendations to the President as to –

- The distribution between the Union and the States of the net proceeds of taxes
- Principles governing the grants in-aid of the revenues of the States out of the Consolidated Fund of India
- Measures needed to augment the Consolidated Fund of a State to supplement the resources of the Panchayats and Municipalities in the State on the basis of the recommendations made by the State Finance Commission.
- Any other matter referred to the Commission by the President in the interests of sound finance.

RECOMMENDATIONS

The President shall cause every recommendation made by the Finance Commission together with an explanatory memorandum as to the action taken thereon to be **laid before each House of Parliament**.

FOURTEENTH FINANCE COMMISSION (FFC)

- 14th Finance Commission (FFC) Report was tabled in Parliament February 2015.
- FFC recommended by Majority Decision that the States' Share in the Net Proceeds of the Union Tax Revenues be Raised to 42% which is a huge jump from the 32% Recommended by the 13th Finance Commission.
- The tenure of FFC is for the period from **1st April, 2015 to 31st March, 2020**.

► ELECTION COMMISSION**CONDUCT OF ELECTIONS**

Election Commission shall be responsible for Superintendence, Direction and Control of the preparation of the Electoral Rolls for and the conduct of all elections to-

- **Parliament**
- **Legislature of every State**
- Offices of **President** and **Vice-President**

The President may also appoint after consultation with the Election Commission such **Regional Commissioners** as he may consider necessary to assist the Election Commission in the performance of its functions.

CONSTITUTION

- **Chief Election Commissioner (CEC)** and such number of other **Election Commissioners**, as the **President may** from **time to time fix**.
- The **CEC** shall act as the **Chairman** of the Election Commission.

REMOVAL

- The **CEC** shall be removed from his office in like manner and on the like grounds as a **Judge of the Supreme Court**.
- Any other **Election Commissioner** or a **Regional Commissioner** shall not be removed from office except on the recommendation of the Chief Election Commissioner.
- Thus, the process of removal of CEC and other Election or Regional Commissioners is different.

ROLE OF PARLIAMENT

Parliament may by law make provision with respect to matters relating to elections to either **House of**

Parliament or to the **House or either House of State Legislature** including the preparation of

- Electoral rolls,
- The delimitation of constituencies and
- All other matters necessary for securing the due constitution of such House or Houses

Thus, the Parliament of India has legislated **The Representation of People Act, 1950** and **The Representation of People Act, 1951**.

State Legislature can make provisions (if any has not been made by the Parliament) in connection with election to the House or either House of State.

INTERFERENCE BY COURTS

Interference by Courts in matters related with elections are barred in matters of -

- **Delimitation of constituencies** or the **allotment of seats** to such constituencies by Delimitation Commission.
- Election to either House of Parliament or to the House or either House of State Legislature **during the conduct of an election**.

The purpose is to allow the process of election to be completed in the set timeframe allotted by the Election Commission. Thus, the Constitution effectively states that all disputes related to the elections shall be raised only after the declaration of results.

JURISDICTION OF COURTS

All doubts and disputes arising out of or in connection with the election of a **President or Vice-President** shall be inquired into and decided by the **Supreme Court**.

→ **The Constitution (Nineteenth Amendment) Act, 1966**

The amendment **abolished Election Tribunals** and accordingly the jurisdiction to hear election disputes was transferred to the **High Court**. This was facilitated by adding **Section 80A** to the **Representation of People Act, 1951**.

Section 80A - High Court to try election petitions.—(1) The Court having jurisdiction to try an election petition shall be the **High Court**.

ELECTION TO PANCHAYAT & MUNICIPALITY

The superintendence, direction and control of the preparation of electoral rolls for, and the conduct of, all elections to the Panchayats and Municipality shall be vested in the **State Election Commission**.

When is a By-Election held for Lok Sabha?

Section 149 of the *Representation of People's Act, 1951* provides for **bye-election** in case of casual vacancies in

the House of the People. It says when the seat of a member elected to the House of the People becomes vacant or is declared vacant or his election to the House of the People is declared void, then Election Commission by notification can hold an election to fill the vacancy.

However, if vacancy is caused on a seat reserved for Scheduled Caste or Scheduled Tribe, then person filling the seat through election must be from the same category.

Bye-elections to fill the vacancy shall be held within a period of six months from the date of the occurrence of the vacancy. However, bye-election shall not be held if:

1. If less than one year remains for the conduct of next general elections. (Eg. Election is to be held in December and vacancy arose in February of the same year)
2. If the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within six months.

► NATIONAL COMMISSION FOR SCHEDULED CASTE (NCSC)

MEMBERS

The Commission shall consist of a Chairperson, Vice-Chairperson and three other Members.

APPOINTMENT

The Chairperson, Vice-Chairperson and other Members of the Commission shall be **appointed by the President** by warrant under his hand and seal.

TENURE

The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the **President may by rule determine**.

DUTIES

It shall be the duty of the Commission to:

- to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or any other law.
- to inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes
- to participate and advise on the planning process of socio-economic development of the Scheduled Castes
- to evaluate the progress of their development under the Union and any State

- to present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards
- to make recommendation about measures to be taken by Union or State for effective implementation for the protection, welfare and socio-economic development of the Scheduled Castes.

REPORT OF THE COMMISSION

- **The President** shall cause all such reports to be laid before **each House of Parliament** along with a memorandum explaining the action taken or proposed to be taken on the recommendations.
- If the report relates to State Government, then the **Governor of that state** who shall cause it to be laid before the **Legislature of the State** along with a memorandum explaining the action taken or proposed to be taken.

POWERS OF CIVIL COURT

The Commission shall, while investigating any matter or enquiring into any complaint shall have all the powers of a civil court trying a suit especially for

- summoning and enforcing the attendance of any person from any part of India and examining him on oath
- requiring the discovery and production of any document
- receiving evidence on affidavits
- requisitioning any public record or copy thereof from any court or office
- issuing commissions for the examination of witnesses and documents

CONSULTATION

The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

► NATIONAL COMMISSION FOR SCHEDULED TRIBE (NCST)

MEMBERS

The Commission shall consist of a Chairperson, Vice-Chairperson and three other Members.

APPOINTMENT

The Chairperson, Vice-Chairperson and other Members of the Commission shall be **appointed by the President** by warrant under his hand and seal.

TENURE

The conditions of service and tenure of office of the Chairperson, Vice-Chairperson and other Members so appointed shall be such as the **President may by rule determine**.

DUTIES

- To investigate and monitor all matters relating to the safeguards provided for the **Scheduled Tribe** under the Constitution or any other law.
- To inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Tribes
- To participate and advise on the planning process of socio-economic development of the Scheduled Tribes
- To evaluate the progress of their development under the Union and any State
- To present to the President, annually and at such other times as the Commission may deem fit, reports upon the working of those safeguards
- To make recommendation about measures to be taken by Union or State for effective implementation for the protection, welfare and socio-economic development of the Scheduled Tribes.

REPORT OF THE COMMISSION

- **The President** shall cause all such reports to be laid before **each House of Parliament** along with a memorandum explaining the action taken or proposed to be taken on the recommendations.
- If the report relates to State Government, then the **Governor of that state** who shall cause it to be laid before the **Legislature of the State** along with a memorandum explaining the action taken or proposed to be taken.

POWERS OF CIVIL COURT

The Commission shall, while investigating any matter or enquiring into any complaint shall have all the powers of a civil court trying a suit especially for

- summoning and enforcing the attendance of any person from any part of India and examining him on oath
- requiring the discovery and production of any document
- receiving evidence on affidavits
- requisitioning any public record or copy thereof from any court or office
- issuing commissions for the examination of witnesses and documents

CONSULTATION

The Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Tribes.

► 102nd CONSTITUTIONAL AMENDMENT ACT – NATIONAL COMMISSION FOR BACKWARD CLASSES (NCBC)

PROVISIONS

1) Article 338B: Creates a constitutional Commission for the socially and educationally backward classes (SEBCs) to be known as **National Commission for Backward Classes**.

- **Composition:** Commission shall consist of Chairperson, Vice-chairperson, and three other Members. Conditions of service tenure of office of the Chairperson, Vice-Chairperson and other members to be determined by President by rules. They will be appointed by President by warrant under his hand and seal.
- **Functions of the NCBC:**
 - Investigate and monitor about the safeguards provided for SEBCs under COI or under any law or order. Also to evaluate working of above safeguards.
 - Inquire into specific complaints with respect to deprivation of rights and safeguards of the SEBCs
 - Participate and advise on the socio-economic development of SEBCs and to evaluate the progress of their development under the Union or any State.
 - Present annual report to the President and other reports as the Commission deems fit upon the working of safeguards.
 - Make recommendations about the measures that need to be taken by the Union or States for the effective implementation safeguards and other additional measures for socio-economic development of SEBCs in the above reports
- President shall lay all reports of NCBC before each House of Parliament along with memorandum explaining the action taken and the reasons for the non-acceptance, of any such recommendations.
- If the report of NCBC presented to the President or any part of it deals with any matter which deals with any State Government, a copy of such report shall be forwarded to the State Government which will lay it before the Legislature of the State along with

memorandum explaining the action taken and the reasons for the non-acceptance, of any such recommendations.

- NCBC will have powers of civil court while inquiring into any complaint.
- Union and State Governments to consult NCBC on all major policy matters affecting the SEBCs.

2) Article 342A:

- President after consultation with Governor of each State and UT to notify SEBCs for every State or UT.
- Central List of SEBCs: Parliament can by law include in or exclude from the Central List of SEBCs.

► COMMISSION ON OFFICIAL LANGUAGE (ARTICLE 344)

OFFICIAL LANGUAGE

The official language of the Union shall be **Hindi in Devanagari script**.

APPOINTMENT

The **President** shall at the **expiration of ten years** by order constitute a Commission which shall consist of a Chairman and such other members representing the different languages specified in the Eighth Schedule as the President may appoint.

DUTIES

It shall be the duty of the Commission to make recommendations to the President as to –

- the progressive use of the Hindi language for the official purposes of the Union
- restrictions on the use of the English language for all or any of the official purposes of the Union
- the language to be used for all or any of the purposes mentioned in article 348 (Language to be used in Supreme Court and in every High Court – **English language**)
- form of numerals to be used for any one or more specified purposes of Union
- Any other matter referred by the President to the Commission regarding official language of the Union and the **language for communication** between the **Union and a State** or between **one State and another State** and their use.

In making their recommendations, the Commission shall have

- Due regard to the **industrial, cultural and scientific advancement of India**.

- Just claims and interests of persons belonging to **non-Hindi speaking areas** about the public services.

COMMITTEE

There shall be constituted a Committee consisting of **30 members, of which**

- **20 members** shall be members of the **House of the People** and
- **10 members** shall be members of the **Council of States**

to be elected by each House in accordance with the **system of proportional representation by means of the single transferable vote**.

The Committee shall examine the recommendations of the Commission and report to the President their opinion.

► SPECIAL OFFICER FOR LINGUISTIC MINORITIES (ARTICLE 350B)

APPOINTMENT

- There shall be a Special Officer for linguistic minorities to be appointed by the **President**.
- **Article 29** provides that any section of citizens residing in Indian territory shall have right to conserve distinct **language, script or culture** of their own.

DUTY

It shall be the duty of the Special Officer to **investigate** all matters relating to the **safeguards provided for linguistic minorities** under this Constitution and report to the President upon those matters at such intervals as the President may direct.

REPORT

The President shall cause all such **Reports** to be laid before **each House of Parliament**, and sent to the Governments of the States concerned.

► STATUTORY BODIES

► NATIONAL COMMISSION FOR MINORITIES

ESTABLISHED

- Government of India appointed a Minorities Commission in 1978 under an administrative resolution.
- Scope of the Commission's work extended to minorities whether based on religion or language.

- Parliament enacted the National Commission for Minorities Act, 1992 to establish National Commission for Minorities
- The government has notified the following as minorities:
 - Muslims,
 - Christians,
 - Buddhists,
 - Sikhs
 - Zoroastrians, and
 - Jains

MEMBERS

The Commission shall consist of a

- Chairperson,
- Vice-Chairperson and
- Five Members

to be **nominated by the Central Government** from amongst persons of eminence, ability and integrity.

TENURE

The Chairperson and every Member shall hold office for a term of **3 years** from the date of appointment.

FUNCTIONS

- Evaluate the progress of the development of minorities under the Union and States.
- Monitor the working of the safeguards provided in the Constitution and in laws enacted by Parliament and the State Legislatures and make effective recommendations.
- look into specific complaints regarding deprivation of rights and safeguards of minorities
- Conduct studies, research and analysis on the issues relating to socio-economic, educational development and discrimination of minorities and recommend suitable measures.

REPORTS

Central Government shall cause the recommendations to be laid before **each House of Parliament** along with a memorandum explaining the action taken or proposed to be taken and the reasons for the non-acceptance, if any, of any of such recommendations.

► NATIONAL COMMISSION FOR THE PROTECTION OF CHILD RIGHTS (NCPCR)

CONSTITUTION

- It was set up in March 2007 under **The Commissions for Protection of Child Rights (CPCR) Act, 2005**.
- It works under the administrative control of Ministry of Women & Child Development.
- The 2005 Act provides for constitution of **National Commission** and **State Commissions** for Protection of Child Rights and **Children's Courts** for providing speedy trial of offences against children or of violation of child rights.
- The Commission shall consist of a Chairperson and six Members, out of which at least two shall be women.
- The Child is defined as a person in the 0 to 18 years age group.

APPOINTMENT

- The Central Government shall appoint Chairperson and other Members
- Chairperson shall be appointed on the recommendation of a Three Member Selection Committee headed by Minister of Women and Child Development.

FUNCTION

- Examine and review the safeguards provided for the protection of children under various law and recommend measures for effective implementation
- Inquire into violation of child rights and recommend initiation of proceedings in such cases
- Examine all factors that inhibit the enjoyment of rights of children affected by terrorism, communal violence, riots, natural disaster, domestic violence, HIV/AIDS, trafficking, maltreatment, torture and exploitation, pornography and prostitution and recommend appropriate remedial measures
- Look into the matters relating to children in need of special care and protection including children in distress, marginalized and disadvantaged children, children in conflict with law, juveniles, children without family and children of prisoners and recommend appropriate remedial measures
- Study treaties & other international instruments, undertake periodic review of policies and programs and promote research in the field of child rights.

► NATIONAL COMMISSION FOR WOMEN

CONSTITUTION

The National Commission for Women was set up as statutory body under the National Commission for Women Act, 1990.

MEMBERS

The Commission shall consist of a Chairperson and 5 members to be nominated by the Central Government from reputable fields.

TENURE

The Chairperson and every Member shall hold office for period **not exceeding three years**.

FUNCTIONS

- Review the Constitutional and Legal safeguards for women
- Recommend remedial legislative measures to the government
- Facilitate redressal of grievances and
- Advise the Government on all policy matters affecting women
- Take up cases of violation of laws and rights, non-implementation of policies and schemes affecting women
- Undertake promotional and educational research and suggest ways of ensuring due representation of women in all spheres of life.

REPORTS

- The Central Government shall cause the Reports of NCW to be laid before each House of Parliament along with a memorandum explaining the action taken or proposed to be taken.
- If any matter in the report pertains to any state government, then Commission shall forward a copy of such report or part to such State Government who shall cause it to be laid before the Legislature of the State along with a memorandum explaining the action taken or proposed to be taken on such recommendations.

► CENTRAL VIGILANCE COMMISSION (CVC)

FORMATION

- The CVC was set up by the Government in February, 1964 on the recommendations of the Committee on Prevention of Corruption, headed by Shri K.

Santhanam, to advise and guide Central Government agencies in the field of vigilance.

- An Ordinance by the President in 1998 made the CVC a multi member Commission with "statutory status" with effect from 25th August, 1998.
- Consequently the CVC Bill passed in 2003 to give CVC a statutory status

VIGILANCE

CVC is conceived to be the apex vigilance institution, free of control from any executive authority to

- Monitor all vigilance activity under the Central Government and
- Advise various authorities in Central Government organizations in planning, executing, reviewing and reforming their vigilance work.
- Receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.
- Exercise superintendence over functioning of Delhi Police Establishment regarding investigation of offences under **The Prevention of Corruption Act, 1988**.

MEMBERS

The Commission shall consists of-

- Central Vigilance Commissioner
- Not more than 2 Vigilance Commissioners

APPOINTMENT

Central Vigilance Commissioner and other Vigilance Commissioners shall be appointed by the **President** by warrant under his hand and seal.

The appointment shall be made after obtaining the recommendation of a Committee consisting of-

- Prime Minister – Chairperson
- Minister of Home Affairs – Member
- Leader of Opposition in the Lok Sabha - Member

TENURE

Central Vigilance Commissioner and every Vigilance Commissioner shall hold office for

- A term of **4 years** from the date of his/her appointment.
- Or till he/she attains the age of **65 years** (whichever is earlier)

BAR ON APPOINTMENT

- Central Vigilance Commissioner shall be **ineligible for appointment in the Commission** when he/she ceases to hold office.

- Vigilance Commissioner shall be eligible for appointment as Central Vigilance Commissioner
- On ceasing to hold office, Central Vigilance Commissioner and every other Vigilance Commissioner shall be ineligible for further employment to any office of profit under Government of India or government of any State.

RESIGNATION

Central Vigilance Commissioner or a Vigilance Commissioner may by writing under his hand addressed to the President, resign their office.

REMOVAL

- Central Vigilance Commissioner or any Vigilance Commissioner shall be removed shall be removed on grounds of misbehavior or incapacity
 - On order of the President
 - And after an enquiry has been conducted by the Supreme Court

► NATIONAL LEGAL SERVICE AUTHORITY (NALSA)

FORMATION

- National Legal Service Authority (NALSA) derives its power through **The Legal Services Authority Act, 1987**.
- The Act promotes an inclusive legal system in order to ensure fair and meaningful justice to the marginalized and disadvantaged sector by strengthening the system of **Lok Adalats** and other **Alternate Dispute Resolution** mechanisms.
- The Act constitutes legal services authorities at **National and respective State level** to provide **free and competent legal services** to the weaker sections of the society.

COMPOSITION

National Legal Services Authority shall consist of

- **Chief Justice of India** who shall be the **Patron-in-Chief**,
- a **Serving or Retired Judge of the Supreme Court** to be nominated by the President, in consultation with the Chief Justice of India, who shall be the **Executive Chairman** and
- Such number of **other members**, possessing such experience and qualifications to be **nominated in consultation with the Chief Justice of India**.
- The Central Government shall, in consultation with the Chief Justice of India, appoint a person to be the

Member-Secretary of the Central Authority to exercise such powers and perform such duties under the Executive Chairman of the Central Authority.

FUNCTION

NALSA shall perform the following for the weaker sections of the society

- Frame effective and economical schemes for the purpose of making legal services available to them.
- Take necessary steps by way of social justice litigation with regard to consumer protection, environmental protection or other matter of special concern.
- Train the social workers in legal skills for promotion of justice.
- Undertake and promote research in the field of legal services with special reference to the need for such services among the poor.
- Take steps to ensure commitment to the fundamental duties of citizens enshrined under Part IVA of the Indian Constitution.
- Monitor and evaluate implementation of the legal aid programs and schemes at periodic intervals
- Provide grants-in-aid for specific schemes to various voluntary social service institutions & State and District Authorities.
- Develop, in consultation with the Bar Council of India, programs for clinical legal education and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions.
- Make special efforts to enlist the support of voluntary social welfare institutions working at the grass-root level, particularly among the **Scheduled Castes and the Scheduled Tribes, women and rural and urban labour**
- Co-ordinate and monitor the functioning of State Authorities, District Authorities, Supreme Court Legal Services Committee, High Court Legal Services Committees, Taluk Legal Services Committees, voluntary social service institutions and other legal services organisations.

SUPREME COURT LEGAL SERVICES COMMITTEE

- The Central Authority shall constitute **Supreme Court Legal Services Committee** for the purpose of exercising such powers and performing such functions as may be determined by regulations made by the Central Authority.
- The members of the Committee shall be nominated by the Chief Justice of India. The Committee shall consist of

- a) a **Sitting Judge** of the Supreme Court who shall be the Chairman
- b) such number of other members possessing such experience and qualifications as may be prescribed by the Central Government

STATE LEGAL SERVICES AUTHORITY

State Legal Services Authority also called State Authority shall consist of-

- **Chief Justice of the High Court** who shall be the **Patron-in-Chief**
- **Serving or Retired Judge of the High Court**, to be nominated by the Governor, in consultation with the Chief Justice of the High Court, who shall be the **Executive Chairman**; and
- Such number of other members to be nominated by the respective State Government in consultation with the Chief Justice of the concerned High Court.
- The State Government in consultation with the Chief Justice of the High Court, appoint a person belonging to the State Higher Judicial Service, not lower in rank than that of a District Judge, as the **Member-Secretary** of the **State Authority**, to exercise such powers and perform such duties under the Executive Chairman of the State Authority.

FUNCTIONS OF STATE LEGAL SERVICES AUTHORITY

- State Authority shall implement the policy and directions of the Central Authority.
- Give legal service to persons belonging to the weaker section of the society
- Conduct Lok Adalats including Lok Adalats for High Court cases.
- Undertake preventive and strategic legal aid programs

HIGH COURT LEGAL SERVICES COMMITTEE

The State Authority shall constitute **High Court Legal Services Committee** for every High Court, for the purpose of exercising such powers and performing such functions as prescribed.

The members of the Committee shall be nominated by the Chief Justice of respective High Courts. The Committee shall consist of

- a Sitting Judge of the High Court who shall be the Chairman
- Such number of other members possessing such experience and qualifications as may be determined by regulations made by the State Authority.
- The Chief Justice of the High Court shall appoint a Secretary to the Committee

DISTRICT LEGAL SERVICES AUTHORITY

The State Government shall, in consultation with the Chief Justice of the High Court, constitute **District Legal Services Authority** for every District in the State to exercise the powers and perform the functions conferred on them.

A District Authority shall consist of

- the District Judge who shall be its Chairman
- Such number of other members, possessing such experience and qualifications, to be nominated by that Government in consultation with the Chief Justice of the High Court.
- The State Authority shall, in consultation with the Chairman of the District Authority, appoint a person belonging to the State Judicial Service not lower in rank than that of a Subordinate Judge or Civil Judge posted at the seat of the District Judiciary as **Secretary of the District Authority** to exercise such powers and perform such duties under the Chairman of that Committee.

FUNCTIONS OF DISTRICT AUTHORITY

- It shall be the duty of every District Authority to perform such of the functions of the State Authority in the District as may be delegated to it from time to time
 - Co-ordinate the activities of the Taluk Legal Services Committee and other legal services in the District and
 - To organise **Lok Adalats** within the District.
- District Authority shall act in coordination with other governmental and non-governmental institutions, universities and others engaged in the work of promoting the cause of legal services to the poor.
- It shall also be guided by such directions as the Central Authority or the State Authority

TALUK LEGAL SERVICES COMMITTEE

- The State Authority may constitute a **Taluk Legal Services Committee**, for each taluk or mandal or for group of taluks or mandals.
- The Committee shall consist of
 - The senior-most Judicial Officer operating within the jurisdiction of the Committee who shall be the ex officio Chairman, and
 - Such number of other members, as may be prescribed by the State Government to be nominated by that Government in consultation with the Chief Justice of the High Court.
- The Taluk Legal Services Committee may perform all or any of the following functions, namely

- o co-ordinate the activities of legal services in the taluk
- o organize Lok Adalats within the taluk
- o perform other functions as assigned by the District Authority

► LOK ADALATS

- **The Legal services authority Act** also lays down a framework for Lok Adalats
- Every State Authority or District Authority or Supreme Court Legal Services Committee or every High Court Legal Services Committee or, Taluk Legal Services Committee may organise Lok Adalats.
- Every Lok Adalat organised for an area shall consist of such number of serving or retired judicial officers and other members as may be prescribed by any of the respective Authorities.
- A Lok Adalat shall have jurisdiction to determine and to arrive at a compromise or settlement between the parties to a dispute in respect of
 - any case pending before or
 - any matter which is falling within the jurisdiction of, and is not brought before, any Court for which the Lok Adalat is organised
- **Lok Adalat shall have no jurisdiction** in respect of any case or matter **relating to an offence not compoundable under any law.**

Non-compoundable cases are **serious criminal cases** which cannot be quashed and compromise is not allowed between the parties. It is always registered in the name of state. Eg. *State of Karnataka vs XYZD*. Under a Non-Compoundable offense, full trial is held which ends with the acquittal or conviction of the offender, based on the evidence presented in a Court of Law.

FUNCTIONS OF LOK ADALAT

Lok Adalat while hearing a case can

- summon and enforce the attendance of any witness;
- examine him/her on oath,
- make discovery of documents,
- receive evidence,
- ask for requisitioning of any public record or document or copy of such record or document from any court or office

Lok Adalat can specify its own procedure for the determination of any dispute. All the proceedings before a Lok Adalat shall be deemed to be judicial proceedings.

AWARDS OF LOK ADALAT

- Every award of the Lok Adalat shall be deemed to be a decree of a civil court or an order of any other court and where a compromise or settlement has been arrived at.
- Every award made by a Lok Adalat **shall be final and binding** on all the parties to the dispute, and **no appeal shall lie to any court against the award.**

► NORTHEASTERN COUNCIL

- North-eastern Council is the nodal agency for the economic and social development of the Northeastern Region which consists of the eight States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. Northeastern Council was constituted in 1971 by an Act of Parliament.
- Union Cabinet, in 2018, approved the proposal of Ministry of Development of Northeastern Region (DoNER) for the nomination of the union Home minister as ex-officio Chairman of Northeastern Council (NEC). The Cabinet also approved that Minister of State (Independent Charge), Ministry of DoNER would serve as Vice Chairman of the Council.
- NEC members: the Governors and the Chief Ministers of the 8 states including Sikkim, Chairman and 3 members who are nominated by the country's President.

► QUALITY COUNCIL OF INDIA

Quality Council of India (QCI) was set up in 1997 jointly by the Government of India and the Indian Industry represented by the three premier industry associations

- Associated Chambers of Commerce and Industry of India (ASSOCHAM),
- Confederation of Indian Industry (CII) and
- Federation of Indian Chambers of Commerce and Industry (FICCI)

to establish and operate national accreditation structure and promote quality through National Quality Campaign. **It is a Non Statutory Body.**

It provides technical support to both Central and State government departments in implementing ISO 9001 standards as well as in undertaking process improvement projects.

ADMINISTRATIVE CONTROL

The Department of Industrial Policy & Promotion, **Ministry of Commerce & Industry**, is the nodal ministry for QCI.

NATIONAL BOARD FOR QUALITY PROMOTION

- The National Board for Quality Promotion, a constituent board of Quality Council of India works on the Vision of promoting quality of life for the Citizens of India.
- The board is supported through nominal Plan Funds from the DIPP (Department of industrial Planning & Projects) to carry out the National Quality Campaign.

AIM

- It aims to promote application of quality management standards and statistical quality tools with an objective of enabling industry, to improve their competitiveness, with specific focus on SME sectors.
- To develop, establish & operate National Accreditation programs in accordance with the relevant international standards & guides for various service sectors such as education, healthcare, environment protection, governance, social sectors, infrastructure sector, vocational training etc.
- It also empowers the consumers to demand quality and thereby creates a back-pressure on suppliers to ensure quality of their products and services.

► COMPETITION COMMISSION OF INDIA (CCI)**FORMATION**

- The Competition Act, 2002 establishes the Competition Commission of India.
- Competition Act, 2002 was enacted by replacing Monopolies and Restrictive Trade Practices Act, (MRTP), 1969 on the recommendations of Mr S. V. S. Raghavan Committee.

MANDATE

- To check Anti-Competitive agreements
- Prohibit Abuse of dominance by strong companies over weak organisations, and
- To regulate Mergers and Acquisitions or Takeovers taking place in the market.

ROLE

- To prevent practices having adverse effect on competition
- To promote and sustain competition in markets
- To protect the interests of consumers and
- To ensure freedom of trade carried on by other participants in Indian market.

MEMBERS

The Competition Commission shall consist of a

- Chairperson and
- Not less than 2 and not more than 6 members

The Chairperson and other Members of the Commission shall be appointed by the Central Government from a panel of names recommended by a **Selection Committee** consisting of –

- the Chief Justice of India or his nominee – Chairperson
- the Secretary in the Ministry of Corporate Affairs – Member
- the Secretary in the Ministry of Law and Justice – Member
- two experts of repute who have special knowledge of, and professional experience in international trade, economics, business, commerce, law, finance, accountancy, management, industry, public affairs or competition matters including competition law and policy - Members

TENURE

The Chairperson and Members shall hold office as such for

- a term of five years
- till he/she attain the age of 65 years

Chairperson and Members shall be eligible for re-appointment.

REMOVAL

The Chairperson or any other Member may, by notice in writing under his hand addressed to the **Central Government**, resign his office.

COMPETITION APPELLATE TRIBUNAL

Competition Appellate Tribunal has been established to hear and dispose of appeals against any direction issued or decision made or order passed by the Competition Commission of India.

► FOOD SAFETY AND STANDARD AUTHORITY OF INDIA (FSSAI)**FORMATION**

FSSAI has been established under Food Safety and Standards Act, 2006. It operates under **Ministry of Health & Family Welfare**.

MANDATE

- Frame of Regulations to lay down and enforce various Standards and guidelines in relation to articles of food.
- Lay down mechanisms and guidelines for **accreditation of certification** bodies engaged in

certification of food safety management system for food businesses including **accreditation of certifying laboratories**.

- Provide scientific advice and technical support to Central Government and State Governments in the matters of framing the policy and rules in areas relating to **food safety and nutrition** and also check for **adulteration**.
- Collect and collate data regarding food consumption, incidence and prevalence of biological risk, contaminants in food, residues of various, and contaminants in foods products, identification of emerging risks and introduction of rapid alert system.
- Creating an information network across the country so that the public, consumers, Panchayats etc. receive rapid, reliable and objective information about food safety and issues of concern.
- Provide training programs for persons who are involved or intend to get involved in food businesses.
- Contribute to the development of international technical standards for food, sanitary and phyto-sanitary standards.
- Promote general awareness about food safety and food standards.

MEMBERS

FSSAI shall consist of a Chairperson and 22 members out of which one-third shall be women.

APPOINTMENT

The Chairperson shall be appointed by the **Central Government** from amongst the persons of eminence in the field of food science or from administration.

TERM OF OFFICE

- The Chairperson and the members other than ex officio Members shall hold office for a term of **three years** from date of appointment and **shall be eligible for re-appointment** for a further period of three years.
- However, Chairperson **shall not hold office** as such after he has attained the age of sixty-five years.

APPENDIX

► SCHEDULES UNDER THE CONSTITUTION OF INDIA

SCHEDULE I - Name of States and Union Territories

SCHEDULE II - Salaries and Emoluments of dignitaries holding constitutional office:

- President and Governors
- Speaker & Deputy Speaker of Lok Sabha + Chairman & Dy. Chairman of Rajya Sabha + Speaker & Dy. Speaker of State Legislative Assembly + Chairman & Dy. Chairman of Legislative Council of State
- Judges of Supreme Court and High Courts
- Comptroller and Auditor General of India

SCHEDULE III - Forms of Oath or Affirmation

SCHEDULE IV - Allocation of seats in the Council of States (Rajya Sabha).

SCHEDULE V

- Administration & Control of Scheduled Areas and Scheduled Tribes
- Provides for Tribes Advisory Council

SCHEDULE VI - Administration of Tribal Areas in the states of

Assam	Meghalaya	Tripura	Mizoram
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Provides for the constitution of District Councils and Regional Councils

SCHEDULE VII - Distribution of powers to make laws for Parliament & State Legislatures under

Union List	State List	Concurrent List
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SCHEDULE VIII Languages

SCHEDULE IX

- It was added by the Constitution (First Amendment) Act, 1951 (PM Jawahar Lal Nehru).
- The First amendment added

Article - 31A	Article -31B	Ninth Schedule
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- so as to make laws acquiring zamindari unchallenged in court of law.
- Thus, any law added to the 9th Schedule could not be challenged in a Court of law even though they violated Fundamental Rights.
- However, in a landmark judgment by 9 Judge Constitution Bench in 2007 changed the status quo.
- The Judgment held that all amendments made to the Constitution **on or after 24th April, 1973** by which 9th SCHEDULE was amended by various laws **can be judicially reviewed** if they have **violated the basic**

structure of the constitution as mentioned in Article 14, 19, 20 and 21.

- Now 9th Schedule **can be Judicially Reviewed** on grounds of violating Basic Structure of the Constitution.

SCHEDULE X- Disqualifications on grounds of Defection

SCHEDULE XI

- Endowing the Panchayat to make laws under provisions mentioned 11th Schedule.
- It was added by 73rd Constitution Amendment

SCHEDULE XII

- Endowing the Municipality to make laws on provisions mentioned under 12th Schedule
- It was added by 74th Constitution Amendment

► IMPORTANT AMENDMENTS TO THE CONSTITUTION OF INDIA

AMENDMENTS	AMENDED PROVISIONS OF THE CONSTITUTION
1st Amendment Act, 1951	<ol style="list-style-type: none"> 1. Added Ninth Schedule to protect the land reform and other laws included in it from the judicial review. 2. Added three more grounds of restrictions on freedom of speech and expression, viz., public order, friendly relations with foreign states and incitement to an offence. Also, made the restrictions 'reasonable' and thus, justiciable in nature.
7th Amendment Act, 1956	Abolished the existing classification of states into four categories i.e., Part A, Part B, Part C and Part D states, and re-organised them into 14 states and 6 union territories.
21st Amendment Act 1967	Added Sindhi as one of the languages in the 8 th Schedule.
42th Amendment Act, 1976 ('Mini-Constitution'; it gave effect to the recommendations of Swaran Singh Committee.)	<ol style="list-style-type: none"> 1. Added three new words (i.e., socialist, secular and integrity) in the Preamble. 2. Added Fundamental Duties by the citizens (new Part IV A). 3. Made the president bound by the advice of the cabinet. 4. Provided for administrative tribunals and tribunals for other matters (Added Part XIV A). 5. Froze the seats in the Lok Sabha and state legislative assemblies on the basis of 1971 census till 2001. 5. Added three new Directive Principles viz., equal justice and free-legal aid, participation of workers in the management of industries and protection of environment, forests and wild life. 6. Facilitated the proclamation of national emergency in a part of territory of India. 7. Shifted five subjects from the state list to the concurrent list, viz., education, forests, protection of wild animals and birds, weights and measures and administration of justice, constitution and organization all courts except the Supreme Court and the high courts.
44th Amendment Act, 1978	<ol style="list-style-type: none"> 1. Empowered the president to send back once the advice of cabinet for reconsideration. But, there considered advice is to be binding on the president. 2. Replaced the term 'internal disturbance' by 'armed rebellion' in respect of national emergency. 3. Made the President to declare a national emergency only on the written recommendation of the cabinet. 4. Deleted the right to property from the list of Fundamental Rights and made it only a legal right. 5. Provided that the fundamental rights guaranteed by Articles 20 and 21 cannot be suspended during a national emergency.
52th Amendment	Provided for disqualification of members of Parliament and state legislatures on the ground

Act, 1985 (popularly known as Anti-Defection Law)	of defection and added a new Tenth Schedule containing the details in this regard.
61st Amendment Act, 1989	Reduced the voting age from 21 years to 18 years for the Lok Sabha and state legislative assembly elections.
71st Amendment Act 1992	Added Konkani, Manipuri and Nepali languages in the 8 th Schedule.
87th Amendment Act, 2003	Santhali, Bodo, Dogri, and Maithili in the 8th Schedule of Indian Constitution Service Tax introduced.
91st Amendment Act, 2003 (Made provisions to debar defectors from holding public offices, and to strengthen the anti-defection law)	<ol style="list-style-type: none"> 1. The total number of ministers, including the Prime Minister, in the Central Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha 2. A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. 3. The total number of ministers, including the Chief Minister, in the Council of Ministers in a state shall not exceed 15% of the total strength of the legislative Assembly of that state. But, the number of ministers, including the Chief Minister, in a state shall not be less than 12 4. A member of either House of a state legislature belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister 6. The provision of the Tenth Schedule (anti-defection law) pertaining to exemption from disqualification in case of split by one-third members of legislature party has been deleted. It means that the defectors have no more protection on grounds of splits.
92nd Amendment Act, 2003	Added Bodo, Dogri, Mathili and Santhali languages in the 8 th Schedule.
95th Amendment Act, 2010	Extension of reservation of seats for SC/ST Nomination of Anglo-Indian members in Parliament and State Assemblies
96th Amendment Act 2011	Replaced Odia for Oriya in the 8th Schedule to the Indian Constitution
97th Amendment Act 2012	Introduction of Part IXB in the Constitution of India relating to Co-operative Societies
100th Amendment Act 2015	Exchange of some enclave territories with Bangladesh Conferment of citizenship rights to citizens of enclave's resulting to signing of Land Boundary Agreement (LBA) Treaty between India and Bangladesh.
101st Amendment Act, 2016	Introduction of Goods and Services Tax (GST)
102nd Amendment Act, 2018	Constitutional Status to National Commission for Backward Classes
103rd Amendment Act, 2019	A maximum of 10% Reservation for Economically Weaker Sections of citizens of classes other than the classes mentioned in clauses (4) and (5) of Article 15, i.e. Classes other than socially and educationally backward classes of citizens or the Scheduled Castes and the Scheduled Tribes.

104th Amendment Act, 2019	To extend the reservation of seats for SCs and STs in the Lok Sabha and states assemblies from Seventy years to Eighty years. Removed the reserved seats for the Anglo-Indian community in the Lok Sabha and state assemblies.[112]
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► IMPORTANT SUPREME COURT CASES

AK Gopalan Case, 1950	<ul style="list-style-type: none"> Corresponds to the charges of violation of fundamental Right to freedom under the Preventive Detention Act the court was approached over the validity of the act. SC held that the constitutional validity of a law cannot be verified by the Judiciary and the Judiciary has only the capacity to verify whether the "procedure established by the law" has been followed. (Article 21 of the Constitution)
Champakam Dorairajan Case, 1951	<ul style="list-style-type: none"> The case challenged the reservations given to backward classes in educational institutions in Tamil Nadu. SC overruled the caste-based reservation as unconstitutional citing right against discrimination as given in Article 15. (Led to the enactment of First Amendment Act)
Shankari Prasad Case, 1952	<ul style="list-style-type: none"> The first Constitution Amendment Act, providing for reservations, was challenged that it violated Fundamental rights. The court held that Parliament has power to amend the Constitution.
Berubari Case, 1960	<ul style="list-style-type: none"> While ceding a part of Indian Territory to an alien state the court in an advisory opinion held that such process cannot take place unless a Constitution amendment to that effect is made. Court opined Preamble is not a part of the Constitution.
Keshav Singh Case, 1964	<ul style="list-style-type: none"> One journalist Keshav Singh was held for contempt of legislature for making scathing criticism and often denigrating on a law passed. He was sentenced to jail. SC held that the contempt power of Parliament to issue warrants against individuals must comply with the due process requirements under Article 21.
Sajjan Singh Case, 1965	The case related to the validity of 17th Constitutional Amendment Act which provided for land acquisition contrary right to property. SC upheld that Fundamental Rights can be amended within the purview of Article 368.
Golaknath Case, 1967	SC while reversing the ruling made in Shankari Prasad and Sajjan Singh case held that constitutional amendment cannot be extended to infringement of Fundamental Rights.
Kesavananda Bharati Case, 1973	For the first time the SC propounded the Basic Structure Doctrine and held that certain basic features of the Constitution cannot be amended while others can be done so without having a sweeping change in the Constitution.
Maneka Gandhi Case, 1978	The SC overruled the AK Gopalan case and mooted the "due process of law" doctrine according to which the procedure according to the law as well as the reasonableness and validity of the law can be questioned by the Judiciary.
Minerva Mills Case, 1980	SC held that Fundamental Rights and Directive Principle of State Policy are complementary to each other and if any law enacted to implement the Directive Principle not totally contravening the Fundamental Rights is valid.
Hussainara Khatoon vs. State of Bihar	First reported case of PIL.
Shah Bano Case,	SC held that Muslim women also have right to get maintenance from their husbands

1985	when they are divorced although such practice is not permitted under Muslim traditional laws.
Unnikrishnan Case, 1993	SC held that Right to Education also constitutes a Fundamental Rights as part of Right to life under Act 21.
Indira Sawhney Case, 1993	SC upheld the 27% reservation made for OBCs in public employment but subjected to a cap of 50% of reservations. SC also mooted the Creamy Layer concept to identify the well-off groups within the backward classes.
Sarala Mudgal Case, 1995	SC ruled that a man married under Hindu religious law cannot convert himself to Islam for the purpose of marrying other women.
Bommai Case, 1995	SC held that federalism is a part of basic structure and State Governments cannot be arbitrarily dismissed by a Governor and any such test of confidence of the Executive must be done on the floor of the Assembly.
TMA Pai Case, 2002	SC held that the right to administer minority educational institution is not absolute and the, State can regulate the institutional affairs to educational standards.
Inamdhara Case, 2005	SC declared that the reservations for SCs/STs in private educational institutions null and void. To overcome this judgment, the Government passed 93rd Constitutional Amendment in private institutions.
IR Coelho Case, 2006	SC ruled that the 9th Scheduled of the Constitution is subjected to judicial review.
Ashok Kumar Thakur Case, 2007	SC upheld the 93rd Constitutional Amendment Act providing for reservation for SC/STs OBCs in Central Universities as well as Private institutions but subject to a ceiling of 50% of total seats for reservation.
Transgender as 'Third Gender' 2014 (NALSA judgement)	SC created the Third Gender status.
National Judicial Appointments Commission 2015	SC by majority upheld the collegium system and struck down NJAC as unconstitutional.
Puttaswamy Judgement/Case, 2017	<ul style="list-style-type: none"> SC unanimously held that Indians have a constitutionally protected fundamental right to privacy that is an intrinsic part of life and liberty under Article 21 Constitutional validity of Aadhar Act was upheld by the Supreme Court. However, it cannot be made mandatory.
VISHAKHA Judgement	SC laid down guidelines for prevention of sexual harassment at workplace.
ARUNA SHANBAUG	Passive Euthanasia was legally allowed and concept of living will was allowed. (Advanced Medical Directive).

► IMPORTANT PROVISIONS OF REPRESENTATION OF PEOPLES ACT

REPRESENTATION OF PEOPLES ACT, 1950	REPRESENTATION OF PEOPLES ACT, 1951
(i) Allocation of Seats in the House of People (Section 3) <ul style="list-style-type: none"> Number of seats for Each States Reserved Seats for SC/ ST (1st Schedule) 	(i) Qualification - House of People; Legislative Assembly; Council of States & Legislative Council
(ii) No. of Seats in Legislative Assemblies (Section 7)	(ii) Disqualification - Members of Parliament and State

<ul style="list-style-type: none"> No. of Seats to Each state Reserved Seats for SC/ST (2nd Schedule) 	<p>Legislature.</p> <ul style="list-style-type: none"> Examples: Section 8(1); Section 8(2); Section 8(3) of the Act
<p>(iii) Allocation of seats in Legislative Council (Section 10)</p> <ul style="list-style-type: none"> As provided in the 3rd Schedule of the Act. 	<p>(iii) Power of Election Commission to reduce or remove disqualification by reason recorded in writing (Section 11)</p>
<p>(iv) Preparation and revision of Electoral rolls.</p> <ul style="list-style-type: none"> Before each general Election and Legislative Assembly Election Before bye-election to fill casual vacancy Shall be revised in any year as directed by Election Commission. 	<p>(iv) Notification for General Election (Section 14)</p> <ul style="list-style-type: none"> President may notify on the recommendation of Election Commission. Notification for State Legislative Assembly (Section 15) Governor may notify on the recommendation of Election Commission.
	<p>Registration of political parties is governed by the provisions of 29 A</p>
	<p>(viii) Election Deposits (Section 34)</p> <ul style="list-style-type: none"> Parliamentary Constituency – Rs. 25000 (General) and Rs. 12500 for SC/ ST. State Assembly Constituency – Rs. 10000 (General) and Rs. 5000 for SC/ST.
	<p>(v) Power of Election Commission for adjournment of Poll or countermanding of Elections on the grounds of Booth Capturing (Section 58A)</p>
	<p>(vi) Right to Vote (Section 62)</p> <ul style="list-style-type: none"> No person shall vote attorney general election in more than one constituency of same class, if votes in more than one constituency, his votes in all such constituency shall be void.
	<p>(vii) Appeal on religious grounds (Section 123(3))</p> <ul style="list-style-type: none"> Appeal on religious ground is a corrupt practice.
	<p>Prohibition of public meetings during period of forty-eight hours ending with hour fixed for conclusion of poll (Sec 126)</p>
	<p>Return of forfeiture of candidate's deposits (Sec 158)</p>

► INTERNATIONAL INDEXES

NAME OF REPORT/INDEX	PUBLISHED BY	PARAMETERS/ADDITIONAL INFO.	INDIA'S RANK
Rule of Law Index	World Justice Project	<ol style="list-style-type: none"> Constraints on Government Powers Absence of Corruption Open Government Fundamental Rights 	<p>Rank – 79</p> <p>Score - 0.50</p>

		5. Order & Security 6. Regulatory Enforcement 7. Civil Justice 8. Criminal Justice	
Democracy Index	Economist Intelligence Unit	1. Civil liberties 2. Political culture 3. Political participation 4. Governance 5. Electoral Pluralism	Rank – 46 Score – 6.91/10
Global Innovation Index 2021	Jointly by Cornell University, INSEAD and World Intellectual Property Organization	Relies on two sub-indices: 1. Innovation Input Sub-Index 2. Innovation Output Sub-Index Pillars - Innovation Input Sub-Index 1. Institutions 2. Human Capital & Research 3. Infrastructure 4. Market Sophistication 5. Business Sophistication Pillars - Innovation Output Sub-Index 1. Knowledge & Technology Outputs 2. Creative Outputs	Rank – 46
Corruption Perceptions Index 2021	Transparency International	It ranks countries by their perceived levels of public sector corruption, as determined by expert assessments and opinion surveys.	Rank – 85 Score – 40
World Press Freedom Index 2021	Reporters Without Borders	India is now ranked below neighbours like Nepal, Bhutan and Sri Lanka. To improve India's ranking, the Index Monitoring Cell was set up in 18 Ministries to find ways to improve the position on 32 international indices. Information and Broadcasting Ministry was delegated to look at the freedom of press index.	Rank -142 Score 46.56/100 Lesser the Score, better the result.
Freedom in the World 2021 Report	Freedom House	The Report categorises countries as - Free, Partly Free, Not Free Status. Criteria for the Report – Political Rights, Political Pluralism & Participation, Functioning of Government, Freedom of Expression and Belief, Association & Organizational Rights, Rule of Law and Personal Autonomy & Individual Rights.	Status – Partly Free
WORLD HAPPINESS REPORT, 2021	<u>Sustainable Development Solutions Network</u> , powered by data from the Gallup World Poll and Lloyd's Register Foundation, who provided access to the World Risk Poll.	The 2021 Report includes data from the ICL-YouGov Behaviour Tracker as part of the COVID Data Hub from the Institute of Global Health Innovation.	Rank – 139/149
Varieties of Democracy	Sweden-based V-Dem Institute	Reflects the complexity of the concept of democracy as a system of rule that	Status – Electoral Autocracy

		<p>goes beyond the simple presence of elections.</p> <p>The V-Dem project distinguishes between five high-level principles of democracy: electoral, liberal, participatory, deliberative, and egalitarian, and collects data to measure these principles.</p>	
Human Freedom Index 2021	Cato Institute Cato Institute in US and Fraser Institute in Canada	<ul style="list-style-type: none"> • Rule of Law • Security and Safety • Movement • Religion • Association, Assembly and Civil Society • Expression and Information • Identity and Relationships • Size of Government • Legal System and Property Rights • Access to Sound Money • Freedom to Trade Internationally • Regulation of Credit, Labour, and Business 	Rank - 119/165

► DOMESTIC INDEXES

NAME OF REPORT/INDEX	PUBLISHED BY	PARAMETERS/ADDITIONAL INFO.	STATE'S RANK
Good Governance Index	Department of Administrative Reforms and Governance under Ministry of Personnel, Public Grievances & Pensions	<p>1) Agriculture and Allied Sectors, 2) Commerce & Industries, 3) Human Resource Development, 4) Public Health, 5) Public Infrastructure & Utilities, 6) Economic Governance, 7) Social Welfare & Development, 8) Judicial & Public Security, 9) Environment, and 10) Citizen-Centric Governance.</p> <p>It categorizes States and UTs into four categories, i.e.,</p> <p>(i) Other States – Group A; (ii) Other States – Group B; (iii) North-East and Hill States; and (iv) Union Territories.</p>	Gujarat, Maharashtra and Goa top the composite rank score covering 10 sectors.
INDIA INNOVATIONS INDEX 2020	NITI Aayog along with Institute for Competitiveness	<p>The report examines the innovation capabilities and performance of the states and union territories.</p> <p>Five inputs and Two output pillars were created consisting of indicators that enable and epitomize innovation in India.</p> <p>Five Enablers pillars capture elements of the state economy that act as inputs for the innovation environment - 'Human Capital',</p>	Top Ranked State – Karnataka & Delhi

		<p>'Investment', 'Knowledge Workers', 'Business Environment', 'Safety and Legal Environment'.</p> <p>Two Performance Pillars depict the performance - 'Knowledge Output' and 'Knowledge Diffusion'.</p>	
DISTRICT GOOD GOVERNANCE INDEX 2021	Department of Administrative Reforms and Public Grievances – DARPG in partnership with J&K administration launched India's First "District Good Governance Index" for 20 districts of Jammu and Kashmir.	<p>It measures the diversity of governance model in the Union Territory of Jammu and Kashmir.</p> <p>It provides a roadmap for similar benchmarking of Governance at District level for all States and Union Territories of India.</p>	The Good Governance Index 2021 indicated that Jammu and Kashmir had registered an increase of 3.7 percent in Good Governance Indicators over the 2019 to 2021 period.
PUBLIC AFFAIRS INDEX, 2021	Public Affairs Centre (PAC)	<p>The Index uses – 3 PILLARS, 5 THEMES, 13 Sustainable Development Goals (SDG) & 50 INDICATORS.</p> <p>3 Pillars used to construct Composite Index are 1. Equity, 2. Growth and 3. Sustainability.</p> <p>States are classified into two categories - <u>Large and Small using population as the criteria.</u></p> <p>The Public Affairs Index is a data-based framework that measures the quality of governance at the sub-national level and ranks the states and Union Territories (UTs) of India on a Composite Index (CI).</p>	
DATA GOVERNANCE QUALITY INDEX (DGQI)	NITI Aayog	<p>DGQI is based on internationally accepted data preparedness assessment models from private and public sectors but appropriately contextualized for India.</p> <p>The toolkit can be used to draw an integrated data policy covering the three pillars of data preparedness</p> <p>1. data strategy</p> <p>2. data systems and</p> <p>3. data driven outcomes</p> <p>needs to be adopted by all government agencies.</p> <p>Effective data strategies must be framed by the Ministries and Departments and States and implemented with adequate infrastructural, human and financial resources.</p>	

M C Qs

ANSWER KEY

Q1. Which of the following can be attributed as the reasons for the birth of Indian Federalism having a strong Centre?

1. Stem disintegration, and bring about social and political change.
2. Presence of the Princely States at the time of Indian independence, aiming for independence.
3. To ensure harmony in the functioning of the centre and the state governments.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
(c) 2 and 3 only (d) 1, 2 and 3

Q2. Consider the following statements about the Inner Line Permit:

1. The Inner Line Permit has no legislative backing.
2. The provisions of the Citizenship (Amendment) Act, 2019, will not apply to the 6th Schedule areas and the Inner Line Permit states.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q3. Which of the following are the essential criteria for a country to be called 'republic'?

1. Head of the State is elected.
2. Absence of any privileged class.
3. Parliamentary form of government.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q4. Consider the following statements about Kautilya's political thought:

1. The Saptanga theory gives importance to finances, army and forts for the stability of a State.
2. The king is considered to be the most important part of the Kautilya's polity.
3. The Mandala theory of Kautilya highlights how the nations should conduct their foreign policy.

Which of the statements given above are correct?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q5. Consider the following statements:

1. The term 'minority' has been defined in the Constitution.
2. Protection under Article 30 is confined only to the minorities.
3. The framers of the Constitution did not include any restrictions under Article 30.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q6. Which of the following are included in the Indian Constitution?

1. Time limit to ratify a Bill by the State Legislature in case of a Constitutional amendment affecting federal structure.
2. Legislative council also ratifies constitutional amendments affecting federal structure.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q7. Which of the following statements is *incorrect* with respect to the Rajya Sabha's resolution to authorize the Parliament to make laws on the State List?

- (a) It should be passed by absolute majority.
- (b) It remains in force for a maximum period of one year.
- (c) It can be renewed any number of times, but not exceeding one year at a time.
- (d) This provision does not restrict the power of a State Legislature to make laws on the same matter.

Q8. Who of the following come under the Electoral College for the President?

1. The elected members of the Rajya Sabha.
2. The nominated members of the Lok Sabha.
3. The elected members of the Legislative Assemblies of the Union Territories of Delhi and Puducherry.
4. The nominated members of the State Legislative Assemblies.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
(c) 1, 2 and 3 only (d) 1, 2 and 4 only

Q9. On which of the following items the state governments have the exclusive power to levy taxes?

1. Supply of goods in the course of import or export
2. Agricultural income
3. Land revenue
4. Excise duty on tobacco

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1, 3 and 4 only (d) 1, 2, 3 and 4

Q10. Consider the following statements about the Joint Sitting of the Parliament:

1. The power to summon the Joint Sitting upon a Bill is vested with the Cabinet.
2. In the absence of the Speaker, the Chairman of the Rajya Sabha presides over the Joint Sitting.
3. The Joint Sitting can only be called when a Bill passed by one House is rejected by the other House or there is a disagreement over amendments over a Bill.

Which of the statements given above is/are *incorrect*?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 only (d) 1, 2 and 3

Q11. Consider the following statements about Money Bill:

1. The decision of the Speaker to qualify a Bill is final and there can be no judicial review of this decision.
2. Appropriation of funds out of the Consolidated Fund of India, the Contingency Fund of India and the Public Accounts of India can only be done by Money Bill.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q12. Consider the following statements about internet shutdown in India:

1. The Government, in case of grave emergency or national security threat, can suspend internet for indefinite period of time, without approval from the Competent Authority.
2. The order to suspend internet by the Competent Authority must be forwarded to the Review Committee formed under the Temporary suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017.

3. The Review Committee constituted by the Central Government shall be chaired by the Union Home Secretary.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 2 only (d) 1 and 2 only

Q13. Consider the following statements:

1. An arrested person has the right to be informed about the grounds of arrest and to be represented by a legal representative of his choice.
2. While arresting a person, the police cannot detain him for more than 48 hours, unless allowed or approved by the Judicial Magistrate.
3. The Judicial Magistrate may extend police custody of the accused upto 15 days.

Which of the statements given above are correct?

- (a) 1 and 3 only (b) 2 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q14. Which of the following can be categorized as "Public Authority" under the Right to Information Act, 2005?

1. An institution of self- government established or constituted under the Constitution or law made by the Parliament or the State Legislature.
2. Non-Government Organization, substantially financed, directly or indirectly by funds provided by the appropriate Government.
3. Any organization owned, controlled or substantially financed by any Pressure Group or Self Help Group.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q15. Which of the following is *not* a voluntary provision of the 73rd Constitutional Amendment Act of 1992?

- (a) Endowing the Gram Sabha with the powers and functions at the village level.
- (b) Determining the manner of election of the Chairperson of the Village Panchayat.
- (c) Making the grants-in-aid to the Panchayats from the Consolidated Fund of the State.
- (d) Direct elections to all seats in the Panchayats at the village, intermediate and district levels.

Q16. Consider the following statements about the Governor of State:

1. He/she can appoint any member of the State Legislative Assembly to preside over its proceedings, when the offices of both the Speaker and the Deputy Speaker fall vacant.
2. He/she can withdraw an Ordinance anytime.
3. No demand for a grant can be made except on his recommendation.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q17. Which of the following statements are correct regarding the Attorney General for India?

1. He must be a person qualified to be appointed as a Judge of the Supreme Court.
2. In the performance of his duties, he has the right of audience in all Courts in India, as well as the right to take part in the proceedings of the Parliament.
3. The term of office of the Attorney General is fixed by the Constitution.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q18. Consider the following statements with respect to the Mahatma Gandhi National Rural Employment Guarantee Act:

1. It provides only unskilled volunteer work to the adult members of a rural household.
2. The type of work to be undertaken is decided by the District Collector.
3. Social audit is taken up if it is demanded by the Gram Panchayat.

Which of the statements given above is/are correct?

- (a) 1 only (b) 3 only
(c) 1 and 2 only (d) 2 and 3 only

Q19. Which of the following best describes the meaning of citizenship with respect to most democratic countries?

- (a) Relationship between an individual and a state to which the individual owes allegiance and, in turn, is entitled to its protection from the state, without having equality of rights.
- (b) State bestowing equality of rights along with civil, political and socio-economic rights, such as the

right to vote, freedom of speech, right to a minimum wage or the right to education.

- (c) State imposing legal and moral obligation on the individual to participate in and contribute to the shared life of the community.
- (d) State making the citizens the inheritors and trustees of its culture and the natural resources, without any guarantee for citizen's protection.

Q20. Which of the following statements is/are correct about the Ordinance-making power of the President?

- 1. An Ordinance cannot be promulgated for the matters related to the Money Bill.
- 2. An Ordinance must be laid before both the Houses of the Parliament when it reassembles.
- 3. It is a discretionary power of the President.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
- (c) 2 only (d) 1, 2 and 3

Q21. Which of the following expenditures are charged upon the Consolidated Fund of State?

- 1. The emoluments and allowances of the Governor and other expenditure relating to his office.
- 2. The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly, or the Chairman and the Deputy Chairman of the Legislative Council.
- 3. Expenditure in respect of the salaries, pensions and allowances of the Judges of any High Court.
- 4. Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.

Select the correct answer using the code given below:

- (a) 2, 3 and 4 only (b) 3 and 4 only
- (c) 1 and 4 only (d) 1, 2 and 4 only

Q22. The "Memorandum of Procedure of Appointment of Supreme Court Judges" provides for the appointment of which of the following?

- 1. Ad Hoc Judges
- 2. Acting Chief Justice
- 3. Chief Justice of India
- 4. Attendance of Retired Judges

Select the correct answer using the code given below:

- (a) 1, 2 and 4 only (b) 1 and 2 only
- (c) 2, 3 and 4 only (d) 1, 2, 3 and 4

Q23. Consider the following statements about the Centralized Public Grievance Redress and Monitoring System (CPGRAMS):

- 1. The CPGRAMS allows the citizens to file grievances related to service delivery relating to all Ministries of the Central Government only.
- 2. RTI applications can also be filed on the CPGRAMS portal for redressal and information retrieval.
- 3. It is administered under the Ministry of Electronics and Information Technology (MeitY).

Which of the statements given above is/are **incorrect**?

- (a) 1 only (b) 2 and 3 only
- (c) 1 and 3 only (d) 1, 2 and 3

Q24. Consider the following statements about the disqualification of the member of the Parliament:

- 1. The President takes a decision on the disqualification of the member of either House of the Parliament in all scenarios on the opinion of the Election Commission of India.
- 2. Holding of any 'Office of Profit' is a ground for disqualification from the membership of the Parliament.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
- (c) Both 1 and 2 (d) Neither 1 nor 2

Q25. Which of the following statements are **incorrect** regarding the "Basic Structure" Doctrine?

- 1. The Supreme Court, in the Kesavananda Bharati Case (1973), expanded the Doctrine of Basic Structure, as enshrined in Article 13 of the Constitution.
- 2. The Venkatchaliah Commission opposed the Theory of Basic Structure.
- 3. The Basic Structure Doctrine has consolidated the balance between rigidity and flexibility of the nature of the Indian Constitution.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
- (c) 2 and 3 only (d) 1, 2 and 3

Q26. Which of the following statements is/are correct regarding Universal Franchise in India?

- 1. The Constitution of India Bill, 1895 proposed it for the first time.
- 2. Motilal Nehru Report, 1928, affirmed the conception of Universal Franchise.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q27. Consider the following statements about 'Constitutional Morality':

- The term 'Constitutional Morality' is used in the Indian Constitution.
- Dr. B. R. Ambedkar discussed the concept of 'Constitutional Morality'.
- 'Constitutional Morality' includes commitment to inclusive and democratic political process, in which both individual and collective interests are satisfied.

Which of the statements given above are correct?

- (a) 3 only (b) 2 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q28. Which of the following are explicitly included as the Fundamental Rights in the Constitution of India?

- Right to marriage
- Right to sexual identity
- Right to access restaurants and hotels
- Right to settle in any part of country
- Right to privacy

Select the correct answer using the code given below:

- (a) 1, 2 and 3 only (b) 3 and 4 only
(c) 3, 4 and 5 only (d) 1, 2 and 5 only

Q29. Consider the following statements about the Attorney General for India:

- He enjoys all the privileges and immunities that are available to a member of the Parliament.
- He does not fall in the category of government servants.
- He is debarred from private legal practice.

Which of the statements given above are correct?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q30. Which of the following explicitly form the part of the Directive Principles of State Policy?

- Settlement of international disputes by arbitration
- Securing development of indigenous technology
- Promotion of scientific agriculture
- Improvement of public health
- Participation of the workers in the management of the industry

- Securing right to work
- Tribal development

Select the correct answer using the code given below:

- (a) 2, 3, 4, 5 and 6 only (b) 1, 3, 4, 5 and 6 only
(c) 1, 2, 3, 4, 5 and 7 only (d) 1, 2, 4, 5 and 6 only

Q31. Consider the following pairs about the Committees of the Constituent Assembly:

S.No.	Committee	Chairman
1.	Finance and Staff Committee	B. Pattabhi Sitaramayya
2.	House Committee	Dr. Rajendra Prasad
3.	Committee on the Functions of the Constituent Assembly	G.V. Mavalankar

Which of the pairs given above is/are correctly matched?

- (a) 1 and 2 only (b) 3 only
(c) 2 and 3 only (d) 1, 2 and 3

Q32. Consider the following statements about the Alternative Dispute Resolution Mechanisms:

- In Arbitration, there is a court like procedure, where binding judgement is given by the Arbitrator.
- In Mediation, the Mediator plays a more active role as compared to the Conciliator in assisting the parties at dispute resolution.
- In Conciliation, the Conciliator acts as mere a facilitator and the dispute resolution is by the parties themselves.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q33. Which of the following are provided as the parts of the Fundamental Duties laid down in the Constitution of India?

- To pay taxes
- Render national service when called upon
- Develop humanism
- Promote spirit of common brotherhood
- To vote in elections
- Cherish ideals of freedom struggle

Select the correct answer using the code given below:

- (a) 2, 3, 5 and 6 only (b) 2, 3, 4 and 6 only (a) 1 and 2 only (b) 2 and 3 only
 (c) 1, 2, 3 and 4 only (d) 1, 2, 3 and 6 only (c) 3 only (d) 1, 2 and 3

Q34. Which of the following parts were added to the Constitution of India by the First Amendment Act, 1951?

1. The Ninth Schedule to the Constitution was included.
2. Protection of environment as an obligation on the State.
3. Provisions for nationalization of industries.
4. Reasonable restrictions on the freedom of speech and expression.
5. Primacy of laws made to enact the Directive Principles of State Policy over the Fundamental Rights.

Select the correct answer using the code given below:

- (a) 1, 3 and 5 only (b) 1, 3 and 4 only
 (c) 2, 4 and 5 only (d) 1, 2 and 5 only

Q35. Which of the following statements is/are correct?

1. Any Bill passed by the Legislature and presented to the Governor for his consideration can be returned to the Legislature.
2. It is obligatory on the President to assent to a Bill which has been re-sent by the Legislature to the Governor and re-reserved by the Governor for the consideration of the President.
3. Money Bills are not immune from being reserved by the Governor for the consideration of the President.

Select the correct answer using the code given below:

- (a) 1 only (b) 1 and 2 only
 (c) 3 only (d) 1, 2 and 3

Q36. Which of the following principles best describes the legislative relations between the Centre and the States in India?

- (a) Delegative (b) Subsidiarity
 (c) Supremacy (d) Territorial nexus

Q37. Consider the following statements regarding the Fundamental Rights in India:

1. All Fundamental Rights are qualified in nature.
2. Fundamental Rights in the Indian constitution are available to citizens only.
3. They are defended and protected by the Supreme Court only.

Which of the statements given above is/are **incorrect**?

Q38. Although recognized as the basic feature of the Constitution of India, 'Equality before Law' has many limitations. Which of the following Parts to the Constitution of India provides/provide for such exceptions?

1. Part V
2. Part III
3. Part XIX

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 2 and 3 only
 (c) 3 only (d) 1, 2 and 3

Q39. Which of the following changes was/were proposed by the Charter Act of 1833?

1. It ended the commercial monopoly of the East India Company.
2. The Governor-General was given the power to superintend all financial, civil and military affairs of the Company.
3. No Indian citizen was to be denied employment under the Company on the basis of religion, colour, birth or descent.

Select the correct answer using the code given below:

- (a) 1 only (b) 1 and 2 only
 (c) 2 and 3 only (d) 1, 2 and 3

Q40. Which of the following has/have been provided under the Constitution of India, relating to the principle of Equality, envisaged in the Preamble?

1. Elections to the Lok Sabha and the State Assemblies to be on the basis of adult suffrage.
2. Equality of opportunity in the matters of public employment.
3. Secures to men and women equal right to an adequate means of livelihood.

Select the correct answer using the code given below:

- (a) 1 only (b) 1 and 2 only
 (c) 2 and 3 only (d) 1, 2 and 3

Q41. Which of the following Directive Principles of State Policy (DPSPs) is/are Gandhian Principle(s)?

1. To promote the educational and economic interests of the SCs, the STs and other weaker sections of the society, and to protect them from social injustice and exploitation.

2. Prevention of concentration of wealth and means of production.
3. To organise agriculture and animal husbandry on modern and scientific lines.

Select the correct answer using the code given below:

- (a) 1 only (b) 1 and 2 only
(c) 2 and 3 only (d) 1, 2 and 3

Q42. With reference to the Lok Sabha, consider the following statements:

1. The Speaker and the Deputy Speaker are the Presiding Officers of the Lok Sabha.
2. The Deputy Speaker presides over the Lok Sabha when the Speaker is absent from the sitting of the House.
3. In the "absence" of the Speaker and the Deputy Speaker, the duty of the office of the Speaker is performed by such member of the Lok Sabha as appointed by the President.
4. When the offices of both the Speaker and the Deputy Speaker fall "vacant", the House shall be presided by a Chairperson from amongst the panel nominated by the Speaker of the Lok Sabha.

Which of the statements given above are correct?

- (a) 1 and 3 only (b) 2 and 4 only
(c) 1 and 2 only (d) 3 and 4 only

Q43. With reference to the Money Bill, consider the following statements:

1. When the Office of the Speaker of the Lok Sabha falls vacant, the duties of the Office shall be performed by the Deputy Speaker, excluding certifying a Bill as Money Bill.
2. The deadlock on Money Bill can be resolved through Joint Sitting of both the Houses of the Parliament.
3. The receipt of money on account of the Consolidated Fund of India or the Public Account of India is a part of Money Bill.

Which of the statements given above is/are correct?

- (a) 3 only (b) 1 and 3 only
(c) 2 and 3 only (d) 1 only

Q44. Which of the following statements is/are correct about the legislative powers of the Parliament and the Legislatures of the State?

1. The Parliament can make law on the matters under the State List for the whole country if it is in national interest and has been approved by the

Rajya Sabha by resolution supported by not less than two-thirds of the members present and voting.

2. In case of inconsistency between the laws made by the Legislatures of the States and the laws made by the Parliament on matters enumerated in the Concurrent List, the law made by the State Legislature shall prevail and the law made by the Parliament shall be void to the extent of the inconsistency.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q45. Consider the following statements:

1. The term 'law' in Article 13 of the Constitution of India has been given a wide connotation and includes the ordinance making powers of the President and the Governor.
2. Issuing ordinance by the President and the Governor is their discretionary power and they need not consult the Council of Ministers.

Which of the statements given above are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q46. Which of the following best describes about the writ of Habeas Corpus?

- (a) The writ is in the nature of a proceeding whereby the court enquires into the legality of the claim which a party asserts to a public office and to oust him from its enjoyment if the claim is not well founded.
- (b) The writ demands some activity on the part of the body or person to whom it is addressed and commands the person to whom it is addressed to perform certain public or quasi-legal public duty which he has refused to perform and the performance of which cannot be enforced by any other adequate legal remedy.
- (c) The writ is issued by the High Court or the Supreme Court to an inferior court forbidding the latter to continue proceedings therein in excess of its jurisdiction with which it is not legally vested.
- (d) The writ is in the nature of an order calling upon the state who has detained another person to produce before the court in order to let the court know on what ground the person has been detained or confined and to set him free if there is no legal justification for the imprisonment.

3. When a Bill is passed by the Houses and is in possession of the Rajya Sabha, the Chairman authenticates the Bill with his signature before presenting it to the President for assent.
4. It is the right of the Chairman to interpret the Constitution and rules and the Chairman's rulings constitute precedents which are of a binding nature.

Which of the statements given above are correct?

- (a) 2, 3 and 4 only (b) 1, 2 and 3 only
(c) 1, 3 and 4 only (d) 1, 2, 3 and 4

Q55. The Governors of the state are empowered to

1. appoint the State Election Commissioner.
2. appoint Judge of the High Court.
3. appoint the Advocate General for the State.
4. nominate members for the District and Regional Councils.

Select the correct answer using the code given below:

- (a) 1, 2 and 4 only (b) 1, 3 and 4 only
(c) 2, 3 and 4 only (d) 1, 2 and 3 only

Q56. The Fifteenth Finance Commission has recommended grants for which of the following?

1. All tiers of the Panchayati Raj.
2. Fifth and Sixth Schedule areas and the Cantonment Boards.
3. Provide tied grants to the rural local bodies.
4. Separate grants for million-plus urban agglomerations/cities and non-million plus cities.

Select the correct answer using the code given below:

- (a) 2, 3 and 4 only (b) 1, 3 and 4 only
(c) 1, 2 and 3 only (d) 1, 2, 3 and 4

Q57. Consider the following statements:

1. Cognizable offence means a case in which a police officer may arrest without warrant.
2. When a person is accused of a non-bailable offence, then in such a case, bail can only be granted by an officer and not by the Court.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q58. Consider the following statements:

1. Every information relating to the commission of a cognizable offence must be reduced in writing in the form of a First Information Report (FIR).

2. The registration of the FIR by a police station of a crime committed outside the jurisdiction of the police station is referred to as Zero FIR and the practice is not allowed in India.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q59. With reference to "the Lokpal and Lokayuktas Act, 2013", which of the following statements is/are correct?

1. The Lokpal and the Lokayukta conduct hearings in "Special Court" at the central and state levels in the case of allegations of corruption against the public servants.
2. The Lokayukta can initiate inquiry and conduct investigation on the allegations of corruption against the Chief Minister of a state, but the records of the investigation shall not be disclosed in public.
3. The Lokpal has supervisory powers over the Central Bureau of Investigation and the Central Vigilance Commission.

Select the correct answer using the code given below:

- (a) 2 only (b) 1 and 3 only
(c) 3 only (d) 1 and 2 only

Q60. Consider the following statements:

1. The United Nations General Assembly adopted the Global Plan for the Decade of Action for Road Safety 2011-2020, aimed at reducing fatalities in road accidents by 50% by the year 2020.
2. The Brasilia Declaration aims to achieve Sustainable Development Goal 3.6 - which is to reduce the number of global deaths and injuries from road traffic accidents to half.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q61. With reference to the 'Capital punishment', consider the following statements:

1. The Supreme Court of India has declared the capital punishment as unconstitutional, as it violates Article 21 of the Indian Constitution.
2. The capital punishment is based on 'the deterrent theory of punishment' and instils the fear of punishment, including death, among the wrong doers.

3. The capital punishment declared by the Court of Sessions shall not be executed unless it is confirmed by the respective High Court.

Which of the statements given above is/are correct?

- (a) 2 and 3 only (b) 2 only
(c) 1 and 2 only (d) 3 only

Q62. Which of the following statements is/are correct about the election of the President?

- The members of a dissolved Legislative Assembly can vote in case fresh elections have not taken place for that Assembly before the Presidential election.
- Only the elected members of the Parliament and the State Legislative Assemblies participate in the Presidential election.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q63. Consider the following statements:

- The 42nd Constitutional Amendment, 1976 made it obligatory for the President to give his assent to a Constitutional Amendment Bill.
- If the President withholds assent to a Private Members' Bill, it ends then and there.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q64. Which of the following statements is/are correct about the Ordinance-making power of the President?

- An Ordinance cannot be promulgated for matters related to the Money Bill.
- An Ordinance must be laid before both the Houses of the Parliament when it reassembles.
- It is a discretionary power of the President.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
(c) 2 only (d) 1, 2 and 3

Q65. Which of the following expenditures are charged upon the Consolidated Fund of State?

- The emoluments and allowances of the Governor and other expenditure relating to his office.
- The salaries and allowances of the Speaker and the Deputy Speaker of the Legislative Assembly,

or the Chairman and the Deputy Chairman of the Legislative Council.

- Expenditure in respect of the salaries, pensions and allowances of the Judges of any High Court.
- Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal.

Select the correct answer using the code given below:

- (a) 2, 3 and 4 only (b) 3 and 4 only
(c) 1 and 4 only (d) 1, 2 and 4 only

Q66. Which of the following can be considered as the essential elements of an "ideal democracy"?

- A pluralistic system of political parties and organizations.
- Separation of power.
- Independent judiciary.
- Periodic free and fair elections, where the value of the votes of the citizens can differ significantly.
- Regulated and monitored media.
- Human rights and fundamental freedoms subject to arbitrary rule making.

Select the correct answer using the code given below:

- (a) 2, 3, 5 and 6 only (b) 1, 2 and 3 only
(c) 1, 2, 3 and 4 only (d) 1, 2, 3, 5 and 6 only

Q67. Consider the following statements:

- The Parliament alone can make 'Extraterritorial Legislation'.
- The President is empowered to direct that an Act of the Parliament does not apply to a Scheduled Area in the State, or apply with specified modifications and exceptions.
- The Parliament can make laws for the whole or any part of the territory of India.

Which of the statements given above are correct?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q68. Consider the following statements:

- The Constitution of India follows the Australian pattern of single enumeration of powers.
- In case of conflict between the State List and the Concurrent List, it is the former that should prevail.
- The power to make laws for residuary subjects is vested in the President.

Which of the statements given above are *incorrect*?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q69. The Constitution of India empowers the Parliament to make laws on any matter enumerated in the State List. In this respect, which of the following statements are correct?

1. If the Rajya Sabha passes a resolution supported by one-third of the members present and voting in the national interest.
2. The Parliament restricts the power of the State to legislate, while a Proclamation of National Emergency is in operation.
3. When the legislatures of two or more States pass resolutions requesting the Parliament to enact laws, such a law can be amended or repealed only by the Parliament.
4. When the President's Rule is imposed in a State, the Parliament becomes empowered to make laws with respect to any matter in the State List in relation to that State.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 3 and 4 only
(c) 1, 2 and 3 only (d) 2, 3 and 4 only

Q70. With respect to the "All-India Services", consider the following statements:

1. The ultimate control lies with the Central Government, while the immediate control vests with the State Governments.
2. Article 324 of the Constitution authorizes the Parliament to create new All-India Services on the basis of a Rajya Sabha resolution to that effect.
3. It violates the principle of federalism under the Constitution by restricting the autonomy and patronage of the States.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) 2 and 3 only (d) 1 and 3 only

Q71. With respect to the National Emergency, consider the following statements:

1. The President of India becomes empowered to make laws on any subject mentioned in the State List.
2. The President can modify the constitutional distribution of revenues between the Centre and the States.

3. The Parliament may extend the normal tenure of a State Legislative Assembly by two years each time.

Which of the statements given above is/are correct?

- (a) 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q72. With respect to the recommendations of the Sarkaria Commission, consider the following statements:

1. A permanent Inter-State Council, called the Inter-Governmental Council, should be set up under Article 263.
2. There should be only one All-India Service.
3. The Central Government should not have the powers to deploy its armed forces.

Which of the statements given above is/are correct?

- (a) 3 only (b) 1 only
(c) 1 and 2 only (d) 2 and 3 only

Q73. Consider the following statements:

1. The Vice-President can act as the President only for a maximum period of 6 months.
2. While discharging the functions of the President, the Vice-President does not perform the duties of the office of the Chairman of the Rajya Sabha.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q74. Which of the following statements is/are correct about the Prime Minister of India?

1. The President always appoints the leader of the majority party in the Lok Sabha as the Prime Minister.
2. The nominated members of the Rajya Sabha shall not become the Prime Minister of India.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q75. With reference to the Public Accounts Committee, consider the following statements:

1. It was first set up in the wake of the Montagu-Chelmsford Reforms and presently it comprises the members from the Rajya Sabha only.
2. It can examine excesses over the voted grants and charged appropriations, expenditure of the state corporations or expenditure of the autonomous

and semi-autonomous bodies for which audit is conducted by the Comptroller and Auditor-General (C&AG).

3. It is empowered to consider the report of the C&AG in cases where the President may have required him to conduct an audit of any receipts and to examine the accounts of stores and stocks.
4. While examining the financial reports of various Ministries, the Committee can summon the members from the respective Ministries or departments of the Government of India.

Which of the statements given above are correct?

- (a) 2, 3 and 4 only (b) 1, 2 and 4 only
(c) 1, 3 and 4 only (d) 1, 2, 3 and 4

Q76. Which of the following statements is/are correct about the Estimates Committee?

1. It consists of not more than 30 members from the Lok Sabha and the Rajya Sabha, who are elected every year according to the 'principle of proportional representation by means of single transferable vote'.
2. It can suggest improvements in organization, efficiency or administrative reform or any alternative policies, in order to bring about efficiency and economy in administration.
3. It shall not exercise its functions in relation to such undertakings which are allotted to the Committee on Public Undertakings.

Select the correct answer using the code given below:

- (a) 2 only (b) 2 and 3 only
(c) 1 and 2 only (d) 3 only

Q77. Consider the following statements about the Public Undertakings Committee:

1. The members of the Committee are elected as per the 'principle of proportional representation', which ensures that each party or group represented in the Committee is in proportion to its respective strength in the Houses (the Lok Sabha and the Rajya Sabha).
2. It examines the reports and accounts of the Public Undertakings specified in Fourth Schedule of the Rules of Procedure and Conduct of Business in the Lok Sabha.
3. It can examine and investigate the matters of major government policy, as distinct from business or commercial functions of the public undertakings.

Which of the statements given above are correct?

- (a) 2 and 3 only (b) 1 and 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q78. Consider the following statements about the Judges of the Supreme Court of India:

1. The Indian Constitution ensures judicial independence, as a Supreme Court Judge can be appointed by the President, but cannot be removed or dismissed arbitrarily by the Union Government.
2. The Judge of the Supreme Court shall hold office until he/she attains the age of 65 years, but shall not plead or act in any court or before any authority within India after his/her retirement.
3. The Supreme Court Judges (Salaries and Conditions of Service) Act, 1958, is revised from time to time to increase the quantum of salary or pension for the Judges of the Supreme Court.

Which of the statements given above is/are correct?

- (a) 2 only (b) 1 and 3 only
(c) 3 only (d) 1, 2 and 3

Q79. Which of the following constitutional provisions ensure the independence of judiciary?

1. Separation of power.
2. Security of the tenure of the Judges.
3. The salaries of the Judges cannot be reduced during their tenure.
4. The expenses of the Supreme Court charged upon the Consolidated Fund of India.
5. Insulation for the Judges from criticism in the Parliament or the State Legislature for their judgments.

Select the correct answer using the code given below:

- (a) 1, 3, 4 and 5 only (b) 2, 4 and 5 only
(c) 2, 3, 4 and 5 only (d) 1, 2, 3, 4 and 5

Q80. The "Memorandum of Procedure of Appointment of Supreme Court Judges" provides for the appointment of which of the following?

1. Ad Hoc Judges
2. Acting Chief Justice
3. Chief Justice of India
4. Attendance of Retired Judges

Select the correct answer using the code given below:

- (a) 1, 2 and 4 only (b) 1 and 2 only
(c) 2, 3 and 4 only (d) 1, 2, 3 and 4

Q81. With respect to 'the inter-state trade and commerce', consider the following statements:

1. Article 272 of the Constitution deals with the trade, commerce and intercourse within the territory of India.
2. The Parliament can impose restrictions on the freedom of trade, commerce and intercourse between the states or within a state in public interest.
3. A Bill to impose reasonable restrictions on the freedom of trade can be introduced in the State Legislature only with the previous sanction of the President of India.

Which of the statements given above are correct?

- (a) 1 and 2 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q82. The Constitution of India has entrusted the Supreme Court with which of the following?

1. Original jurisdiction to settle disputes between the Union and the States and amongst the States.
2. Writ jurisdiction to protect the Fundamental Rights of the individuals.
3. Appellate jurisdiction to hear appeals from the High Court in civil, criminal and constitutional matters.
4. Power to review any judgment pronounced or order made by itself.

Select the correct answer using the code given below:

- (a) 2, 3 and 4 only (b) 1, 2 and 4 only
(c) 1, 2 and 3 only (d) 1, 2, 3 and 4

Q83. With reference to the Advisory Jurisdiction of the Supreme Court under Article 143 of the Indian Constitution, consider the following statements:

1. On reference of any question of law or fact by the President to the Supreme Court, it shall be binding or mandatory for the Supreme Court to give its opinion.
2. If the President refers any dispute between the States or between the Union and the States (Article 131) for the Supreme Court's advice, then providing such advice may be at the discretion of the Supreme Court.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q84. Consider the following statements:

1. The Centralized Public Grievance Redress and Monitoring System (CPGRAMS) is an online platform available to the citizens to lodge their grievances to the public authorities on any subject related to service delivery.
2. The two nodal agencies designated by the Central Government to handle public grievances are the Department of Administrative Reforms and Public Grievances, and the Directorate of Public Grievances.
3. The Department of Administrative Reforms and Public Grievances has signed a memorandum of understanding (MoU) with the Common Service Centres to increase the accessibility of the CPGRAMS to the rural population.

Which of the statements given above is/are correct?

- (a) 2 only (b) 3 only
(c) 1 and 2 only (d) 1, 2 and 3

Q85. Consider the following statements about disqualification of the Member of the Parliament:

1. The President takes a decision on the disqualification of the member of either House of the Parliament in all scenarios on the opinion of the Election Commission of India.
2. Holding of any 'Office of Profit' is a ground for disqualification from the membership of the Parliament.
3. The 'Office of Profit' is defined in the Constitution.

Which of the statements given above is/are correct?

- (a) 2 only (b) 1 and 2 only
(c) 2 and 3 only (d) 1, 2 and 3

Q86. Consider the following statements about Joint Sitting:

1. Joint Sittings are not allowed in the State Legislatures.
2. If the Speaker is not available, the Chairman of the Council of States acts as the Presiding Officer of the Joint Sitting.
3. Joint Sittings cannot be called in case of a deadlock over Constitutional Amendment Bills and Money Bills.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q87. Which of the following statements is/are correct about the President of India?

- The pardoning power of the President of India is an executive power.
- The President and the Governor can both pardon death sentences.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q88. Consider the following statements about the Speaker of the Lok Sabha:

- The Speaker of the House of Commons in the UK leaves his political party, unlike the Speaker of the Lok Sabha in India.
- The Constitution provides for timelines during which a Speaker should be elected in a newly constituted Lok Sabha.
- The office of the Deputy Speaker cannot remain vacant.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 and 3 only
(c) 1 and 3 only (d) 1, 2 and 3

Q89. Consider the following statements:

- The Chairman and the Deputy Chairman of the Rajya Sabha should be the members of the Rajya Sabha.
- The Chairman of the Rajya Sabha enjoys a casting vote in case of equality of votes.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q90. Consider the following statements:

- The Indian constitution does not mention about the Solicitor general of India.
- The advocate general of state is appointed by the Chief Justice of India.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q91. Consider the following statements:

- Money Bills can be introduced only by a Minister.
- The decision of the Speaker to qualify a Bill as a Money Bill is final and there can be no judicial review of this decision.
- The President can send back the Money Bill for reconsideration of the Houses of the Parliament.

- Defeat of a Money Bill in the Lok Sabha amounts to lack of confidence in the government.

Which of the statements given above is/are correct?

- (a) 1 only (b) 1 and 4 only
(c) 3 and 4 only (d) 1, 2 and 3 only

Q92. Which of the following are the devices by which the Parliament can ensure accountability of the Executive?

- Question Hour
- Control over the Budget
- Amendment to the Constitution
- Office of Profit
- Debates and Discussions
- No-Confidence Motion
- Laying of Reports in the Parliament

Select the correct answer using the code given below:

- (a) 1, 2, 3 and 6 only (b) 1, 2, 3, 4 and 6 only
(c) 3, 4, 5, 6 and 7 only (d) 1, 2, 5, 6 and 7 only

Q93. With reference to Ad Hoc Judges under Article 127 of the Indian Constitution, consider the following statements:

- A Judge of a High Court, duly qualified for appointment as a Judge of the Supreme Court, can be requested in writing for the attendance at the sittings of the Supreme Court, as an Ad Hoc Judge with previous consent of the President.
- Whenever the necessity for such an appointment arises, the Chief Justice of India will consult the Chief Minister of the state concerned regarding the availability of the High Court Judge to attend the sittings of the Supreme Court.
- A Judge of the High Court, while attending the sittings of the Supreme Court, shall have all the jurisdiction, powers and privileges, and shall discharge the duties of a Judge of the Supreme Court.

Which of the statements given above is/are correct?

- (a) 1 and 3 only (b) 2 and 3 only
(c) 1 and 2 only (d) None of the above.

Q94. Consider the following statements:

- The Supreme Court shall be a court of record and shall have all the powers of such a court without the power to punish for contempt of itself.

2. The Supreme Court shall sit in Delhi or in such other place or places, as the Chief Justice of India may, with the approval of the Prime Minister from time to time, appoint.

Which of the statements given above is/are **incorrect**?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q95. Consider the following pairs:

- 15th Amendment- Increased the age of retirement of the High Court Judges from 60 to 62 years
- 52nd Amendment- Introduction of the Tenth Schedule
- 61st Amendment- Brought down the minimum age for voting from 21 to 18 years
- 91st Amendment- Strengthened the Anti-Defection Law

Which of the pairs given above are correctly matched?

- (a) 1, 2 and 3 only (b) 1, 3 and 4 only
(c) 1 and 2 only (d) 1, 2, 3 and 4

Q96. Consider the following statements regarding the elections to the Legislative Council:

- The number of members elected by the local bodies are the same as the number of members elected by the members of the Legislative Assembly.
- The number of members nominated by the Governor is the same as the number of members elected by the graduates of 3 years standing and residing within the state.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q97. Which of the following statements are **incorrect** regarding the "Basic Structure" Doctrine?

- The Supreme Court, in the Kesvananda Bharti Case, 1973 expanded the Doctrine of Basic Structure, as enshrined in Article 13 of the Constitution.
- The Venkatachaliah Commission opposed the Theory of Basic Structure.

3. The Basic Structure Doctrine has consolidated the balance between rigidity and flexibility of the nature of the Indian Constitution.

Select the correct answer using the code given below:

- (a) 1 and 2 only (b) 1 and 3 only
(c) 2 and 3 only (d) 1, 2 and 3

Q98. Which of the following statements is/are correct regarding Universal Franchise in India?

- The Constitution of India Bill, 1895, declared that every citizen, i.e., anyone born in India, had a right to take part in the affairs of the country and be admitted to the public office.
- Motilal Nehru Report, 1928, affirmed the conception of Universal Franchise.

Select the correct answer using the code given below:

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q99. With respect to the 'National Legal Services Authority (NALSA)', consider the following statements:

- In every High Court, a High Court Legal Services Committee has been constituted.
- The payment of court fee and process fees is not included in the free legal services.

Which of the statements given above is/are correct?

- (a) 1 only (b) 2 only
(c) Both 1 and 2 (d) Neither 1 nor 2

Q100. With respect to the 'Permanent Lok Adalats', consider the following statements:

- The pecuniary jurisdiction of the Permanent Lok Adalat shall be up to Rs. 10 lakhs.
- It shall consist of a Chairman, who is or has been a Judge of the High Court.
- Award made by the Permanent Lok Adalat shall not be final and binding.

Which of the statements given above is/are correct?

- (a) 1 only (b) 1 and 2 only
(c) 2 and 3 only (d) 1, 2 and 3

ANSWER KEY

1.	d	21.	d	41.	a	61.	a	81.	b
2.	b	22.	d	42.	c	62.	b	82.	d
3.	a	23.	d	43.	a	63.	b	83.	d
4.	d	24.	b	44.	a	64.	c	84.	d
5.	b	25.	a	45.	a	65.	d	85.	a
6.	d	26.	c	46.	d	66.	b	86.	c
7.	a	27.	b	47.	a	67.	c	87.	a
8.	b	28.	b	48.	d	68.	d	88.	a
9.	b	29.	a	49.	d	69.	b	89.	b
10.	d	30.	b	50.	d	70.	d	90.	a
11.	d	31.	b	51.	b	71.	a	91.	b
12.	c	32.	a	52.	c	72.	b	92.	d
13.	a	33.	b	53.	b	73.	c	93.	a
14.	a	34.	b	54.	d	74.	d	94.	c
15.	d	35.	c	55.	b	75.	a	95.	d
16.	d	36.	b	56.	d	76.	b	96.	a
17.	a	37.	d	57.	a	77.	c	97.	a
18.	a	38.	d	58.	a	78.	d	98.	c
19.	b	39.	d	59.	c	79.	d	99.	a
20.	c	40.	d	60.	c	80.	d	100.	a

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