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Preface

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.

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 Four Years

INDIAN POLITY & GOVERNANCE			
PRELIMS 2022	PRELIMS 2021	PRELIMS 2020	PRELIMS 2019
1. Contempt of Courts Act, 1971	1. Indian Parliament VS British parliament	1. Parliamentary system of government	1. Sarkaria commission
2. Advocates and Bar Council of India	2. Right to Privacy	2. DPSP / Part IV (3 questions)	2. Functions of Parliamentary Committees
3. Constitutional Amendment	3. Election - Candidates can contest	3. Basic Structure, Judicial review	3. Judicial review
4. Council of Ministers	4. Article 14	4. Bureaucracy	4. Definition of liberty
5. Powers of Lok Sabha	5. Federalism - Features	5. Preamble	5. Article 142 - Supreme Court
6. Anti-defection Law	6. State - Definition, Characteristics	6. RPA - 1951	6. Legislative assembly of state
7. Attorney General of India	7. Judiciary - Appointment	7. Functioning of Parliament	7. Article 21
8. Writs: Mandamus & Quo Warranto	8. Citizenship	8. Rajya Sabha vs Lok Sabha	8. Amendments - 44th, 99th
9. Deputy Speaker of Lok Sabha	9. Liberty	9. Fundamental Rights	9. Impeachment of Judges
10. Fifth Schedule of Constitution	10. DPSP	10. Definition - Constitutional government	10. Ninth Schedule
11. India Sanitation Coalition, NIUA	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		

1 SECTION

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 to anarchism are the belief in individual freedom and denial of any authority, particularly that of state, which 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 of 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 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. Karl Marx: He believed that production relations in a society form the base of all dimensions of society. There was antithetical relationship between owners of capital and owners of

	<p>labour. This mutual conflict between led to alienation of laboring classes. State to be 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 administers law over all persons and group within its jurisdiction is 'State.' Important 4 Elements of State – Territory, Population, Government & Sovereignty.
HARM PRINCIPLE	<ul style="list-style-type: none"> • 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.
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 favor.
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,</p>

	<p>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 MAHATMA GANDHI	<p>Oceanic Circle: It highlights Gandhiji's belief of social organization. Oceanic Circle reflects his 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 de-humanisation. (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	<p>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.</p>
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>

2

SECTION

CITIZENSHIP

► SOME BASICS

- Part II of Indian Constitution from Article 5 to 11 deals with Citizenship and provides three modes of acquiring Indian Citizenship:
 1. By Domicile
 2. Cases of Migration
 3. Process of Registration

DOMICILE

- **Article 5** mentions that at the commencement of this Constitution, every person shall be a citizen of India who has his domicile in the territory of India and
 - (a) who was born in the territory of India; or
 - (b) either of whose parents was born in the territory of India; or
 - (c) who has been ordinarily resident in the territory of India for not less than five years immediately preceding the commencement of the Constitution.

MIGRATION

- **Article 6** mentions about rights of citizenship of certain persons who have migrated to India from Pakistan.
- A person who has migrated to India from the territory now included in Pakistan shall be deemed to be a citizen of India at the commencement of this Constitution if –
 - (a) He or either of his parents or any of his grandparents was born in India as defined in the Government of India Act, 1935.
 - (b) If such person has migrated from Pakistan before 19th July 1948, he has been ordinarily resident in the territory of India since the date of his migration, or
 - (c) For persons migrated on or after 19th July 1948, he must be registered as citizens of India.
- However, no person shall be registered as Indian citizen, unless he has been resident in the territory of India for at least six months immediately preceding the date of his application.

Citizenship by Registration – Migrants & Persons of Indian origin residing outside India.

- **Article 7 allows citizenship by registration** to such migrants who had after 1st March 1947 (during partition) migrated to Pakistan but returned to India under a permit for resettlement or permanent return issued by or under the authority of any law.

REGISTRATION

- **Article 8** provides for acquiring Indian Citizenship by Registration for persons of Indian origin residing outside.
- Such persons of Indian Origin can register themselves with the diplomatic or consular representative of India in the country where he is for the time being residing.

DUAL OR MULTIPLE CITIZENSHIP PROHIBITED

- **According to Article 9**, no person shall be a citizen of India by virtue of article 5, Article 6 or Article 8, if he has voluntarily acquired the citizenship of any foreign State.

RIGHTS OF CITIZENSHIP CAN BE REGULATED BY LAW MADE BY PARLIAMENT

- **Article 10** – Every Citizen of India by virtue of this constitution shall continue to be Indian citizen subject to the provisions of any law that may be made by Parliament.
- **Article 11** – Parliament has power to make any provision with respect to the acquisition and termination of

citizenship and all other matters relating to 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 The 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 voluntarily 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.

► 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 regions.

- **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.

- But 2019 amendment has changed abovementioned 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 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 to the Inner Line Permit System in December 2019.

Note: How citizenship can be lost?

- Renunciation
- Termination
- Deprivation

► 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.

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**.

► 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.

- o 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.
- o Cases involving extreme compassion.

► DELAY IN CONDUCT OF CENSUS

2021

The Government conducts Census under the Census Act, 1948 in two phases of House listing and Housing Census and Population Enumeration. The census for 2021 was decided to be conducted along with updation of National Population Register (NPR). However, 2021 Census exercise may not commence by at least September 2023 since the government has extended the date for states and Union territories to finalise their administrative boundaries by June end.

CENSUS - IMPORTANT HIGHLIGHTS

- **Nature of Exercise:** Census provides information on size, distribution, socio-economic, demographic and other characteristics of the country's population.
- **Types of Data Collected** - In Census, data is collected on demographic and various socio-economic parameters like education, SC/ST, religion, language, marriage, fertility, disability, occupation and migration of the individuals. Data on migration characteristics along with the reasons of migration such as work/employment and business are collected.
- **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 not shared with any agency, Government or private.
- **Separate Enumeration for SC/ST** - 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.**

- **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.

► SOCIO ECONOMIC AND CASTE CENSUS (SECC) 2011

Central Government in response to a petition filed in the Supreme Court to reveal data of Socio-Economic Caste Census 2011 has stated that the data collected during the exercise is faulty and ruled out caste-based census in 2021. Supreme Court also dismissed a petition challenging the ongoing caste-census in Bihar.

ABOUT SECC-2011

- **Union Ministry of Rural Development** commenced the **Socio Economic and Caste Census (SECC) 2011**, in June 2011 through a comprehensive door to door enumeration across the country.
- **SECC-2011** is a **study of socio-economic status of rural and urban households** and allows ranking of households based on predefined parameters.
- SECC 2011 has three census components which were conducted by three separate authorities **but under the overall coordination of Department of Rural Development in the Government of India.**
 1. **Census in Rural Area** has been conducted by the **Department of Rural Development (DoRD).**
 2. **Census in Urban areas** under the administrative jurisdiction of the then **Ministry of Housing and Urban Poverty Alleviation (MoHUPA).**
 3. **Caste Census** is under the administrative control of **Ministry of Home Affairs: Registrar General of India (RGI) and Census Commissioner of India.**
- Personal information given in the Socio-Economic Caste Census (SECC) is open for use by Government departments to grant and/ or restrict benefits to households.

- Ministry of Rural Development commenced Socio-Economic Caste Census in 2011 through a door-to-door enumeration across the country.
- Based on SECC 2011 data, beneficiaries are decided through a 3-step process involving
 - 13 Automatic Exclusion parameters for identifying poor households.
 - 5 Automatic Inclusion parameters for identifying poorest of the poor households and
 - 7 Deprivation Criteria for identifying poor households.
- SECC-2011 data are used for implementation of various programs including Pradhan Mantri Awaas Yojana-Gramin, Deendayal Antyodaya Yojana-National Rural Livelihood Mission and Pradhan Mantri Ujjwala Yojana as well as to design and administer various welfare programs or schemes in urban areas.
- In a caste census, data is specifically conducted on Other Backward Class and other castes other than the Scheduled Caste and Scheduled Tribes.

PURPOSE OF SECC-2011

- To enable households to be ranked based on their Socio- Economic status.
- Identify below poverty line persons for government benefit schemes in urban and rural areas.
- To make available authentic information to enable caste-wise population enumeration of the country.
- To make available authentic information regarding the socio-economic condition, and education status of various castes and sections of the population.

EXPERT GROUP ON SECC, 2011

In 2017, government constituted an Expert Group under the **Chairmanship of former Finance Secretary Shri Sumit Bose** for –

- Studying the objective criteria for allocation of resources to States and
- Identification and prioritization of beneficiaries under various program using Socio Economic and Caste Census (SECC) data.
- Expert Group has observed that regular updation and verification of SECC data is essential for improved targeted delivery of essential services.

RECOMMENDATIONS OF EXPERT GROUP

- The SECC has the potential to move from being only a census-like socio-economic database to becoming the core of a functioning **Social Registry Information System (SRIS)**.

- **SRIS** would result in several advantages in implementation of social sector schemes.
- It has the potential to
 - streamline program administration.
 - reduce duplication of benefit and fraud
 - Saving on time and costs for both program applicants and services providers
 - Monitoring the living standards of beneficiaries over time
 - Better targeting of vulnerable and marginalized sections of the society and
 - Enable expansion of the coverage of the programs.
- Finally, the use of SECC data would lead to better budgetary planning and allocation of resources for various programs.

BENEFITS OF CASTE BASED ENUMERATION

- It will present the correct picture of socio-economic status of various castes in any particular state.
- Such data will help the state government to ensure how much reservation is necessary for any given caste.
- Comprehensive caste-based data will help to figure out the economic status of various castes in different states.
- State can plan accordingly their welfare schemes for the most backward castes based on their need and socio-economic conditions.
- It will satisfy demand of various groups/ castes/ tribes/ communities and will overall reduce agitation over caste-based reservations.

► NPR TO INCORPORATE CHANGES DUE TO BIRTH/DEATH

- The National Population Register (NPR) is a Register containing details of persons usually residing in a village or rural area or town or ward or demarcated area within a ward in a town or urban area.
- NPR was first prepared in 2010 and updated in 2015 under Rule **3(4) of the Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003**, framed under the **Citizenship Act, 1955**.
- **National Population Register (NPR)** is a comprehensive identity database maintained by the **Registrar General & Census Commissioner of India** under **Ministry of Home Affairs**.
- **To incorporate the changes due to birth, death and migration, the NPR would be updated along**

with House listing and Housing Operations of forthcoming Census.

- The objective of the NPR is to create a comprehensive database of usual residents in the country. No document will be collected during this exercise.
- **Citizens and 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

► DATABASE FOR BIRTH & DEATHS

Centre has proposed amendments to **Registration of Births and Death Act, 1969 (RBD Act)** 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 CHANGES SUGGESTED

- **The government intends to amend Section 3 of the RBD Act by adding Section 3A, which mandates the Registrar General, India to maintain the database of registered births and deaths at national level, that may be used, with approval of the Central government, to update the following:**
 - Population Register prepared under the Citizenship Act, 1955.
 - Electoral registers or electoral rolls prepared under the Representation of People Act, 1951.
 - Aadhaar database prepared under the Aadhaar Act, 2016.
 - Ration card database prepared under the National Food Security Act, 2013.
 - Passport database prepared under the Passport Act
 - Driving license database under Motor Vehicles (Amendment) Act, 2019.
 - Other databases at the national level.
- **Integration of Data Records** - It also amends **section 4 of RBD Act** to **allow the Chief Registrar to take steps to maintain a unified database of civil registration records at state level** and integrate it with the database at the national level maintained by Registrar General of India.
- **Provide Aadhaar for Birth and Death** – Information pertaining to birth and death to be provided to the Registrar along with the Aadhaar number.
- **Information to be provided on Non-Institutional Adoption & Child Born to single parent/unwed mother from her womb and orphan, abandoned, or surrendered child in childcare institution.**

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.
- 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.

► **NRIC & ASSAM ACCORD**

- **Section 14A** of **Indian Citizenship Act, 1955** highlights that
 - Central Government may compulsorily register every citizen of India & issue national identity card.
 - Central Government may maintain a National Register of Indian Citizens and establish a National Registration Authority.
- So far, no specific steps have been taken to register National Register of Indian Citizen on a national level.
- However, updation of National Register of Indian Citizens took place in Assam in 2019 based on Supreme Court's direction to implement the provisions of Assam Accord particularly **Section 6A of Indian Citizenship Act, 1955**

ASSAM ACCORD - SECTION 6A OF INDIAN CITIZENSHIP ACT, 1955

- It mentions that all those who came to Assam on or **after 1st January 1966** but **before 25th March 1971** from Bangladesh and since then have been ordinarily resident in Assam, must register themselves with the government of Assam.
- The leaders of Assam movement were against granting of Indian citizenship to illegal migrants from Bangladesh.
- **Accordingly, Assam Accord** was signed between the **Government of India, State government of Assam** and the **leaders of Assam movement** i.e. All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad (AAGSP) on 15th August 1985.
- As per the Accord, **1st January 1966** shall be the base date and year for purposes of **detection and deletion of foreigners.**

- Foreigners, who came to Assam after 1st January 1966 and up to 24th March 1971 shall be detected in accordance with the provisions of the **Foreigners Act, 1946** and the **Foreigners (Tribunals) Order 1964.**
- Names of Foreigners so detected were to be deleted from the electoral rolls in force.
- Such persons were required to register themselves before the **Registration Officers** of the respective districts in accordance with the provisions of the **Registration of Foreigners Act, 1939** and the **Registration of Foreigners Rules, 1939.**

► **FOREIGNER'S TRIBUNAL**

Supreme Court (Rashida Begum v Union of India) has set aside the ex-parte (without hearing the other side) order of the Foreigners' Tribunal of Assam which had declared a woman as a foreigner who entered India after March 25, 1971. The Court also ordered to restore the proceedings in the Assam's tribunal.

ABOUT FOREIGNERS' 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.
- Although Foreigners Tribunal has been constituted **through an Executive Order of Home Ministry**, its decisions are 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.**

► **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 fulfil 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 regarding 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.

► **SOME BASICS**

- **NITI Aayog** in its **Three-Year Action Agenda** highlighted that there were three areas in which Criminal Justice system needs reform: **statutory and administrative laws, the judicial system and police.**
- Even **Malimath Committee** has suggested certain recommendations towards reforming India's Criminal Justice System. In India, laws pertaining to criminal justice system branches out from the three fundamental provisions of the Indian Constitution namely **Article 20, 21 and 22.**
- **Article 20** provides for double jeopardy and right against self-incrimination. **Article 21** ensures personal liberty unless prosecution is justified through procedure established by law. Whereas **Article 22** protects against arbitrary arrest and detention and ensures that a person arrested must be produced before the magistrate within 24 hours and has the right to be represented by the lawyer of their choice.
- **Article 20 - Protection in respect of conviction for offences**
 - 1) 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 charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.
 - 2) No person shall be prosecuted and punished for the same offence more than once.
 - 3) No person accused of any offence shall be compelled to be a witness against himself.
- **Article 21 - Protection of life and personal liberty** — No person shall be deprived of his life or personal liberty except according to procedure established by law.
- **Article 22 - Protection against arrest and detention in certain cases**
 - 1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.
 - 2) 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 excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.
 - 3) Nothing in clauses (1) and (2) shall apply—
 - (a) to any person who for the time being is an enemy alien; or
 - (b) to any person who is arrested or detained under any law providing for preventive detention.
- So, in this section let us through **important terms associated with criminal justice system** which affects the rights of citizens as guaranteed under the Indian Constitution and other laws of the country.

► **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 CUSTODY AND ARREST

- **'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.
- Therefore, many times, unwarranted arrests have reached courts of law. There have been occasions when unlawful detention has been considered as a violation of fundamental right and compensation thereof has been paid.

UNDERSTANDING POLICE CUSTODY & JUDICIAL 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)**
- **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 BE A PERSON CAN 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 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.
- **Release on Bail** - If the Magistrate is convinced that sufficient reasons exist, then the accused or suspect can be released on bail.

► NEED FOR LAW AGAINST WRONGFUL ARREST

In cases where accused are falsely or maliciously implicated, then there should be a legal mechanism for providing compensation to the accused and such investigative officer should be subject to disciplinary proceedings.

THERE CAN BE TWO INSTANCES REGARDING SUCH IMPLICATION

1. Where a person is falsely implicated based on distorted facts by the investigating agencies.
2. When a person was implicated and put in jail. However, he had to be released as the investigative agencies could not gather sufficient evidence to prosecute such person.

COMPENSATION MUST BE PROVIDED IN THE FIRST INSTANCE BECAUSE

- The accused had gone through physical discomfort when he was placed in jail.
- Of mental agony suffered by the person and his entire family.
- Social Stigma caused to the person and his family (especially in rural areas) – they also get ostracized from the society. This also impacts the emotional well-being of the child of such family.
- Compensation must also be provided to under-trial prisoners because of the extremely slow judicial process which takes 8 to 10 years for a person to be finally released due to lack of evidence or other aspects.

IS THERE ANY LEGAL MECHANISM AGAINST WRONGFUL PROSECUTION IN INDIAN LAWS?

- **Section 358 of the Cr.P.C.** provides for a paltry fine of Rs. 1,000/- to be provided to persons who are wrongfully arrested. Such compensation must be paid by the person who asked the police officer to arrest such persons.
- If the person who is to pay such compensation refuses or fails to pay, then such person shall be sentenced to simple imprisonment for such term not

exceeding 30 days as the Magistrate directs, unless such sum is sooner paid.

- **Section 211 of Indian Penal Code** provides for **false charge of offence made with intent to injure** - Whoever, with intent to cause injury to any person, institutes any criminal proceeding against that person, or falsely charges any person with having committed an offence, knowing that there is no just or lawful ground for such proceeding or charge against that person, shall be punished with imprisonment of either description for a term which may extend to 2 years, or with fine, or with both.
- And if such criminal proceeding be instituted on a false charge of an offence punishable with death, imprisonment for life, or imprisonment for seven years or upwards, shall be punishable with imprisonment of either description for a term which may extend to 7 years, and shall also be liable to fine.

► **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 must 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 acting 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 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 investigate.

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.

► 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.
- **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.**
- **Bail is given in both - Bailable Offence and Non-Bailable Offence.**

BAIL FOR BAILABLE OFFENCE

- **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.**

BAIL FOR NON-BAILABLE OFFENCE

- **Section 437 of Cr.PC empower two authorities to consider the question of bail:**
 - **Court** and
 - **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 & not obligatory** - Hence, it must be exercised with great caution because of the risk and stakes involved.
- **Station Police officer should satisfy himself that release on bail of such accused would not prejudice the prosecution or affect investigation in any manner.**
- For 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 appear reasonable grounds for believing that he has been guilty of such offence.
- If it appears to the Court that 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.

► ANTICIPATORY BAIL & STATUTORY BAIL

The Enforcement Directorate (ED) has said that the agency has played an "instrumental role in protecting the social and economic fabric of the country", in its plea opposing the anticipatory bail applications of NCP leader Hasan Mushrif's three sons in connection with an alleged money laundering case.

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 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 fulfil 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 must 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.

► **CUSTODIAL TORTURE A CRIMINAL OFFENCE**

• The offences of causing hurt or grievous hurt to extort confession are punishable under **Sections 330 and 331 of the Indian Penal Code.**

• **Section 330 - Voluntarily causing hurt to extort confession or to compel restoration of property** - Such persons shall be punished with imprisonment of either description for a term which may extend to 7 years and shall also be liable to fine.

• **Section 331 - Voluntarily causing grievous hurt to extort confession or to compel restoration of property** - Such persons shall be punished with imprisonment of either description for a term which may extend to 10 years and shall also be liable to fine.

• **Illustration** - A, a police-officer, tortures Z to induce Z to confess that he committed a crime. A is guilty of an offence under this section.

FRANCIS CORALIE MULLIN V. UNION TERRITORY OF DELHI (1981) - SC

• Any form of torture or cruel inhuman or degrading treatment would be offensive to human dignity and would be violative of **Article 21**.

• There is implicit in **Article 21** the right to protection against torture as it is also enunciated in **Article 5 of the Universal Declaration of Human Rights (UDHR)** and guaranteed by **Article 7 of the International Covenant on Civil and Political Rights (ICCPR)**.

• **UDHR - Article 5** - No one shall be subjected to cruel, inhuman or degrading treatment or punishment.

• **ICCPR - Article 7** - No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation.

► **MAGISTERIAL INQUIRY FOR CUSTODIAL DEATH**

Considering fake encounters done by police, there is a need for independent magisterial enquiries to be conducted under the direction of the Court. Section 176 of Criminal Procedure Code (Cr.P.C) prescribes for "Inquiry by Magistrate into cause of death".

MAJOR HIGHLIGHTS OF SECTION 176 OF CR.PC

- **If an information is received by the police station about**
 - suicide of a prisoner
 - death or disappearance of the prisoner
 - death of the prisoner under circumstances raising a reasonable suspicion that some other person has committed an offence.

- o the case involves suicide by a woman within seven years of her marriage.
- o the case relates to the death of a woman within seven years of her marriage in any circumstances raising a reasonable suspicion that some other person committed an offence in relation to such woman.

then the nearest magistrate or any magistrate so empowered may hold an inquiry into the cause of death instead of or along with the investigation held by the police officer.

• **However, in cases were**

- (a) any person dies or disappears from police custody or judicial custody; or
 - (b) rape is alleged to have been committed on any woman during police custody or judicial custody.
- then under Section 176(1A) of Cr. PC - an enquiry must be conducted by the Judicial Magistrate or the Metropolitan Magistrate along with the police enquiry.

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

- The provisions for holding a person in custody for the purpose of furthering investigation, in India are governed by Section 167 of the Code of Criminal Procedure (Cr.PC)
- 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 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.
- **Release on Bail** - If the Magistrate is convinced that sufficient reasons exist, then the accused or suspect can be released on bail.

► PAROLE & FURLOUGH

Bombay High Court has directed the Superintendent of Amravati Central Prison to pay the legal expenses or the 'cost of a petition' for denying furlough to a 60-year-old blast convict on stereotypes reasons.

PAROLE	FURLOUGH
<ul style="list-style-type: none"> • While parole is granted for the prisoner to meet a specific exigency or specific purpose. • Parole can be granted in case of short-term imprisonment. • Duration of parole extends to one month. • In case of parole, reasons are to be indicated before release. • For parole, specific reason is required, whereas furlough is meant for breaking the monotony of imprisonment. • When a prisoner is on parole his period of release does not count towards the total period of sentence. • Parole can be granted number of times. 	<ul style="list-style-type: none"> • Furlough is granted in case of long-term imprisonment. • Furlough extends to fourteen days maximum. • It is not necessary to state the reasons while releasing the prisoner on furlough. • The grant of furlough is to break the monotony of imprisonment and to enable the convict to maintain continuity with family life and integration with society. • Although furlough can be claimed without a reason, the prisoner does not have an absolute legal right to claim furlough. • When a convict is on furlough, he is eligible to have the period of release counted towards the total period of his sentence undergone by him. • The grant of furlough must be balanced against the public interest and can be refused to certain categories of prisoners. • Since furlough is not granted for any particular reason, it can be denied in the interest of the society. • There is limitation in the case of furlough

SUPREME COURT ON FURLOUGH & PAROLE

- **State of Maharashtra v. Suresh Pandurang Darvakar** - Period of furlough is treated as a period spent in the prison. However, period spent on parole is not to be counted as remission of sentence. Since the furlough is granted for no particular reason, it can be denied in the interest of society, whereas parole is to be granted only on sufficient cause being shown.
- **State of Haryana v. Mohinder Singh** - When a prisoner is on parole his period of release does not count towards the total period of sentence. While when he is on furlough, he is eligible to have the period of release counted towards the total period of his sentence undergone by him."

► TYPES OF PRISON

President Murmu while delivering the valedictory address at the Constitution Day Celebrations highlighted about the situations of Indian Prisons.

WHAT IS A PRISON?

Prisons Act 1894 defines Prison as:

- **"Prison"** means any jail or place used permanently or temporarily under the general or special orders of a State Government for the detention of prisoners, and includes all lands and buildings appurtenant thereto, but does not include –
 - (a) any place for the confinement of prisoners who are exclusively in the custody of the police.
 - (b) any place specially appointed by the State Government
 - (c) any place which has been declared by the State Government, by general or special order, to be a subsidiary jail.

• **Prisons exist at three levels:**

Taluk level	Sub Jail
District level	District Jail
Zonal/Range level	Central Jail

PRISON STATISTICS INDIA – 2021 REPORT

According to Prison Statistics India – 2021 Report, published by National Crime Records Bureau (NCRB), the total number of prisons at national level has increased by 1% from 1,306 in 2020 to 1,319 in 2021.

► E-PRISON PROJECT

Ministry of Home Affairs informed Rajya Sabha that e-Prisons have been operationalised across all states and Union Territories. 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 IS E-PRISONS?

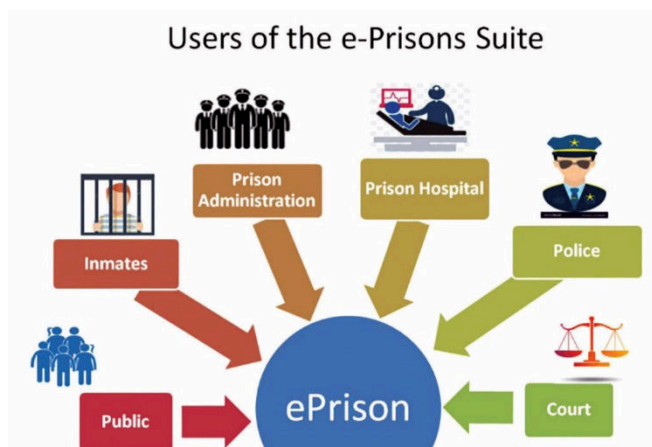
- The e-Prisons application suite integrates all the activities related to prison and prisoner management.
- It provides vital information about the inmates lodged in the prisons in a real-time environment to the courts, prison officials and other entities, involved in the Criminal Justice System.
- 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 the state prison departments now have access to the necessary technology for onboarding.



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.

► AFRS, CCTNS, ICJS & NAFIS

Approval has been accorded for implementation of **Automatic Facial Recognition System (AFRS)** by National Crime Records Bureau (NCRB). AFRS will use police records and will be accessible only to Law Enforcement Agencies. NCRB functions under Ministry of Home Affairs.

ABOUT AFRS

- AFRS is a centralised web application and is expected to be the foundation for “national level searchable platform of facial images”.

- The surveillance tool will be integrated with centrally maintained databases such as the **Crime and Criminal Tracking Network and Systems (CCTNS), the Inter-operable Criminal Justice System (ICJS), and the National Automated Fingerprint Identification System (NAFIS).**

ABOUT CCTNS, ICJS & NAFIS

- **Crime and Criminal Tracking Network and Systems (CCTNS)** is a Mission Mode Project under the National e-Governance Plan (NeGP). CCTNS aims at creating a comprehensive and integrated system to enhance effectiveness & efficiency of policing by adopting principles of e-Governance and creation of a nationwide networking infrastructure for evolution of IT-enabled-state-of-the-art tracking system around 'Investigation of crime and detection of criminals'.
- **CCTNS** also provide citizen centric police services through a web portal; establishes State and National Database of Crime and Criminal records, provides crime and criminal reports at state and centre, computerizations of police process & interlinks police stations, state and national data centres through a data network.
- **Inter-operable Criminal Justice System (ICJS)** is 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 MHA, the ICJS enables a nationwide search on police, prisons & courts databases across all States/ UTs in the country.
- **National Fingerprint Identification System (NAFIS)** - is being setup by NCRB which is a network-based pan India system for recording and sharing of fingerprints of criminals in various crimes. This will facilitate better identification of criminals, unidentified dead bodies and missing/found children and persons.

4 SECTION

PREAMBLE, FR, DPSP & FD

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.

- Preamble is inspired from "Objective Resolution" introduced by Jawahar Lal Nehru in Constituent Assembly.
- 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 words **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*
- **Source of Constitution are the people themselves from whom Constitution derives its ultimate sanction.**
- **The People of India thus constitute 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?

- Preamble 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**.

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.

► FUNDAMENTAL RIGHTS - BASICS

In this Section, let us quickly revise the basics about Fundamental Rights as covered in the Constitution and then go through recent developments on the front of fundamental rights.

The Fundamental Rights in the Indian Constitution have been grouped under the following heads:

General	Article 12 – 13
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 (ART. 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.
- Over the years, concept of state has been expanded through the various judgments of Supreme Court.
- In **Ajay Hasia v. Khalid Mujib Sehravardi**, the Supreme Court laid down the **relevant tests to determine the existence of State agency or instrumentality**:
 - **Financial Control:**
 - If the entire share capital of the corporation is held by Government – indicates that 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 – indicates governmental character.
 - **State Protection:** 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 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.

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 (ART. 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 ensures that both pre-constitutional laws and post-constitutional laws are void to their extent of their inconsistency with the Fundamental Rights.
- **Article 13(1)** - *All laws in force in the territory of India immediately before the commencement of this Constitution, as far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void.*
- **Article 13(2) deals with post-Constitutional laws** - 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.
- So, we can say that 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 features'** of the Constitution.
- **However, Article 13 has not expressly used the term "judicial review".**

► RIGHT TO EQUALITY (ART. 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 that 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.
- **Certain exceptions to Article 14** - 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** as 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).
- **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) Reservations 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.
- **Supreme Court has held that reservations in jobs cannot be claimed as a fundamental right.**

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.
- The Government has enacted the **Protection of Civil Rights Act, 1955** which prescribe punishment for the preaching and practice of “Untouchability” for the enforcement of any disability arising therefrom.

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.
- Bharat Ratna, Padma Vibhushan, Padma Bhushan & Padma Shri called as National Awards would not amount to title within the meaning of Article 18.

► RIGHT TO FREEDOM (ART. 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

- o to move freely throughout the territory of India.
- o to practice any profession or to carry on any occupation, trade or business.
- **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 purposes:**
 - 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 are open to Judicial Review.

IS RIGHT TO INTERNET ACCESS A FUNDAMENTAL RIGHT?

- The Supreme Court declared that **access to the internet is protected under Article 19 of the Constitution.**
- A three-judge bench of the Court 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.

In jurisprudence, **double jeopardy** is a procedural defence that prevents an accused person from being tried again on the same charges following an acquittal or conviction and in rare cases prosecutorial and/or judge misconduct in the same jurisdiction.

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
 - o any person who for the time being is an **enemy alien**.
 - o 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 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. E.g.: 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 grounds that it is under the management of a minority, whether based on religion or language.

► SAVING OF CERTAIN LAWS (ARTICLES 31A-31C)

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 (iv) 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

► ARMED FORCES & FUNDAMENTAL RIGHTS (ARTICLE 33)

By article 33 of the Constitution, Parliament is empowered to enact laws determining to what extent any of the rights conferred by Part III of the Constitution shall, in their application to the members of the Armed Forces or the Forces charged with the maintenance of public order, be restricted or abrogated to ensure the proper discharge of their duties and the maintenance of discipline among them.

► MARTIAL LAW AND FUNDAMENTAL RIGHTS (ARTICLE 34)

Article 34 provides for the **restrictions on fundamental rights while martial law is in force** in any area within the territory of India. It empowers the Parliament to indemnify any government servant or any other person for any act done by him in connection with the maintenance or restoration of order in any area where martial law was in force. The Parliament can also validate any sentence passed, punishment inflicted, forfeiture ordered, or other act done under martial law in such area.

► RIGHTS OUTSIDE PART III

Besides the Fundamental Rights included in 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 in Part XII**).
2. No person shall be deprived of his property saved by authority of law (**Article 300-A in Part XII**).
3. Trade, commerce and intercourse throughout the territory of India shall be free (**Article 301 in Part XIII**).
4. **Elections** to Lok Sabha & State Legislative Assembly shall be **based on adult suffrage (Article 326 in Part XV)**.

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 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).

RIGHTS ISSUES

► FREE SPEECH, HATE SPEECH & SEDITION

Free Speech and Sedition operates at two ends of the spectrum, but sedition can cross the path of free speech occasionally. Hate Speech meanders somewhere in

between sedition and free speech. Once, threshold of the reasonable restrictions is crossed by an individual under Article 19(2), he/she enters the unknown domain or territory of either hate speech or sedition.

SIGNIFICANCE OF FREE SPEECH

- Free speech is one of the most significant principles of democracy.

- **Freedom allows an individual to attain self-fulfillment, assist in discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change.**
- **Universal Declaration of Human Rights, 1948**, in its Preamble and Article 19 declared freedom of speech as a fundamental right. This freedom is termed as an essence of free society.
- **Restrictions On Free Speech - Article 19(1)(a)** of the Constitution of India guarantees freedom of speech and expression to all citizens. However, this freedom is subjected to certain restrictions namely, 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.
- **Sedition is used as restriction on free speech.**

HATE SPEECH

- The term **hate speech** though not defined under the Indian Penal Code, Constitution of India or other laws but can be regulated through **Article 19(2)** which allows state to impose reasonable restrictions on such speech which may incite violence or disturbs public order.
- **Section 153 and 153A of IPC criminalises certain speech if they promote enmity between different groups on ground of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.**

STEPS TO DEFINE HATE SPEECH AS A SEPARATE OFFENCE

- **Ministry of Home Affairs** has constituted a committee headed by **Prof. (Dr.) Ranbir Singh**, Chairperson Vice-Chancellor NLU Delhi to recommend changes in criminal law is seeking to formulate new provisions that will make hate speech a separate offence.
- **T.K. Viswanathan Committee (2017)** suggested adding two new provisions in IPC - **Sections 153C and 505A.**
- **Section 153C** would target speech that gravely threatens any person or group with intention to cause fear or alarm, or incite violence towards them, and prescribe a sentence of two years in prison and a fine.
- **Section 505A**, on the other hand, proposes to punish speech or writing that causes fear or alarm among a group, or provokes violence against it, on grounds of

race, religion, gender, sexual orientation, place of birth or disability.

ABOUT SEDITION

- **Section 124A of the Indian Penal Code (IPC)**, which deals with sedition, was drafted by Thomas Babington Macaulay and included in the IPC in 1870.
- Section 124A of the IPC, which deals with sedition, states, ***"Whoever, words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."***
- A person charged under Sedition cannot apply for a government job. They have to live without their passport and must present themselves in the court when required.

SEDITION PUT ON HOLD BY SUPREME COURT

- **In 2022, Supreme Court suspended pending criminal trials and court proceedings under Section 124A (Sedition) of the Indian Penal Code, while allowing the Union of India to reconsider British-era law.**
- Three Judge Bench held that ***all pending trials, appeals and proceedings with respect to the charge framed under Section 124A of the IPC to be kept in abeyance.***
- However, adjudication with respect to other sections of law, if any, would proceed if the court concerned was "of the opinion that no prejudice would be caused to the accused."
- The court also made it clear that it "hopes and expects" the Centre and States to restrain from registering FIRs, continuing investigations or take coercive measures under Section 124A while the "reconsideration" of the colonial provision was on.
- So, if a new case of sedition is registered, then the accused is at liberty to approach the Court and Court will dispose the case.

SUPREME COURT JUDGMENTS ON SEDITION

- **Romesh Thapar v State of Madras** – SC declared that 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** - Constitution Bench had ruled in favour of the constitutional validity of Section 124A (sedition) in the IPC. SC 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.”**
- **Shreya Singhal v Union of India** - SC held that under the Constitutional scheme, for the democracy to thrive, the liberty of speech and expression is a cardinal value and of paramount importance. Three concepts are fundamental in understanding the reach of freedom of speech and expression –

1st is **Discussion**, 2nd is **Advocacy** and 3rd is **Incitement**.

- **Meandering between Article 19(1)(a) and Article 19(2)** - Mere discussion or even advocacy of a particular cause howsoever unpopular is at the heart of Article 19(1) (a). It is only when such discussion or advocacy reaches the level of incitement that Article 19(2) kicks in. It is at this stage (Incitement) that a law may be made curtailing the speech or expression that leads to cause public disorder or affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc.
- **Indian Express Newspaper (Bombay)(P) Ltd. v. Union of India** - following four important purposes of the free speech and expression were set out:
 - (i) it helps an individual to attain self-fulfillment.
 - (ii) it assists in the discovery of truth.
 - (iii) it strengthens the capacity of an individual in participating in decision-making, and
 - (iv) it provides a mechanism by which it would be possible to establish a reasonable balance between stability and social change.

IMPORTANT OPINIONS EXPRESSED ON SEDITION

- Mahatma Gandhi called Section 124A ***“the prince among the political sections of the IPC designed to suppress the liberty of the citizen”***.
- Jawaharlal Nehru said that the provision was ***“obnoxious”*** and ***“highly objectionable,”*** and ***“the sooner we get rid of it the better”***.
- **Law Commission** produced ***a Consultation Paper on sedition in August 2018.***
 - **Dissent and criticism of the government are essential ingredients of a robust public debate** in a vibrant democracy.
 - **Every restriction on free speech and expression must be carefully scrutinised** to avoid unwarranted restrictions.

- For merely expressing a thought which is not in consonance with the policy of the government of the day, a person should not be charged under the provision of sedition.
- **People should be at liberty to show their affection towards their country** in their own way without following any particular way of expression.
- The Commission also asked whether it would be worthwhile to rename **Section 124A** and find a **suitable substitute for the term - sedition.**

► RIGHT AGAINST SELF INCRIMINATION

UNDERSTANDING RIGHT AGAINST SELF-INCRIMINATION

- **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.”*

RIGHT AGAINST SELF-INCRIMINATION AS EXPLAINED BY SUPREME COURT

- **A person accused of an offence** means a “person against whom a formal accusation relating to the commission of an offence has been charged, which may result in prosecution.” Formal accusation in India can be brought by lodging of an F.I.R or a formal complaint, to a competent authority against the particular individual accusing him of the commission of the crime.
- **Self-incrimination** means that police cannot compel the accused to give evidence against himself/herself.
- **Nandini Satpathy v. P.L Dani** - SC ruled that the extent of prohibition of Art 20 (3) goes back to the stage of police interrogation after filing of First Information Report. Justice V.R. Krishna Iyer held that ***Article 20(3) is a human article which guarantees dignity and integrity to an individual and clothes him with the right of silence.***
- **Objective of Article 20(3)** is.
 - to *protect the accused from unnecessary police harassment* and

- hence it extends to the stage of police investigation apart from the trial procedure.
- so that accused is not compelled to give evidence against himself or herself.
- **So, in a way, Article 20(3) grants Right to Silence** to the accused from not being a witness against themselves which might harm their case.
- **M.P. Sharma v Satish Chandra** - SC gave a wide interpretation of the phrase **“to be a witness”** which includes **oral, documentary and testimonial evidence against oneself.**
- SC also distinguished between **“to be a witness”** & **“furnishing evidence.”**
- **To be a witness** means imparting knowledge in respect of relevant facts by an oral statement or statement in writing made or given in court or otherwise.
- **Furnishing Information** includes production of documents or giving materials which might be relevant at a trial to determine the guilt or innocence of the accused.

COMPARISON WITH USA

- **5th Amendment in United States**
 - Fifth Amendment in US Constitution outlines basic constitutional limits on police procedure.
 - The Framers derived the **Grand Juries Clause** and the **Due Process Clause** from the **Magna Carta**, dating back to 1215.
 - Fifth Amendment of US Constitution provides five distinct constitutional rights:
 1. Right to indictment by the grand jury before any criminal charges for felonious crimes,
 2. Prohibition on double jeopardy,
 3. Right against forced self-incrimination,
 4. Guarantee that all criminal defendants have a fair trial, and
 5. Guarantee that government cannot seize private property without making a due compensation at the market value of the property.

MIRANDA V. ARIZONA

- This case represents the consolidation of four cases, in each of which **the defendant confessed guilt after being subjected to a variety of interrogation techniques without being informed of his Fifth Amendment rights during an interrogation.** (*Miranda v. Arizona*; *Vignera v. New York*; *Westover v. United States*; *California v. Stewart*)

- In each of these cases, the defendant was questioned by police officers, detectives, or a prosecuting attorney in a room in which he was cut off from the outside world.
- In all these cases, the defendant was not given a full and effective warning of his rights at the outset of the interrogation process including their rights under Fifth Amendment.
- The Court held that a **defendant was required to be warned before questioning that he had the right to remain silent, and that anything he said can be used against him in a court of law.**
- Thus, Miranda Judgment lays down **strong safeguards for the right against self-incrimination** including the now world famous **“Miranda warning”** about **Fifth Amendment Rights.**

► SC AMENDS GUIDELINES FOR ADVANCED DIRECTIVES

Supreme Court relaxed the guidelines for ‘advance medical directive’ issued in 2018 judgment in Common Cause Case by which the Court legalised passive euthanasia under certain conditions. Provisions for “advanced directives” have also been provided under The Mental Healthcare Act, 2017. Let us understand about active and passive euthanasia, relation of Article 21 with right to die and the changes introduced by SC in advanced directives.

MENTAL HEALTHCARE ACT 2017

- This Act 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 manner in which he/she wishes to be treated or not to be treated.
- Person shall have right to **nominate representative** to take decisions on their behalf regarding treatment.
- It prohibits use of **electro-convulsive therapy** without the use of muscle relaxants and anesthesia.
- It prohibits **electro-convulsive therapy for minors.**
- It **decriminalized the attempt to suicide** which hitherto was criminal offence under section 309 of Indian Penal Code.
- It also provides for establishment of **central and state mental health authority.**

LINK OF ARTICLE 21 & RIGHT TO DIE – GIAN KAUR V STATE OF PUNJAB

- **Right to Die does not form part of Article 21** - Supreme Court in *Gian Kaur vs. State of Punjab* effectively overruled the previous judgment of *P. Ratinam v. Union of India* and declared that right to die does not form part of Article 21.
- **Difference between Right to Life & Euthanasia** - SC observed that Right to life including the right to live with human dignity would mean the existence of such a right up to the end of natural life. Whereas euthanasia is termination of life of a person who is terminally ill or in Persistent Vegetative State (PVS).
- **Court Rejected Passive Euthanasia** - "Right to live with Human Dignity" cannot be construed to include within its ambit the right to terminate natural life, at least before the commencement of the process of certain natural death. Thus, the Court did not allow passive euthanasia as it terminated natural life.

UNDERSTANDING EUTHANASIA AND ITS KINDS

- **Euthanasia** is basically an intentional premature termination of another person 's life either by direct intervention (**active euthanasia**) or by withholding life-prolonging measures and resources (**passive euthanasia**).
- **Active euthanasia** also referred as positive or aggressive euthanasia, occurs when death is brought about through a positive act or affirmative action or an act of commission entailing use of lethal substances or forces to cause the intentional death of a person by direct intervention (lethal injection given to a person with terminal cancer who is in terrible agony).
- **Passive euthanasia**, also called negative or non-aggressive euthanasia, entails withdrawing of life support measures or withholding of medical treatment for continuance of life. E.g., Withholding of antibiotics in case of a patient where death is likely to occur as a result of not giving the said antibiotics or removal of the heart lung machine from a patient in coma.
- **Passive Euthanasia** is further categorized into **voluntary passive euthanasia** and **non-voluntary passive euthanasia**.
 - **Voluntary passive euthanasia** is a situation where a person who is capable of deciding for himself decides that he would prefer to die because of various reasons.
 - **Non-voluntary Passive Euthanasia** has been described to mean where a person is not in a

position to decide for himself (when they are in coma or in Persistent Vegetative State).

SC ALLOWS PASSIVE EUTHANASIA IN 2018

- **Common Cause v. Union of India and Another (March 2018)** - Supreme Court has laid down broad legal framework to protect the dignity of a terminally ill patient or those in Persistent Vegetative State (PVS) with no hope of cure or recovery and in the process has allowed
 1. **Passive Euthanasia**
 2. **Right to give Advance Medical Directives or a valid 'Living Wills'** to smoothen the dying process as a part of fundamental right to live with dignity.
- **The case of passive euthanasia was earlier recognised** by a Two-Judge Bench in the case of *Aruna Shanbaug in 2011*.

Aruna Shanbaug – 2011

Supreme Court allowed withdrawal of life-sustaining treatment from patients not in a position to make informed decision. This was the first time after Gian Kaur case, when Supreme Court had allowed passive euthanasia under strict guidelines and conditions. However, Supreme Court did not allow active euthanasia and held that ending life through use of lethal substance' is not permitted in any circumstance.

- **The Constitution Bench in Common Cause case expanded the scope of euthanasia** by adding to it the principle of a '**living will,**' or an **advance directive**.
 - a practice where a person, while in a competent state of mind, leaves written instructions on the sort of medical treatment that may or may not be administered in the event of them reaching a stage of terminal illness.

RECENT AMENDMENT IN THE ADVANCED DIRECTIVE BY CONSTITUTION BENCH OF SC – JANUARY 2023

EARLIER PRACTICE – 2018 GUIDELINES	SUGGESTED CHANGE
A Living Will was required to be signed by an executor (the individual seeking euthanasia) in the presence of two attesting witnesses, to be further countersigned by a Judicial Magistrate of First Class (JMFC).	The requirement for the Magistrate's approval has been replaced by an intimation to Magistrate. A Notary or gazetted officer can sign the living will in the presence of two witnesses instead of the Magistrate's countersign.

<p>Doctor treating, patient to constitute Medical Board with experts from varied fields having at least 20 years of experience – to take decision on passive euthanasia.</p>	<p>The requirement of 20 years of experience for the doctors has been relaxed to 5 years.</p>
<p>The decision of Medical Board was to be forwarded to the District Collector for his approval.</p>	<p>Rather than two Boards constituted by Hospital and the District Collector, only One Medical Board will be constituted.</p> <p>The medical board must communicate its decision within 48 hours. The earlier guidelines specified no time limit.</p>
<p>The Collector was to then form another medical board of three expert doctors, including the Chief District Medical Officer.</p>	
<p>Only if this second board agreed with the hospital board's findings, the decision to carry out passive euthanasia was to be forwarded to the JMFC, who would then visit the patient and examine whether to accord approval for Passive Euthanasia.</p>	<p>Open to Approach High Court if Medical Board set up by the Hospital refuses permission for Passive Euthanasia - kin to approach the High Court which will form a fresh medical team.</p>

- **Horizontal Application of Fundamental Rights** - This effectively means horizontal application of fundamental rights. Whereas vertical application of fundamental rights refers to application of fundamental rights against state or its functionaries. Fundamental rights under Article 19/21 can be enforced even against persons other than the State or its instrumentalities including other citizens.
- **The state is under a duty to affirmatively protect the rights of a person under Article 21** whenever there is a threat to personal liberty even by a non-state actor.
- **Ministers including MPs/MLAs enjoy freedom of speech in equal measure as other citizens under Article 19(1)(a)** of the Constitution and greater or additional restrictions cannot be imposed on the fundamental right of free speech of such public functionaries.
- **No Vicarious Liability for Government** - A statement made by a minister even if traceable to any affairs of the state or for protection of the government cannot be attributed vicariously to the government by invoking the principle of collective responsibility.
- **Government cannot be held vicariously responsible** for remarks made by its ministers even if the statement relates to affairs of the state.
- **Collective Responsibility of the government cannot be invoked** in case of disparaging remarks made by the minister.
- **Restrictions on freedom of speech of public functionaries cannot go beyond what is prescribed under Article 19(2) of the Constitution** which is exhaustive and applicable to all citizens.
- **Additional restrictions not found under Article 19(2) cannot be imposed** on the exercise of article 19(1)(a) as grounds mentioned in Article 19(2) for restricting free speech are exhaustive.
- **Civil Remedies for Citizens** - It is for the party to control the speeches made by their ministers which can be done by forming a code of conduct. Any citizen who feels attacked by such speeches made or hate speech by public functionary etc. can approach court for civil remedies.
- **Constitutional Tort** - A mere statement made by a minister inconsistent with the rights of a citizen of Part III of the Constitution may not constitute a violation of constitutional rights and become actionable as a constitutional tort.

► **SC EXPANDS AMBIT OF ARTICLE 19**

Supreme Court has held that there is no reason to impose "additional restrictions" on the right to freedom of speech of Ministers and the government is not vicariously liable for disparaging remarks made by them, even if the comments are traceable to state affairs or meant to protect the government.

IMPORTANT HIGHLIGHT OF THE SC JUDGMENT

- **Fundamental Rights Enforced Against Citizens** - A fundamental right under Article 19 or 21 can be enforced even against persons other than the state or its instrumentalities. K.S. Puttaswamy – SC held that individuals are protected against interference by state and non-state actors.

CONSTITUTIONAL TORT

- A constitutional tort is a violation of one's constitutional rights by a government employee. The alleged constitutional violation creates a cause of action that is distinct from any otherwise available state tort remedy.
- In India, the history of constitutional tort can be traced back to the Acts enacted by the British East India Company.
- It initially found a place in Section 65 of the Government of India Act of 1858. This was further inherited in the section 176 of Government of India Act of 1935. Thus section 176 formed the basis and article 300 of the Constitution of India emerged from this.
- Article 300 of the constitution provides for the suits and proceedings to be instituted against the state in the name of Union of India. The tortious liability of the state thus arises from the vicarious liability of its servant in performance of non-sovereign functions.

► FREEDOM OF EXPRESSION FOR BUREAUCRATS

Senior IAS officer Smita Sabharwal of Telangana expressed against the Gujarat government's decision to release 11 convicts in the Bilkis Bano case. This has triggered a debate in the political and bureaucratic circles regarding expressing against the decision of government while in duty.

RULE 9 OF CENTRAL CIVIL SERVICES (CONDUCT) RULES OF 1964

- No Government servant shall, in any radio broadcast, telecast through any electronic media or in any document published in his own name or anonymously, pseudonymously or in the name of any other person or in any communication to the press or in any public utterance, make any statement of fact or opinion
 - which has the effect of an adverse criticism of any current or recent policy or action of the Central Government or a State Government

► RIGHT TO EDUCATION

The form-filling phase by students for admissions under 25% reserved category of the Right of Children to Free and Compulsory Education Act, 2009 (RTE) has been deferred by the state primary education directorate of Maharashtra because of the new rule of Aadhaar Card compulsion for all government schemes.

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

- **Article 21A** was added through **Constitution 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 state and central 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.

IMPORTANT HIGHLIGHTS OF RTE ACT

- 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 centres 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 therefore **NOT 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 JAGADISHWARAN & A AVADHUTA)

- What constitutes an integral or essential part of religion must 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 if 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 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 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).

► 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 JUDGMENT 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 based on 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** 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.

► SC BANS TWO FINGER TEST

- **“Two Finger Test”** was carried out by registered medical practitioners against rape survivors involves the examination of her vagina to check if she is habituated to sexual intercourse.
- **Supreme Court has held the practice to be against the dignity and privacy of the individual.**
- In May 2013, **Supreme Court held** that the **two-finger test violates a woman's right to privacy** and asked the government to provide better medical procedures to confirm sexual assault.
- **International Covenant on Economic, Social, and Cultural Rights 1966** and **The UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power 1985**, Supreme Court said rape survivors are entitled to legal recourse that does not re-traumatize them or violate their physical or mental integrity and dignity.
- **A handbook released by the World Health Organization (WHO) on dealing with sexual assault victims** says, **“There is no place for virginity (or ‘two-finger’) testing as it has no scientific validity.”**

► 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.

► 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 up to 2 years along with fine.

► **INTERNATIONAL CONVENTIONS - 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 honor 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 honor 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, 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.

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP) - BASICS

► **SOME BASICS - DPSP**

- The Directive Principles of State Policy are contained in **Part IV, Articles 36-51** of the Indian constitution.

- The idea of directives being included in the constitution was 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.
- 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.

► **DPSP CLASSIFICATION**

*The Directive Principles may be classified into 3 broad categories—**Socialistic, Gandhian and Liberal-intellectual.***

SOCIALISTIC

Principal among this category of directives is:

- 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 is:

- 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

Principal among such directives is.

- 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

DIRECTIVE PRINCIPLES OF STATE POLICY (DPSP) – CURRENT DEVELOPMENTS

► **UNIFORM CIVIL CODE - UCC**

UCC AND INDIAN CONSTITUTION

- UCC has been provided for as a Directive principle of State Policy (DPSP) under part IV of the Indian

constitution. **Article 44** provides of a Uniform Civil code and reads *“The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India.”*

- The objective of this endeavour is to **harmonise diverse cultural practices and address the discrimination meted out to various vulnerable groups under the garb of religious practices.**
- During the drafting of the constitution, UCC met with stiff opposition from various corners.

- It was due to this apprehension that **UCC was included as a DPSP rather than a Fundamental right** and it was envisaged that it will be achieved gradually and not all at once.

UCC AND THE SUPREME COURT

a) **Shah Bano case:** In 1985, the Supreme Court ruled in favour of Shah Bano, who had moved the apex court seeking maintenance under Section 125 of the Code of Criminal Procedure after her husband divorced her. The then Chief Justice, Y.V. Chandrachud, observed that a Common Civil Code would help the cause of national integration by removing disparate loyalties to law. The Court directed Parliament to frame a Uniform Civil Code.

Despite the judgment, the government, in 1986, enacted the Muslim Women (Protection of Rights on Divorce) Act, which nullified the Shah Bano judgment. The Act allowed maintenance to women only for 90 days after the divorce.

b) **John Vallamattom v. Union of India case in 2003,** Chief Justice V.N. Khare had observed: "It is a matter of regret that Article 44 of the Constitution has not been given effect to. Parliament is still to step in for framing a common civil code in the country."

c) **S.R. Bommai** - SC warned against "mixing politics with religion." The court had worried whether a

secular state should bring a code which can be perceived to be a threat to personal laws based on the religious beliefs of individual religions.

Goa is the only state where Uniform Civil code exists.

The Goa Civil Code collectively called Family Laws, was framed and enforced by the Portuguese colonial rulers through various legislations in the 19th and 20th centuries. After the liberation of Goa in 1961, the Indian State scrapped all the colonial laws and extended the central laws to the territory but made the exception of retaining the Family Laws.

LAW COMMISSION REPORT ON UNIFORM CIVIL CODE

- 2018

- **UCC Neither Necessary nor Desirable**
- **Need for Religion wise** Amendment - in personal laws to end discrimination against women within the communities.
- **First Ensure Equality within Communities** - between men and women rather than equality between communities". This would eliminate inequality can be weeded out to the greatest extent possible without absolute uniformity.
- **Preserve Diversity of Personal laws in absence of Consensus through Codification of Personal Laws to eliminate discrimination.**

DIRECTIVES OUTSIDE PART IV

Apart from the Directives included in Part IV, there are some other Directives contained in other Parts of the Constitution. They are:

1. **Claims of SCs and STs to Services:** 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 endeavor 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 grounds that all parts of the constitution must be read together.

FUNDAMENTAL DUTIES

PART IV-A - Article 51A - It shall be the duty of every citizen of India —

1. to abide by the constitution and respect its ideals 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; They are non-justiciable in nature.
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 and improve the natural environment including forests, lakes, rivers, and wildlife 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 Constitution 86th Amendment)**

► PETITION TO ENFORCE FUNDAMENTAL DUTIES

Supreme Court in the case of Durga Dutt v Union of India 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.**

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 the Constitution** which **added 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)**.
- **Fundamental Duties by themselves are not enforceable in a Court of law** as provided under PART IV-A.
- **However, they can be enforced through laws made by the government.**

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. Such as 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 through laws made by the Parliament or rules or guidelines passed by the executive or through judicial decree.**
- **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.
- **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:

- **Prevention of Insults to National Honour Act, 1971** - The law was enacted to ensure that no disrespect is shown to National Flag, Constitution of India and National anthem.

- **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 an MLA.

5 SECTION

UNION, STATES & UNION TERRITORY

► SOME BASICS – INDIAN CONSTITUTION

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.)

Article 3 - It says that Parliament may by law –

- (a) 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)
- (b) increase the area of any State.
- (c) diminish the area of any State.
- (d) alter the boundaries of any State.
- (e) 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.

STATES REORGANISATION

STATES REORGANISATION

- At the time of independence, there were four categories of states namely PART A, PART B, PART C & PART D States.
- However, **State Reorganisation Act, 1956 (SRA)** removed these criteria and it created 14 states & 6 Union Territories (UT).
- In 2020 the two union territories of Dadra and Nagar Haveli and Daman and Diu were merged.
- The former state of Jammu and Kashmir was bifurcated into two UTs, Jammu and Kashmir and Ladakh. (Ladakh does not have an elected legislative assembly).
- Now, three UTs- Delhi, Puducherry, Jammu and Kashmir have an elected legislative assembly and an executive council of ministers.

UNION, STATES, & UNION TERRITORY

IMPORTANT HIGHLIGHTS

- **S.K. Dhar Committee** – June 1948 - recommended reorganisation of states based on administrative convenience.
- **JVP Committee** – Dec 1948 - rejected language as the basis of reorganisation of states post-independence.
- First state to be created on linguistic basis was Andhra Pradesh by separating Telugu speaking areas of Madras.
- **Fazal Ali Commission (States Reorganisation Commission)** - 1955 (K.M. Panikkar and H.N. Kunzru) – broadly accepted language as the basis of reorganisation of states. It rejected the “one language, one state” formula.
- **Fazal Ali Commission** identified four major factors:
 - Preservation and strengthening of the unity and security of the country.
 - Linguistic and cultural homogeneity
 - Financial, economic and administrative considerations
 - Planning and promotion of the welfare of the people in each state as well as of the nation as a whole

- **Fazal Ali Commission** suggested abolition of four-fold classification of states and creating 16 states and 3 centrally administered territories.
- **Govt. of India accepted the classification.** States Reorganisation Act, 1956 along with Constitution 7th Amendment, resulted in creation of 14 States and 6 Union Territories.

NEED FOR CONSTITUTION 7TH AMENDMENT

- Implement the scheme of States reorganisation.
- Amendments relating to the High Courts and High Court Judges, the executive power of the Union and the States, and a few entries in the legislative lists.
- The reorganisation scheme involved.
 - establishment of new States and Union Territories
 - abolition of the three categories of States (Part A, Part B and Part C States)
 - alterations in the area and boundaries of the existing States
 - Article 1 had to be suitably amended including complete revision of First Schedule.
 - Complete revision of Fourth Schedule – allocation of seats in Council of States

ISSUES RELATED TO UNION TERRITORIES

► ADMINISTRATION OF DELHI

- Delhi State Legislative Assembly having a Chief Minister came into being in 1952 under **Government of Part-C States Act, 1951**. (*Chief Commissioners Province*)
- **The States Reorganisation Act, 1957**, conferred UT status on Delhi, to be administered by an Administrator appointed by President.
- **Limited representative government was provided by the Delhi Administration Act, 1966.**
- **Constitution 69th Amendment added Article 239AA & Article 239AB** which gave constitutional status and the **National Capital Territory of Delhi (GNCT) Act, 1991** was enacted based on recommendations of **Balakrishnan Committee Report**.
- **Election Commission** under **Article 324** conducts elections to Legislative Assembly of Delhi.

ARTICLE 239AA - SPECIAL PROVISIONS WITH RESPECT TO DELHI

Provides that Legislative Assembly of Delhi can legislate on matters in State & Concurrent List except – **State List: Entry 1-Public Order; Entry 2 – Police; Entry 18 – Land.**

DELHI HIGH COURT JUDGMENT – 2016

It declared Delhi as a UT, with LG as administrative head having discretionary powers.

SC JUDGMENT – 2018

- **Reversed Delhi HC Order** - stated that **Article 239AA provides for representative government with Council of Ministers to aid and advice the LG except on matters he refers to the president.**
- **Court Focussed on Collaborative Federalism** – “*The Union government and the State governments should endeavour to address the common problems with the intention of arriving at a solution by showing statesmanship, combined action and sincere cooperation. In collaborative federalism, the Union and the State governments should express their readiness to achieve the common objective and work together for it.*”

- If difference arises on any matter, LG has to send it to the President.
- However, 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

- **Special address by Lieutenant Governor:** At the first session after election of Legislative assembly and at the 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** 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 IN NCT OF DELHI (ARTICLE 239AB)

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

► PRESIDENT’S RULE IN PUDUCHERRY

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

ABOUT PUDUCHERRY

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

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

- **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.

► PUNJAB STAKING CLAIM ON CHANDIGARH

The present Chief Minister of Punjab has passed a resolution in Punjab Assembly urging the central government to transfer Chandigarh to the state of Punjab. This has started a political slugfest between Haryana and Punjab.

ABOUT CHANDIGARH

- The city was commissioned by the government in independent India to replace Lahore, which went to Pakistan after Partition, as the capital of Punjab. The city was designed by **Le Corbusier in association with Pierre Jeanneret.**
- Chandigarh is located on the foothills of Shivalik Himalayas on village land acquired from what was then Kharar tehsil of Ambala district. **It was capital of undivided Punjab from its inauguration in 1953 till 1966.**
- Under **The Punjab Reorganisation Act, 1966** following the Punjabi Suba movement, **Haryana was carved out of the Hindi-speaking regions as a separate State** while the **hill regions of Punjab were merged with what was then the UT of Himachal Pradesh.**
- **Chandigarh was made a UT** and has remained the **joint capital of Haryana and Punjab** with State assets divided between Punjab and Haryana in the ratio of 60:40.

DEBATE ON THE STATUS OF CHANDIGARH

- The resolution staking claim on Chandigarh was passed by Punjab Assembly after the Centre passed two rules impacting appointing of local officials.
- **First, the Centre amended the rules governing the functioning of Bhakra Beas Management Board**

UNION, STATES, & UNION TERRITORY

(BBMB) constituted under **the Punjab Reorganisation Act.**

- According to the 1966 Act, Bhakra Management Board consists of
 - (a) a whole-time Chairman and two whole-time members to be appointed by the Central Government.
 - (b) a representative of each of the Governments of the States of Punjab, Haryana and Rajasthan and the UT of Himachal Pradesh to be nominated by respective Governments or Administrator.
 - (c) two representatives of the Central Government to be nominated by that Government.
- Recently, **Ministry of Home Affairs has amended the rules governing the functioning of Bhakra Beas Management Board (BBMB).**
- The amended rules changed the eligibility criteria for the two full-time members of the Board which by convention has gone to officials from Punjab and Haryana. Based on the changed criteria, it will become difficult for the officers from the two states to meet all the technical qualifications.
- **Second, Centre issued a notification bringing Chandigarh UT administration employees under Central Services Rules** with effect from 2022 replacing the Punjab Services Rules.
- The decision of the centre is being viewed and interpreted as politically motivated.

VARIOUS RESOLUTIONS/AGREEMENTS/ACCORD

- **Anandpur Sahib Resolution 1973:** Included political and religious issues and the issue of Chandigarh.
- **Views of Indira Gandhi:** The then Prime Minister, Indira Gandhi indicated that the UT status to Chandigarh was temporary and that it would be transferred to Punjab.
- **Rajiv-Longowal Accord (1985):** Chandigarh was to be handed over to Punjab in 1986 but was not fructified.

INTER-STATE BOUNDARY DISPUTE – BASICS & RELATED DEVELOPMENTS

► VARIOUS MECHANISMS TO SETTLE DISPUTES

National Commission to Review the Working of Constitution suggested that the Constitution provides for various mechanisms to settle inter-state disputes:

- (a) **Judicial Mechanism under Article 131 (Original jurisdiction of SC)**
- (b) **Inter-State Council under Article 263**
- (c) **Parliament altering the boundary under Article 3**

UNION, STATES, & UNION TERRITORY

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 a question of law or fact on which existence of a legal right of state or Centre depends.
- 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.
- **Does not cover Interstate-river water disputes that falls within the jurisdiction of Article 262.**

INTER-STATE COUNCIL – ARTICLE 263

- In 2022, Centre has reconstituted Inter-State council.
- The Inter-State Council (ISC), set up under Article 263 of the Constitution, has been assigned the duties of
 - investigating and discussing such subjects in which some or all of the States or Union and one or more of the States have common interest.
 - make recommendation for better co-ordination of policy and action with respect to these subjects; and
 - deliberate upon such other matters of general interest to the States.

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 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 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.*
- **The recommendations of Sarkaria Commission to set-up an Inter-State Council was accepted and the Presidential notification in 1990 constituted Inter-state council, headed by Prime Minister.**
- **Establishment of 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

FUNCTIONS OF STANDING COMMITTEE – CHAIRMAN – UNION HOME MINISTER

- Process all matters pertaining to Centre-State Relations before they are taken up for consideration in the Inter-State Council.
- Monitor implementation of decisions taken on the recommendations of the Council
- Consider any other matter related to disputes of centre-states.

PARLIAMENT ALTERING BOUNDARY UNDER ARTICLE 3

Parliament may by law

- (a) 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)

- (b) increase the area of any State.
- (c) diminish the area of any State.
- (d) alter the boundaries of any State.
- (e) alter the name of any State.

► RECENT INTER-STATE BOUNDARY DISPUTES

- **Inter-state Disputes in Northeast:** Assam has had boundary disputes with all the north-eastern States that were carved out of it. Nagaland became a State

in 1963. Meghalaya first became an Autonomous State in 1970 and a full-fledged State in 1972. Arunachal Pradesh and Mizoram were separated from Assam as Union Territories in 1972 and as States in 1987.

- **Assam-Mizoram Border Dispute:** Dispute started after Mizoram (earlier a district of Assam known as Lushai Hills) was carved out as a separate state in 1980. Present dispute stems from 1875 notification, derived from Bengal Eastern Frontier Regulation (BEFR) 1873 and another notification of 1933.

CROSSING THE LINE

Borderline

STATES IN CONFLICT WITH ASSAM AT THEIR BORDERS

Arunachal Claims: B Charali in Sonitpur & parts of Lakhimpur & Tinsukia

Nagaland Claims: Merapani and Uriamghat in Golaghat, the oil-rich Sivasagar & parts of Karbi Anglong Assam's district sandwiched between Meghalaya and Nagaland

Meghalaya Claims: Lampi in Kamrup & parts of Karbi Anglong

Mizoram Claims: Cachar & Hailakandi in Barak Valley

Manipur-Nagaland Conflict: Both claim Zuko Valley, spread over Manipur's Senapati district and Nagaland's Kohima district

RECENT CLASHES

- Assam's the common strand that connects most border disputes. The decision to carve states out of Assam seen as root cause for the inter-state conflicts. Arunachal got statehood in 1987, Nagaland in 1963, Meghalaya 1972, Mizoram 1987, to accommodate territorial aspirations of Nagas, Khasis, Garos and Mizos. But the new states' boundaries did not conform to the region's ethnic boundaries. For example, sizeable populations of Mizos and Nagas live in the Cachar Hills, making it possible for both Mizoram & Nagaland to claim territories in Assam
- The longest and bloodiest of the disputes has been between Assam and Nagaland after Nagas did not accept the boundary
- Meghalaya has 12 points of dispute along the 733-km Assam-Meghalaya border
- Initially, both Arunachal and Mizoram accepted its notified borders, but later raised issue of Assamese encroachment
- Assam-Mizoram border has been relatively calm

Aug 2014: Armed Nagas shot dead 14 villagers living on the Assamese side of the border in Golaghat district

Aug 2014: July 2014: Mizos threaten villagers to quit settlements at

Kochurtal forest in Assam's Hailakandi district

Feb 2014: Armed people from Arunachal shot dead 10 villagers living on the Assamese side of the border in Sonitpur

- **Tussle over Belagavi** - Based on the recommendations of SRA, 1956, Belgaum was included in Karnataka as majority population was Kannada Speaking. Subsequently, Maharashtra petitioned Centre to include Konkani speaking areas into Maharashtra which led to constituting Mahajan Committee. It suggested retaining Belagavi in Karnataka and transfer some areas of Karnataka to Maharashtra and vice versa. However, the dispute continues along border areas.



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REASON FOR CONTINUATION OF DISPUTES

- Successive reorganisation of states resulted in continuous change in boundaries.
- Failure of forums such as Inter-State Council Zonal Council to resolve boundary disputes.
- Non-compliance of recommendations of Committee Reports
- Non-compliance of judicial or administrative orders

- Failure to reach an amicable solution on border disputes.
- Border issues used for political gains.

AGREEMENTS SIGNED TO BRING PEACE AND PROSPERITY TO THE NORTHEAST

- **Bodo Accord, January 2020:** To resolve the five-decade-old Bodo issue in Assam, the Bodo Accord was signed in January 2020.
- **Bru-Reang Agreement:** A landmark agreement was signed in 2020 to resolve the 23-year-old Bru-Reang refugee crisis of Tripura and Mizoram.
- **National Liberation Front of Tripura (NLFT) Agreement:** Government of India and Government of Assam, an agreement was signed with National Liberation Front of Tripura (formed in 1989) (SD) in 2019
- **Karbi Anglong Agreement:** Karbis are a major ethnic group of Assam. The **Karbi Anglong Agreement** was signed on **September 2021**.

INTER-STATE RIVER WATER DISPUTES ACT

► 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**, without approvals from Krishna River Management Board. KRMB along with Godavari River Management Board (GRMB) was constitute under Andhra Pradesh Reorganisation Act, 2014.*

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.**

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**.
- **Entry 56 of Union List** relates to **regulation and development of Inter-state rivers & river valleys** to the extent to which such regulation and development under control of 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** to resolve water dispute through (adjudication by the Tribunal) that would arise in use, control and distribution of an interstate river or river valley. The Award of the tribunal is final and binding after its publication in the official gazette of central government with having same force as the order or decree of the Supreme Court.

- **Scheme based on Tribunal's Decisions:** 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- Goa, Maharashtra and Karnataka.
- Mahanadi river- Odisha and Chhattisgarh
- Vansadhara Water dispute- Andhra Pradesh and Odisha.

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- Krishna Water Disputes- Telangana, Karnataka and Andhra Pradesh.
- Sutlej-Yamuna Link Canal Project- Haryana and Punjab.
- Pennaiyar River dispute between Kerala and Tamil Nadu. Pennaiyyar River originates in Karnataka and flows into the Bay of Bengal in Tamil Nadu, north of the delta formed by Cauvery.

ISSUES RELATED TO FIFTH & SIXTH SCHEDULE

► DEMAND FOR 6TH SCHEDULE

MP from Ladakh has demanded inclusion of Ladakh in the Sixth Schedule for constituting Autonomous District Council which is elected for a period of five years. UT of Ladakh has two Hill councils in Leh & Kargil, but neither is under the 6th Schedule.

SIXTH SCHEDULE

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

LEGISLATIVE POWERS OF DISTRICT COUNCIL/REGIONAL COUNCIL

- Make laws related to land or forest, other than any land which is 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, and any other matters such as town police, public health, primary schools.
- Inheritance of property of Marriage & divorce according to Social Customs

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.

Share of royalties from the mineral extractions in the region as agreed between the State governments and the District Councils.

The disputes relating to this matter will be Governor's discretions with his decision being final.

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

- Only the holder of license shall carry on the business of money lending.

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- Prescribe the maximum rate of interest to be charged a moneylender.
- Inspection of Accounts maintained by moneylenders.
- A person, not being a ST resident in the district will be allowed to practice wholesale or retail business only under a licence issued by the District Council.
- Regulations to be made on above grounds by District Council must be passed by a majority of not less than three-fourth of the total membership of District Council.

► OBJECTION BY KHASI HILLS AUTONOMOUS DISTRICT COUNCIL

Khasi Hills Autonomous District Council (KHADC) has objected to the settlement between the governments of Assam and Meghalaya as consent of the Council was not taken. The deal remains to be ratified by Parliament and the Assemblies of the two States concerned before the boundary is redrawn.

CLAIM OF KHADC

- **Section 41 of Right to Fair Compensation and Land Acquisition and Rehabilitation and Resettlement Act, 2013, Makes Prior Consent Mandatory:** The provisions highlights that no acquisition of land shall be made in Scheduled Areas unless prior consent of the concerned.
 - Gram Sabha
 - Panchayats
 - Autonomous District Councils, at the appropriate level in **Scheduled Areas under the Fifth Schedule** to Constitution is obtained, in all cases of land acquisition in such areas.
- Sixth Schedule of the Constitution provides for creation of autonomous district council. Each of them functions as a government within a specified territory.

ADMINISTRATION OF SCHEDULED AREAS AND TRIBAL AREAS (ARTICLE 244)

1. 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.

2. PART X of the Indian Constitution provides for the SCHEDULED AND TRIBAL AREAS. Article 244(2) under PART X provides that the provisions of Sixth Schedule shall apply to the administration of the tribal areas in the States of Assam, Meghalaya, Tripura and Mizoram.

Currently, there are ten such Councils in the region.

Assam

- Bodoland Territorial Council
- Karbi Anglong Autonomous Council
- Dima Hasao Autonomous District Council

Meghalaya

- Garo Hills Autonomous District Council
- Jaintia Hills Autonomous District Council
- Khasi Hills Autonomous District Council

Tripura

- Tripura Tribal Areas Autonomous District Council
- Chakma Autonomous District Council
- Lai Autonomous District Council
- Mara Autonomous District Council

RATIONALE FOR CONSTITUTION 125TH AMENDMENT BILL

- **125th Constitution Amendment Bill aims to:**
 - Amend article 280 of Constitution to enable Finance Commission to recommend measures needed to augment Consolidated Fund of the States to supplement resources of Autonomous Councils, Village Councils and Municipal Councils and constitute State Finance Commission in 6th schedule areas.
 - Rename existing autonomous District Councils.
 - Increase number of seats in District Councils.
 - Provide for reservation of at least two seats for women in District Councils
 - Transfer additional subjects to Karbi Anglong and Dima Hasao Autonomous Territorial Councils.
 - Conduct elections to all Autonomous Councils by State Election Commission.
 - Providing for disqualification of elected members on account of defection.

CENTRE-STATE TUSSELES

► ATTACK ON INDIAN FEDERALISM

Constitution of India establishes a dual polity at the Centre and States with division of powers and functions through Article 246. Fabric of Indian Federalism stands on three

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pillars namely strong central government, flexible federal system and co-operative federalism.

CONSTITUTIONAL PROVISIONS ON INDIAN FEDERALISM

Article 1: Mentions that **India that is Bharat shall be a Union of States**. It means that **states do not have power or right to secede away from the Union of India**. Also, unlike USA, in India, different states have not formed because of an agreement among the states.

Article 3: Empowers Parliament to create new States.

Formation of new State: When a new state is formed, Schedule I and Schedule IV of the Constitution are amended:

Schedule I: Contains list of States and Union Territories.

Schedule IV: Provides for allocation of seats in Rajya Sabha. The allocation of seats in Rajya Sabha is made based on the population of each State.

Distribution of Legislative, Administrative & Financial Powers: by Constitution between each level of government (Centre & states) by devising an elaborate scheme

- **Article 246 of Indian Constitution-** Empowers:
 - Parliament to make law under Union List
 - States to make law under State List and
 - both the Parliament and States to make law under Concurrent List.
- **Finance Commission constituted under Article 280:** Evaluates finances of the Union and State Governments, recommend sharing of taxes between them, lay down the principles determining the distribution of these taxes among States.
- **Settling Inter-state River water disputes under Article 262: The Inter-State River Water Disputes Act, 1956.**
- **Inter-state Council (Article 263):** Inquires into and advise upon disputes which may have arisen between States.
- **GST Council (Article 279A):** Makes recommendations to the Union and State Government on issues related to Goods and Service Tax. The GST Council is chaired by the Union Finance Minister and other members are the Union State Minister of Revenue or Finance and Ministers in-charge of Finance or Taxation of all the States.

THREE KEY AREAS OF CONFLICT BETWEEN CENTRE & STATES LEGISLATIVE ISSUES

- **Increasing Centralisation**
 - Converting Bills into Money Bill.
 - Excessive use of ordinance.
 - Converting State into Union Territory.
- **Interference in Delhi Administration** by legislating **“The Government of National Capital Territory of Delhi (Amendment) Act, 2021**.
- **Interferences in Public Health** – Public Health is a state subject (State List – Entry 6) but Disaster Management Act was used to impose National Lockdown due to medical emergency.
- **Electricity Amendment Bill 2021** – allows greater private players' participation in electricity distribution, States argue that this will allow cherry picking by corporates and leave loss making areas for state DISCOMS.
- **Use of Institutions and Legislations to Suppress Dissent and Criticism** - CBI, NIA, Income Tax Authorities, use of Sedition law.
- **Legislations on Farm Laws through concurrent List:** Even though “agriculture” is provided under State List.

FINANCIAL ISSUES

- Limited borrowing powers of state from outside India under Article 293.
- Higher Share of Cess and Surcharge collected by Centre (Article 271) is not distributed among the States – Agri Infrastructure Cess.
- Lack of Operational & Financial Autonomy to Implement CSS by States.
- Fiscal Deficit of State cannot exceed 3% of State's GDP as per FRBM Act.
- Increased FRBM borrowing limits of states from 3% to 5% has been linked to the performance of States in fulfilling certain conditions — implementation of the One Nation, One Ration policy, ease of doing business reforms, urban local body/utility reforms and power sector reforms.
- CM Disaster Relief Funds not considered part of CSR whereas PM-CARES Fund is under CSR Exemption.

ADMINISTRATIVE ISSUES

- **Discretionary powers of Governor are often misused.**
- **Reserving Bills of States for President – Article 201.**
- **Use of Article 356 to dismiss government.**

- **Special Powers of Governors under Fifth and Sixth Schedule**
- **Constitutional Asymmetry - Special Provisions - Article 371A-J**
- **Creation of Ministry of Cooperation** (SC Judgment declaring part of Constitution 97th Amendment as invalid - PART IXB - State Cooperatives - Entry 32).
- **Commissions related to Centre-State relations-** Rajamannar Committee (1969) and Punchhi Commission (2007)

► **TAMIL NADU CM HIGHLIGHTS ISSUES IN INDIAN FEDERALISM**

Chief Minister of Tamil Nadu flagged concerns on the kind of federalism practiced by the central government.

FEDERALISM

- **Federalism is a system of government in which the power is divided between a central authority and various constituent units of the country.**
- **Dr. B.R. Ambedkar** stated that **India is a "Union" and not a "Federation of States"**. The states have no right to secede from the Union. The Federation is a Union because it is "indestructible".

CONCERNS ON FEDERALISM PRACTICED BY THE CENTRE

- GST Council taking away state's autonomy of taxes.
- Dismantling Planning Commission which used to grant discretionary grants to states for specific purpose.
- Non-flexibility to states in admissions through NEET.
- Forceful adoption of three language formula by centre including mandatory learning of Hindi in schools.
- Delay in release of grants by centre despite submission of "utilisation certificates" by states

GENERAL FINANCIAL RULES 2017 - Ministry of Finance - Department of Expenditure

- **In respect of recurring Grant:** Ministry or Department concerned should release any amount only after Utilization Certificate of preceding financial year is submitted.
- Release of Grants-in-aid more than 75% of the total amount sanctioned shall be done only after utilisation certificate and the annual audited statement of the preceding year are submitted.

• **Direct Benefit Transfer (DBT) Scheme:** Where the fund flow is directly from the Central Government to the beneficiaries, the intimation from the bank/NPCI (Aadhaar Payment Bridge) regarding deposit of the funds in the beneficiaries' bank accounts, generated as per procedure prescribed by the CAG, may be treated as a Utilization Certificate.

► **REPUGNANCY OF STATE LAWS ON VC-APPOINTMENT**

Article critically analyses Supreme Court judgments which declared appointment of Vice-chancellors (VCs) as unconstitutional and violative of Article 254 as such appointments were in contravention of UGC-Regulations of 2018 despite being as per respective State Laws.

EDUCATION UNDER SEVENTH SCHEDULE

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

SUPREME COURT JUDGMENTS

Gambhirdan K. Gadhvi vs State of Gujarat (March 3, 2022) - Appointment of Vice-Chancellor was quashed. Supreme Court held that **There should be** a panel for the appointment of VC in accordance with UGC Regulations of 2018. UGC Regulations would prevail over the state laws.

Professor (Dr) Sreejith P.S vs Dr. Rajasree M.S. (October 2022): Appointment of Vice Chancellor was challenged on grounds that- **Recommendations of only one name** is against the UGC Regulations. Provision in the State University Act was repugnant to the UGC Regulations as per Article 254 and was therefore void.

ARTICLE 254 INCONSISTENCY BETWEEN LAWS MADE BY PARLIAMENT & LAWS MADE BY STATE LEGISLATURES	
ARTICLE 254(1) If any provision of a law made by the State Legislature is repugnant	ARTICLE 254(2) • Where a law made by the Legislature of a State with respect to one of

or inconsistent to any provision of a law made by Parliament

- which Parliament is competent to enact
- matters enumerated in the Concurrent List

Then the law made by Parliament SHALL PREVAIL and the law made by State Legislature shall to the extent of the repugnancy or inconsistency BE VOID.

the matters enumerated in the Concurrent List

- contains any provision repugnant to the provisions of an earlier law or an existing law made by Parliament with respect to that matter.
- then, the law so made by State shall prevail in that State - if it has been reserved for the consideration of the President & has received President's assent.
- However, Parliament can enact another law on the same matter which amends, vary or repeal law made by state legislature.

CRITICAL ANALYSIS OF SC JUDGMENT

- UGC Regulations are not laws made by Parliament according to the provisions of Article 254.
- State Laws enacted by its legislature gains supremacy over Regulations made by University Grant Commission.

NEED FOR HARMONIOUS CONSTRUCTION

- Legislative Right of States under Article 246 – to frame laws & manage university education and appointment of Vice chancellor are part of Concurrent list.

DOCTRINE OF HARMONIOUS CONSTRUCTION

- It is used to avoid any inconsistency, repugnancy or conflict within two or more statutes, or provisions of the constitution.
- Harmonising different laws or provisions should not render either provision or law as useless.

LANGUAGE ISSUES

► HINDI AS INDIA'S LINK LANGUAGE

MINISTRY OF HOME AFFAIRS OFFICIAL COMMUNICATION

- Union Home minister unanimously approved sending of **11th Volume of Parliamentary Official Committee (37th Meeting) Report to President of India.**
- 70% of agenda of the Cabinet is prepared in Hindi now.
- All eight North East states have agreed to make Hindi compulsory in schools up to Class 10.

SPEAKERS OF DIFFERENT LANGUAGES (CENSUS 2011)

Languages	Percentage of Speakers
Hindi	43.63
Bengali	8.03
Marathi	6.86
Telugu	6.70

Tamil	5.70
Gujarati	4.58
Urdu	4.19

CONSTRAINTS- Idea of national language not supported by the Constitution. Hindi is not the mother tongue of majority of Indians. Constraints federal rights of states as per **Article 345 or 347.**

CONSTITUTIONAL PROVISIONS

OFFICIAL LANGUAGE OF INDIA

- **Article 343(1)** - Official language of Union shall be Hindi in Devanagari script. The form of numerals to be used for the official purposes of the Union shall be the international form of Indian numerals.
- **Article 343(2)** - Provides that English shall also be continued to be used in official work of the Union for a period of 15 years from the date of commencement of the constitution, i.e., up to the 25th of January 1965.

- **Article 343(3)** made provisions for continuation of English from 26th January 1965 by empowering the parliament to make laws to that effect.
- Parliament passed **Official Languages Act, 1963** to provide for the languages which may be used for the official purposes of the Union, for transaction of business in Parliament, for Central and State Acts and for certain purposes in High Courts.

OFFICIAL LANGUAGES ACT, 1963

- It allowed continuance of English language for official purposes of the Union and for use in Parliament even after 1965. As per the Act, both English and Hindi shall be used for certain specified purposes.
- **The Act provides for following -**
 - English language shall be used for purposes of communication between the Union and a State which has not adopted Hindi as its official language.
 - For communication between states where only one state has recognised Hindi as its official language, then communication in Hindi shall be accompanied by a translation of the same in the English language.
- **Optional use of Hindi or other official language in judgments, etc., of High Courts** - As from the appointed day (**26th January, 1965**) or any day thereafter the Governor of a State may, with the previous consent of the President, authorise the use of Hindi or the official language of the State, in addition to the English language, for the purposes of any *judgment, decree or order passed or made by the High Court* for that State. Where any *judgment, decree or order is passed or made in any such language* (other than the English language), it shall be accompanied by a translation of the same in English language issued under authority of the High Court.
- **Article 350A - Facilities for instruction in mother-tongue at primary stage** — *It shall be the endeavour of every State and of 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; and President may issue such directions to any State as he considers necessary or proper for securing the provision of such facilities.* (This provision was incorporated by Constitution (7th Amendment) Act, 1956)

- **Article 351 - Directive for development of the Hindi language** — *It shall be the duty of Union to promote spread of Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in Eighth Schedule, and by drawing, wherever necessary or desirable, for its vocabulary, primarily on Sanskrit and secondarily on other languages.*

► COMMISSION AND COMMITTEE OF PARLIAMENT ON OFFICIAL LANGUAGE

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 duty of Commission to make recommendations to the President as to -

- Progressive use of Hindi language for 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 recommendations, the Commission shall have

- due regard to the *industrial, cultural and scientific advancement of India*
- Just claims and interests of persons belonging to the *non-Hindi speaking areas* regarding public services.

COMMITTEE

There shall be constituted a Committee consisting of 30 members of which

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- 20 members shall be members of House of 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.

Committee shall examine the recommendations of the Commission and report to the President their opinion.

► SPECIAL OFFICER FOR LINGUISTIC MINORITIES (ARTICLE 350B)

- 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- 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. The President shall lay cause all such Reports to be laid before the Parliament and sent to the Governments of the States concerned.

SUGGESTIONS MADE BY PARLIAMENTARY COMMITTEE ON LANGUAGES

- **Division of States into Region A, B & C States for use of Hindi Language** - The committee has advised that Hindi be granted a respectable place in 'A' category states and be used completely.

- **States under Region 'A'** includes - Bihar, Haryana, Himachal Pradesh, Madhya Pradesh, Chhattisgarh, Jharkhand, Uttarakhand, Rajasthan, and Uttar Pradesh, and the Union Territories of Delhi and Andaman and Nicobar Islands.
- **Region 'B'** includes Gujarat, Maharashtra, and Punjab, and the Union Territories of Chandigarh, Daman and Diu and Dadra and Nagar Haveli.
- **Region 'C'** - Other states, where the use of Hindi is less than 65 per cent, are listed under region 'C'.

ISSUES RELATED TO JUDICIARY

A. ISSUES RELATED TO JUDICIAL APPOINTMENTS

► UNION JUDICIARY - PART V - (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 strength of Supreme Court is fixed by law made by Parliament** according to **Article 124 (1)** of the Indian Constitution.
- The Supreme Court (Number of Judges) Act 1956** originally provided for the maximum number of Judges (excluding the Chief Justice of India) to be 10.
- The Supreme Court (Number of Judges) Amendment Act 2019** increased the *number of Judges of Supreme Court from 30 to 33 excluding the Chief Justice of India*.

APPOINTMENT OF SC JUDGES

- Article 124(2)** - Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal.
- The appointment of the judges is carried out by the executive based on recommendations of the Supreme Court Collegium comprising five seniormost Judges of Supreme Court including the Chief Justice of India.
- Collegium based appointment has not been provided in the Constitution.**
- The process to be followed** in case of appointment of Judges of Supreme Court and High Court has been provided under the Respective **Memorandum of Procedure (not provided under the constitution)**.
- Article 126 - Appointment of acting Chief Justice —**
 - When the office of Chief Justice of India is vacant or when the Chief Justice is, by reason of absence or otherwise, unable to perform the duties of his office,

- the duties of the office shall be performed by such one of the other Judges of the Court as the President may appoint for the purpose.

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

QUALIFICATIONS FOR SC JUDGES

- Article 124(3)** - A person shall not be qualified for appointment as a Judge of the Supreme Court unless he/she is a citizen of India and—
 - (a) has been for at least five years a judge of a High Court or a two such Courts in succession; or

(b) has been for **at least ten years an advocate of a High Court or of two or more such Courts in succession.**

(c) 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.

POWERS AND JURISDICTION OF SUPREME COURT

- (i) Original Jurisdiction – Article 131
- (ii) Appellate Jurisdiction – Article 132, 133, 134
- (iii) Writ Jurisdiction – Article 32
- (iv) Power to review its own orders – Article 137
- (v) Law declared by Supreme Court binding on all courts – Article 141
- (vi) Extraordinary Powers to do Complete Justice – Article 142
- (vii) Rulemaking Power (Article 145)
- (viii) Appeal by Special Leave – Article 136
- (ix) Advisory Jurisdiction of Supreme Court – Article 143
- (x) Contempt Powers – Article 129

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)

- **Article 132** - Appellate jurisdiction of Supreme Court in appeals from High Courts in certain cases - if the High Court certifies under Article 134A that the case involves a substantial question of law as to the interpretation of this Constitution.
- 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. 134A**)

- Appeal in cases of Criminal matters; Sentence is Death (Matter of Right); or certified by High Court under Article 134A.

POWER TO ISSUE WRITS

- **Article 32** - The Supreme Court has power to issue directions or orders or writs, including writs of *habeas corpus, mandamus, prohibition, quo warranto and certiorari* for the enforcement of rights under PART-III.
- **Article 139** - Parliament may by law confer on the Supreme Court power to issue directions, orders or writs, including writs of *habeas corpus, mandamus, prohibition, quo warranto and certiorari*, for any purposes including protection of other legal rights not protected through Article 32.

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.
- **Article 142** has been used by SC in number of cases including Ayodhya Judgment, Passive Euthanasia, Appointment of Election Commissioners through a committee comprising PM, LoP & CJI.

POWERS TO REVIEW ITS OWN ORDERS AND DECISIONS (ARTICLE 137)

- Supreme Court has the power to review its own orders and judgments 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.
- **Article 145(3) – Constitution Bench to have minimum number of 5 SC Judges to decide any case.**
 - involving a substantial question of law as to the interpretation of this Constitution or

- o for the purpose of hearing any reference under article 143

Note* Division Bench Means a Bench comprising Two Judges.

APPEAL BY SPECIAL LEAVE

The Supreme Court under **Article 136** enjoys **the power of granting special leave** to appeal from any Judgment, 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 judgment, final order or sentence in a criminal proceeding of a High Court.

CURATIVE PETITION – ARTICLE 137

- 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.

EXTRAORDINARY WRIT JURISDICTION – ARTICLE 32

- Supreme Court has started entertaining matters in which interest of the public at large is involved.

- Such petitions can be moved by any individual or group of persons either by
 - o filing a Writ Petition at the Filing Counter of the Court or
 - o by addressing a letter to Hon'ble, the Chief Justice of India highlighting the question of public importance for invoking this jurisdiction.
- Such concept is popularly known as '**Public Interest Litigation**' and several matters of public importance have become landmark cases.
- This concept is unique to the Supreme Court of India only and perhaps no other Court in the world has been exercising this extraordinary jurisdiction.
- **A Writ Petition filed** is dealt with like any other Writ Petition and processed as such.
- **In case of a letter addressed to Hon'ble the Chief Justice of India** the same is dealt with in accordance with the guidelines framed for the purpose.

ADVISORY JURISDICTION

- **Where it is not mandatory for SC to give opinion - Under Article 143**, The *President can refer to the Court either a question of law or a question of fact, if it is of public importance.* However, **it is not compulsory for the Court to give its advice.**
- **Where it is mandatory for SC to give opinion -** The President is empowered to refer to the Supreme Court for its opinion, disputes arising out of any treaty, agreement, covenant, engagement, sanad or other similar instrument, which had been entered into or executed before the commencement of the Constitution. On such matters the Supreme Court shall compulsorily give their opinion to the President.

CONTEMPT POWERS

- **Article 129** empowers the SC to be a court of record and power to punish for contempt of itself.
- **Article 19(2) permits government to impose reasonable restrictions** 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:** - 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.'
 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.

• **The Contempt of Court (Amendment) 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 - Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself.

CONTEMPT - 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.

CONTEMPT OF COURT V FREEDOM OF SPEECH AND EXPRESSION

- **Contempt of Court acts as one of the reasonable restrictions imposed on freedom of speech and expression under Article 19(2) to safeguard unwarranted attacks on judiciary and its members.**
- **However, excessive use of contempt of Court proceeding is regulated through the Contempt of Courts Act as:**
 - **It defines civil and criminal contempt** - Civil Contempt is initiated for willful disobedience to judgment or willful breach of an undertaking given to a court. Whereas criminal contempt is initiated when any publication or expression scandalizes or lowers court's authority, interferes with judicial proceedings or obstructs administration of justice.

- **Makes consent of Attorney General or Advocate General of States mandatory** when criminal contempt proceedings are initiated by other persons (AG's refusal to initiate criminal contempt case against Swara Bhaskar)
- **Contempt Proceedings cannot be initiated after expiry of 1 year from the date of occurrence.**

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 on 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.

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: -
 - The Judgments, 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 214** of the Constitution.

JURISDICTION OF EXISTING HIGH COURTS – ARTICLE 25

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 also for other purposes as well (legal rights).

EXTENSION OF JURISDICTION OF HIGH COURTS TO UNION TERRITORIES (ARTICLE 230)

- Parliament may by law extend the jurisdiction of a High Court to, or exclude the jurisdiction of a High Court from, any Union territory.

ESTABLISHMENT OF A COMMON HIGH COURT FOR TWO OR MORE STATES – (ARTICLE 231)

- Parliament may by law establish a common High Court for two or more States or for two or more States and a Union territory.

CONTROL OF HIGH COURTS OVER SUBORDINATE COURTS – (ARTICLE 235)

- The control over district courts and courts subordinates thereto including the posting and promotion of, and the grant of leave to, persons belonging to the judicial service of a State and holding any post inferior to the post of district judge shall be vested in the High Court.

APPOINTMENT OF HC JUDGES – ARTICLE 217

Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal. The process for their appointment has been provided under the MoP which not provided in the Constitution.

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 appointed for special reasons.*

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

- 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.

► COLLEGIUM (PRESENTLY OF 6 SC JUDGES)

WHO ENJOYS PRIMACY IN JUDICIAL APPOINTMENT - EXECUTIVE OR JUDICIARY?

- **Article 124(2)** - The whole issue of primacy can be traced to the wordings of Article 124(2), change in the meaning after Second and Third Judges Case and later amendment by the Constitution 99th Amendment.

ARTICLE 124(2) - PRIOR TO CONST. 99TH AMENDMENT	ARTICLE 124(2) - AFTER CONST. 99TH AMENDMENT
<ul style="list-style-type: none"> • Every Judge of the Supreme Court <u>shall be appointed by the President</u> by warrant under his hand and seal. • <u>after consultation with such of the Judges of the Supreme Court and of the High Courts</u> in the States as the President may deem necessary for the purpose • and shall hold office until he attains the age of sixty-five years 	<ul style="list-style-type: none"> • Every Judge of the Supreme Court shall be appointed by the President by warrant under his hand and seal. • <u>on the recommendation of the National Judicial Appointments Commission</u> referred to in article 124A • and shall hold office until he attains the age of sixty-five years.

- **Consultation with Judges was not given primacy by the executive prior to the Second Judges Case** - This has even led to deviation from the seniority principle in the past by former PM Indira Gandhi twice when she appointed.

- o Justice A.N. Ray superseded Justice Shelat, senior-most Judge of the Court as well as two other Judges.
- o Justice M.H. Beg (after retirement of Justice A.N. Ray) superseded Justice Khanna.

EVOLUTION OF COLLEGIUM SYSTEM OF JUDICIAL APPOINTMENT

First Judges Case - S.P Gupta vs. Union of India (1982) - (In favour of Executive)

- **SC held** - opinions of Chief Justice of India (CJI) and Chief Justice of respective High Courts were merely "consultative," and the power of appointment resides solely and exclusively with the Central Government.
- Central government "could" override the opinions given by the Judges. Thus, the opinion of Chief Justice

of India in matters of appointment was not given primacy in matters of judicial appointments under Article 217(1).

Second Judges Case - S.C. Advocates on Record Association v. Union of India (1993) - (Primacy of Judiciary) - The matter was decided by Nine Judge Constitution Bench

- The Court considered the question of "**Primacy of opinion of CJI in regard to appointment of Supreme Court Judges.**" The Court said that the question had to be considered in the context of achieving constitutional purpose of selecting the best to ensure the independence of judiciary and thereby preserving democracy.
- Referring to 'Consultative Process' as envisaged in **Article 124(2)**, SC emphasized that **Government does NOT enjoy primacy or absolute discretion in matters of appointment of Supreme Court judges.**
- Court said that **provision for consultation with Chief Justice** was introduced as **CJI is best equipped**

to know and assess the worth and suitability of a candidate and it was also necessary to eliminate political influence.

- Selection should be made because of ‘Participatory Consultative Process’ where Executive has the power to act as a mere check on the exercise of power by CJI to achieve constitutional purpose.
- SC held that initiation of the proposal for appointment of a Supreme Court Judge must be by the Chief Justice.

Third Judges Case - (1999) - Re: Presidential Reference (Emergence of Collegium System)

- **Supreme Court on a reference made by the President under Article 143 has laid down the following proposition with respect to appointment of Supreme Court judges:**
 - While making recommendations, **CJI shall consult four seniormost Judges of Supreme Court.** This led to the emergence of the present Collegium System.
 - The opinion of all members of collegium regarding their recommendation shall be in writing.
 - The views of the senior-most Supreme Court Judge who hails from the High Court from where the person recommended comes must be obtained in writing for Collegium’s consideration.
 - If majority of the Collegium is against the appointment of a particular person, that person shall not be appointed.
 - Even if two of the judges have reservation against appointment of a particular Judge, CJI would not press for such appointment.
 - A High Court Judge of outstanding merit can be appointed as Supreme Court Judge regardless of his standing on the seniority list.
 - **To ensure a proper process for appointment of Judges of HC & SC, Department of Justice has produced Memorandum of Procedure.**

CURRENT SC COLLEGIUM HAS 5+1 MEMBERS

- As per the Third Judges Case, Collegium comprises 5 seniors most Judges including the CJI. In most situations, one of the 4 seniormost judges is the successor CJI.
- However, if the incumbent CJI’s tenure outlives the tenure of the remaining 4 judges, then the Judge likely to succeed the incumbent CJI, is also included in the Collegium.

- This makes Collegium function with 5+1 senior most Judges of Supreme Court including the present CJI.
- Given the order of seniority, a potential CJI will enter Chandrachud collegium only in May 2023. However, Justice Khanna will be the sixth member of the collegium from November 9, 2022, itself.

► MEMORANDUM OF PROCEDURE - MOP

While striking down the NJAC Act, Supreme Court acknowledged that the MOP for appointment of HC & SC Judges needed fine tuning. Recently, Union Law Minister in a letter to CJI suggested inclusion of a government representative in the “search-cum-evaluation committee” to provide inputs on “suitable candidates” to the Collegium. The suggestion by Union Law Minister was made because the finalisation of MoP was still pending.

ABOUT MEMORANDUM OF PROCEDURE

- The Third Judges Case resulted in the framing of Memorandum of Procedure as agreed between the government and the judiciary based on the first recommendations.
- MoP providing for detailed process to be followed for appoint of HC & SC Judges are uploaded on the website of Department of Justice (DoJ).

Memorandum of Procedure provides for the appointment of following Supreme Court Judges	Memorandum of Procedure provides for the appointment of following High Court Judges
<ul style="list-style-type: none"> • 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 	<ul style="list-style-type: none"> • 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

► MEMORANDUM OF PROCEDURE – HIGH COURT JUDGES

TRANSFER OF A JUDGE (INCLUDING CHIEF JUSTICE) FROM ONE HIGH COURT TO ANOTHER HIGH COURT - MOP

- **Article 222 of the Constitution** makes provision for the transfer of a Judge (including Chief Justice) from one High Court to any other High Court.
- **Proposal of transfer of HC Judge to be initiated by CJI** whose opinion in this regard is determinative.
- **Consent of a Judge for his first or subsequent transfer would not be required.**
- **Transfer of HC Judge Other Than Chief Justice of High Court**
 - CJI considers the views of Chief Justices of the two High Courts – current HC and HC where HC Judge is to be transferred.
 - CJI also consider views of one or more Supreme Court Judges which would assist in the process of deciding whether a proposed transfer should take place.
- **Views on transfer to be considered by CJI and Four Judges of SC in writing.**
- **Reference to Govt. of India** - The proposal for transfer of the Judge, including the Chief Justice is then referred to the Government of India along with the views of all those consulted in this regard.
- CJI sends his recommendations for transfer to the Union Law Minister.
- **Union Law Minister then Submit Recommendations to the Prime Minister who then advise the President** for transfer of the Judge concerned.
- **Secretary in Department of Justice informs the Chief Justice of the High Courts and the Chief Ministers of concerned States** and issues the necessary notification in the Gazette of India.

APPOINTMENT OF CHIEF JUSTICE OF HIGH COURT - ARTICLE 217 - MOP

- **Provision of Article 217** to be followed for initial appointment of a Chief Justice of a High Court.
- **Consideration of Seniority of HC Judges to determine their elevation as Chief Justice**
- **Proposal Initiated by CJI for the appointment of Chief Justice of a High Court**
- **CJI to further adjudge Suitability by ascertaining views of senior-most colleague in SC** who is

conversant with the affairs of the High Court in which the recommendee has been functioning.

- **Recommendations for Appointment as Chief Justice of HC Sent by CJI and Two Senior Most SC Judges**
- **Views of SC Judges to be sent to Union Law Minister by CJI**
- **Then Union Law Minister Obtain Views of Respective State Govt regarding appointment of Chief Justice.**
- **Views of State Govt to be forwarded to PM who then advise the President as to the selection.**
- **After the President approves the appointment OF Chief Justice, Notification of Appointment in the Gazette of India is made.**

APPOINTMENT OF PERMANENT JUDGES OF HIGH COURT - ARTICLE 217 - MOP

- **HC Chief Justice to Communicate to CM about vacancy** at least 6 months before the date of occurrence of the vacancy, his views as to the persons to be selected for appointment.
- **Chief Justice of HC to Consult Two Senior Most Judges of HC before forwarding recommendation** regarding the suitability of the names proposed.
- **Proposal for Appointment of HC Judge to be initiated by Chief Justice of HC**
- **Consultations of HC Collegium to be sent to CM in writing along with the recommendations.**
 - Consultations to be sent to State **Governor** as he is bound by CM's advice on this matter, **CJI and Union Law Minister** simultaneously to expedite the process.
- **CM can ask to reconsider other names** – such names to be forwarded to the Chief Justice for his consideration.
- **Governor to forward the proposal as advised by CM to Union Law Minister** - not later than six weeks from the date of receipt of the proposal from the Chief Justice of the High Court.
- **If the comments are not received within the said period**, it should be presumed by the Union Law Minister that no new names are to be considered and proceed accordingly.
- **Centre to consider Reports of Intelligence Bureau or other agencies for background check** in respect of the names under consideration.

- **Intelligence Reports to be forwarded to the CJI for his advice** (in case there are reservations or in case of adverse report against any person)
- **CJI and Two Senior Most Judges of SC to forward their opinion for appointment as Judge of the High Court**
- **Note* SC Collegium (1+2) to Consider Views of HC Collegium (1+2)**
- **CJI to send his recommendations in writing to Union Law Minister within 4 Weeks**
- **Once Names are Considered and Recommended by CJI, Will Not be Taken Back to State Constitutional authorities** even if a change takes place in the incumbency of any post.
- **Opinion of CJI to be obtained to refer names to state** - However, where it is considered expedient to refer back the names, the opinion of Chief Justice of India should be obtained.
- **Recommendations of CJI to be forwarded to PM preferably**, within 3 weeks.
- **Copies of Correspondence between the**
 - Chief Justice and the Chief Minister
 - Chief Minister and the Governor,**to be forwarded to PM along with the Chief Minister's recommendations.**
- **PM then advise the President in the matter of appointment.**
- **Appointment by President to be communicated to Chief Justice of HC and CM**
- **Obtaining Necessary Documents from the Appointed Judge**
 - Certificate of physical fitness signed by a Civil Surgeon or District medical officer, and
 - Certificate of date of birth.
- **A copy of the communication will also be sent simultaneously to the Chief Minister of State.**

► MEMORANDUM OF PROCEDURE – SUPREME COURT JUDGES

APPOINTMENT OF CHIEF JUSTICE OF INDIA (CJI)

- **Seniormost Judge of the Supreme Court to be appointed as CJI considered fit to hold the office.**
- **The Union Law Minister seeks the recommendation of the outgoing CJI for the appointment of the next Chief Justice of India.**
- **In case of doubt regarding fitness of the senior most Judge to hold the office of CJI, consultation**

with other Judges as envisaged in Article 124 (2) would be made for appointment of the next CJI.

- **After receiving recommendations of incumbent CJI, the Union Law Minister will put up the recommendation to the Prime Minister.**
- **PM will then advise the President to appoint the next CJI.**

APPOINTMENT OF OTHER JUDGES OF SUPREME COURT

- **CJI to initiate the proposal for appointment and forward the name to the Union Law Minister to fill up the vacancy.**
- **The opinion of CJI for appointment of a Judge of the Supreme Court should be formed in consultation with a collegium of the four seniormost Judges of the Supreme Court.**
- **If the successor Chief Justice of India is not one of the four seniormost puisne Judges, he (THE 5th Senior Most Judge) to be made part of the collegium as he should have a hand in selection of Judges who will function during his term as CJI.**
- **CJI to ascertain views of the seniormost Judge in the Supreme Court, who hails from the High Court from where the person recommended comes.**
- **However, if the SC Judge does not have any knowledge of his merits and demerits, the next seniormost Judge in the Supreme Court from that High Court should be consulted.**
- **Opinions of all the Judges consulted in the process must be made in writing and submitted by CJI to the Government of India as part of record.**
- **Based on CJI's Recommendations, the Union Law Minister of Law will put up the recommendations to the Prime Minister who will advise the President for appointment.**
- **Medical Certificates to be Obtained after Appointment** - the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India and obtain from the person selected a certificate of physical fitness signed by a Civil Surgeon or a District Medical Officer.
- **The Medical Certificate is to be obtained from all persons selected for appointment whether they are at the time of appointment in the service of the State or not.**
- **As soon as the warrant of appointment is signed by the President, the Secretary in the Department of Justice will announce the appointment and issue the necessary notification in the Gazette of India.**

► ORDER OF SENIORITY OF JUDGES

President of India as per Article 124(2) has appointed Justice D.Y. Chandrachud as the 50th Chief Justice of India. He will succeed the outgoing Chief Justice of India Justice U.U. Lalit who had recommended Justice D Y Chandrachud's name as his successor on October 11 based on the order of seniority.

SENIORITY OF JUDGES IN SUPREME COURT DECIDED BY

- **Appointment of Chief Justice of India is done based on "Seniority Principle"** - which is decided based on **date of induction in the Supreme Court**.
- A judge who takes an oath earlier becomes senior to another who takes oath later.
- In cases where warrants for appointment of judges to the Supreme Court are issued by the government on different dates, seniority is automatically decided by virtue of the dates of swearing-in by the CJI.
- There is no stated rule, whether in the current Memorandum of Procedure (MoP) or the draft MoP that is under finalisation, to decide the seniority of judges whose warrants of appointment are issued on the same date.
- As the warrants are issued by the government in sequence, the practice has been for the CJI to administer the oath in the same order.
- For example, the warrants for appointment of former CJI Misra and Justice J Chelameswar were issued on

the same day but, as Justice Misra's warrant was numbered above that of Justice Chelameswar, he was sworn in first. This ensured that he became the CJI as he was deemed as senior to Justice Chelameswar.

ON WHAT BASIS ARE THE WARRANTS ISSUED BY THE GOVERNMENT?

- These are on the basis of the recommendation of the Collegium, which comprises the five most senior SC judges. The Collegium's recommendations for any name can be returned by the government, but if the Collegium reiterates the name, the government is bound to issue the warrant of appointment. The procedure for this is laid down in the MoP.

ORDER OF SENIORITY HAS BEEN DEFIED IN THE PAST

- **Illustration** - In February 1964, Justice Gajendragadkar was appointed as the Chief Justice of India, superseding Justice Imam who was suffering from a serious illness.
- **The Principle was also defied by Indira Gandhi twice when she appointed.**
 - Justice A.N. Ray superseding Justice Shelat, the senior-most Judge of the Court as well as two other Judges.
 - Justice M.H. Beg (after retirement of Justice A.N. Ray) superseding Justice Khanna.

B. ISSUES RELATED TO JUDICIAL ACCOUNTABILITY

► REMOVAL OF SC/HC JUDGES

- **Article 124(4)**
 - Not to be removed except by an order of the President
 - passed after an address by each House of Parliament
 - supported 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.
 - has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity (these grounds not defined in the Constitution).

- **Article 124(5)** - Parliament may by law regulate the procedure for the presentation of an address and for the investigation and proof of the misbehaviour or incapacity of a Judge.
- **Article 218** - Judges of HC shall be removed in the same manner as that of Judge of SC as Article 124(4) and 124(5) applies to their removal too.
- Based on Article 124(5) for the removal of SC & HC Judges, the Parliament has enacted **The Judges (Inquiry) Act, 1968** which provides for elaborate process for their removal.

Procedure of Removal of Judge of Supreme Court/High Court - The Judges Inquiry Act, 1968



Judges of Supreme Court or High 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 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 another house. However, recommendation of such committee is not binding on the Parliament.



The motion, if taken for consideration by the house, must 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.

- Further, **Article 124 (5)** mentions that removal of judge on grounds of **“misbehaviour”** and **“incapacity”** can be prescribed by law made by Parliament. Accordingly, Parliament has enacted **The Judges Enquiry Act, 1968** to provide for the process to remove Judge of Supreme Court or High Court on specific charges of “misbehaviour” or “incapacity.”
- **However, cases of impeachment are quite different from cases of Misconduct of Judges** as had happened in the case of former Chief Justice of India Ranjan Gogoi (sexual harassment case) and former Chief Justice of India, Justice Deepak Mishra (impeachment was initiated).

COMMITTEE ON IN-HOUSE PROCEDURE FOR MISCONDUCT

- Based on **‘Restatement of Values of Judicial life’** which is a set of principles containing the essential elements of ideal behaviour for judges (floated by Justice Verma in 1997), Supreme Court of India constituted **Committee on In-House Procedure** to take suitable remedial measures against erring Judges.
- **The Report of the Committee on In-House Procedure** has provided for procedure of investigation.

RESTATEMENT OF VALUES OF JUDICIAL LIFE

- Supreme Court adopted a Charter called the *‘Restatement of Values of Judicial Life’* in May 1997. It serves as a guide for an independent & fair judiciary. The Charter is “a complete code of the canons of judicial ethics” and categorically declares important values to be adhered to and cherished by Honourable Judges.
- As per the Charter, the behaviour and conduct of members of the higher judiciary must reaffirm people’s faith in the impartiality of judiciary. Accordingly, any act of Judge of Supreme Court or a High Court which erodes the credibility of this perception must be avoided.
- The Charter titled **“Restatement of Values of Judicial Life”** prohibits the following:
 - Judges to contest election
 - Close association with members of the bar practicing in same Court
 - Legal Practice of relatives before the Judge concerned.
 - Expressing political views in public or matters which are sub judice.

► DIFFERENCE BETWEEN MISCONDUCT AND IMPEACHMENT

- Indian Constitution protects the independence of judges of the High Courts and the Supreme Court from interference by the executive as they cannot be removed arbitrarily by the executive and their removal has to undergo rigorous legislative scrutiny as provided under **Article 124 (4)**.

- Hearing cases of companies where Judge has personal investments in stocks.
- Speculating on stocks and indices
- Involve himself to raise funds for any purpose.
- Judges accepting gifts or hospitality

REPORT OF THE COMMITTEE ON IN-HOUSE PROCEDURE

- Allegations against any **Judges of HC or SC** shall be examined by their peers and not by an outside agency in order to maintain independence of judiciary. Inquiry can also be initiated against sitting CJI or sitting Chief Justice of HC.
- **If the case is found to hold merit**, then a **3 Member Committee** is to be constituted comprising of SC Judges and shall hold inquiry into the allegations. Such an inquiry shall be in the nature of 'fact finding inquiry' where the Judge concerned will be entitled to appear and have his/her say.
- **Such an enquiry will not be a judicial enquiry** involving examination and cross-examination of witnesses and representation by lawyers.
- **The committee can devise their own rules and procedures** consistent with principles of natural justice. Based on the inquiry, the Committee can file three kinds of reports:
 1. That there is **no substance** in the allegations filed by the complainant.
 2. That there is **sufficient substance** in the allegation of misconduct and such substance is so serious as to **initiate proceedings for removal of Judge**.
 3. There is substance in the allegation, but the **misconduct disclosed is not of such a serious nature** as to initiate removal proceedings.

WHAT HAPPENS IF CHARGES INVESTIGATED ARE PROVED?

- If the committee finds substance in the charges, it can give two kinds of recommendations –
 1. That the misconduct is serious enough to **require removal from office**, or
 2. That it is not serious enough to warrant removal.
- In the first case of removal - the judge concerned will be urged to resign or seek voluntary retirement. If the judge is unwilling to quit, the Chief Justice of the High Court concerned would be asked to withdraw judicial work from him. The President and the Prime Minister will be informed about the situation.
- This is expected to clear the way for Parliament to begin the process of impeachment under the Judges

Inquiry Act, 1968. If the misconduct does not warrant removal, the judge would be advised accordingly.

REMOVAL PROCESS OF JUDGE OF HC/SC UNDER THE JUDGES INQUIRY ACT, 1968

- **Purpose of the Act** - The Act provides for the **procedure** to investigate **proof of misbehaviour or incapacity** of a judge of SC or HC and for the presentation of an address by Parliament to the President for his removal.
- **Investigation by a Committee** - A Committee shall be formed to investigate into misbehaviour or incapacity of a Judge if notice is given which is signed by: (a) Not less than 100 members in the House of the People or (b) Not less than 50 members in the Council of States -- for presenting an address to the President praying for the removal of a Judge.
- **Discretion of Speaker/Chairman** - after considering such materials. Speaker/Chairman may either **admit** the motion for removal or **refuse** to initiate removal process.
- **When Motion for Removal is Accepted** - Speaker/Chairman shall constitute an investigating committee to investigate the grounds on which the removal of any Judge has been prayed.
- **3 Members of Committee** - It shall comprise of 1 Judge from SC, 1 Chief Justice from HC and 1 Eminent Jurists.
- **Powers of Committee** - It shall have the powers of a civil court and can summon and enforce the attendance of any person and examining him on oath; Requiring the discovery and production of documents; Receiving evidence on oath and Examine witnesses or documents. On allegations of physical or mental incapacity, the Committee can arrange for a medical examination of the Judge by a Medical Board appointed by the Speaker or Chairman.
- **Report of Committee to be laid in both Houses of Parliament**
- **Report may find the Judge GUILTY or Not Guilty** - If found guilty, the judge shall be removed by a majority of the total membership of the House and by a majority of not less than two-thirds of the members of the House present and voting in both Houses of Parliament.

Important Facts

- The procedure to remove Supreme Court Judge was exercised for the first time in 1991 when 108 members of Ninth Lok Sabha submitted a notice to the Speaker of Lok Sabha for removal of Justice

Ramaswami of the Supreme Court.

- Justice Ramaswami was charged with financial irregularities while he was the Chief Justice of Punjab and Haryana High Court.
- An Enquiry Committee was formed under The Judges (Inquiry) Act, 1968. Before the committee could present its report, Lok Sabha was dissolved.
- In the case of *Sub-committee of Judicial Accountability v. Union of India*, the question arose whether dissolution of Lok Sabha puts an end to the motion for removal of the concerned Judge.
- Supreme Court held that motion for removal of a Judge under Article 124 (4) does not lapse with the dissolution of Lok Sabha.
- The report of the Committee was tabled in Parliament in December 1992 and was debated in Lok Sabha. A lawyer was also allowed to defend the case of Justice Ramaswamy.
- However, the motion to remove Justice Ramaswamy could not be passed by requisite majority due to absence of certain members of Parliament during the time of vote.

► 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 provide for additional quantum of pension or family pension for judges of High Courts and Supreme Court.

COMPENSATION OF SUPREME COURT JUDGE

- **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.
- **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

- **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.

- **Article 112** - Pensions payable to judges of High Court are charged on Consolidated Fund of India.
- **Article 202** - expenditure in respect of salaries and allowances of High Court Judges are charged on the Consolidated Fund of each State.

THE FOLLOWING EXPENDITURE SHALL BE EXPENDITURE CHARGED ON THE CONSOLIDATED FUND OF INDIA - ARTICLE 112(3)

- (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.

THE FOLLOWING EXPENDITURE SHALL BE EXPENDITURE CHARGED ON THE CONSOLIDATED FUND OF EACH STATE - ARTICLE 202(3)

- (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 include 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.

► RTI & HIGHER JUDICIARY

Supreme Court has held the office of Chief Justice of India is a public authority under Right to Information Act, 2005. However, while giving information under RTI, right to privacy and confidentiality needs to be balanced with serving larger public interest. In providing personal information, SC has asked the Information Commissioner to apply test of proportionality while entertaining applications seeking information from CJI's office.

Exemption from Disclosure of Personal Information under RTI – Section 8

- One of the grounds under Section 8(1)(j) pertains to disclosure of personal information:
 - (i) which has no relationship to any public activity or interest, or
 - (ii) which would cause unwarranted invasion of the privacy of the individual.
- The exemption provided under Section 8(1)(j) is a qualified exemption and not an absolute exemption.
- So, if the Information Officer is satisfied that the existence of the **“larger public interest”** justifies the disclosure of the personal information - the information must be disclosed.

IMPORTANT HIGHLIGHTS OF THE JUDGMENT

- **Supreme Court & High Courts are public authority** under Section 2(h) of RTI Act - by virtue of being established by the Constitution.
- **The office of CJI is not distinct from the Supreme Court** - as the Supreme Court is constituted by virtue of the Constitution and consists of judges, of which the Chief Justice is the head.
- **Need for Balance on disclosing personal information with larger public interest.**
- **Seeking private information must fulfill proportionality test** (Puttaswamy Judgment) - It will ensure that personal information sought is based on ‘pressing social need’ or ‘compelling requirement or in larger public interest (and not only for public amusement) to uphold democratic values.

- **Right to information should not be allowed to be used as a Tool of Surveillance** to scuttle effective functioning of judiciary.
- **Seeking personal information must not breach or violate judicial independence.**

INFORMATION DISCLOSED MUST BE IN PUBLIC INTEREST

- Information shall be disclosed under RTI subject to ‘public interest’ test. The ‘public interest’ test would include.
 - **‘motive and purpose’** of the seeker of information
 - **‘Judicial independence’** shall be one of the key factors to be applied but on case-to-case basis.
- Besides, public interest in disclosure of information should outweigh the possible ‘harm’ and injury to third party.
- Justice Ramana observed that the following non-exhaustive considerations need to be considered while assessing ‘public interest’ under Section 8 of the Act:
 - Nature and content of the information
 - Consequences of non-disclosure, dangers and benefits to public
 - Type of confidential obligation
 - Beliefs of the confidant; reasonable suspicion
 - Party to whom information is disclosed.
 - Manner in which information acquired.
 - Public and private interests
 - Freedom of expression and proportionality

ASPECT OF PRIVACY

There are certain factors which needs to be considered before concluding whether there was a **reasonable expectation of privacy** of the person concerned. These non-exhaustive factors are:

1. The nature of information.
2. Impact on private life.
3. Improper conduct.
4. Criminality
5. Place where the activity occurred, or the information was found.
6. Attributes of claimants such as being a public figure, a minor etc and their reputation.
7. Absence of consent.
8. Circumstances and purposes for which the information came into the hands of the publishers.
9. Effect on the claimant.
10. Intrusion's nature and purpose

DOCTRINE OF PROPORTIONALITY

- Information sought to be disclosed shall strike a balance between privacy and right to information.
- In this context, disclosure of judges' assets does not constitute personal information and cannot be exempted from RTI as judges enjoy a constitutional post and discharge public duty.

JUDICIAL APPOINTMENTS: DISTINCTION BETWEEN 'INPUT' AND 'OUTPUT'

- In the context of information relating to judicial appointments a distinction between "input" and "output" is to be made.
- While "output" is the final outcome of the collegium resolution, "input" relates to collegium deliberation.
- Thus, while information relating to 'output' may be disclosed, for information on 'input' especially collegiums deliberations, public interest test is to be applied.

SOME ISSUES WITH THE JUDGMENT

- **Public interest test** - What constitutes public interest is not defined clearly except a list given by the judges which is not exhaustive. This leaves scope for withholding of information citing that the disclosure of information does not pass the 'public interest' test.
- **Motive and Purpose** - Further according to Section 6(2) of the RTI Act, the motive of the seeker of information is not a relevant consideration while considering the application. However, the judgment provides 'motive' and 'purpose' as a factor in the 'public interest' test.
- **Doctrine of proportionality** - Currently RTI as applicable to any other authority is not subject to proportionality test between right to privacy and right to information. Thus, there is no reason in case of judiciary it shall be applied. Besides, other institutions may start demanding this principle be applied in their case also leading to overall dilution of the act itself.
- **Input-Output distinction** - As pointed out one of the main reasons for RTI to be applied for Judiciary is to seek information relating to collegiums deliberations. By categorizing it as 'input' and hence subjecting it to 'public interest' leaves scope for withholding of information.

► JUDICIAL STANDARDS & ACCOUNTABILITY BILL, 2010

The 2010 Bill provided a mechanism for enquiring into complaints against the Judges of the Supreme Court and High Courts; laid down judicial standards and required the

Judges of the Supreme Court and High Courts to declare their assets and liabilities. It also created a mechanism to allow any person to complain against judges on grounds of misbehavior or incapacity.

- The Bill seeks to repeal the Judges (Inquiry) Act, as it did not contain the mechanism for dealing with the complaints filed by the public against the Judges.
- The Bill established the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an investigation committee.
- Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- Judges will be required to declare their assets and liabilities, and that of their spouse and children.
- The Bill sought to:
 - Create enforceable standards for the conduct of judges of High Courts and the Supreme Court.
 - Change the existing mechanism for investigation into allegations of misbehavior or incapacity of judges of High Courts and the Supreme Court
 - Change the process of removal of judges.
 - Enable minor disciplinary measures to be taken against judges, and
 - Require the declaration of assets of judges.

► MEASURES OF JUDICIAL INDEPENDENCE IN CONSTITUTES

CONSTITUTIONAL 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.
- **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.

OTHER PROVISION TO ENSURE JUDICIAL INDEPENDENCE

- **PENSIONS** - Payable to Judges of HC & SC are charged upon the Consolidated Fund of India and hence not subject to vote.
- **RECUSAL** - In case of conflict of interest while deciding any case, a Judge can withdraw themselves from the hearing to ensure impartiality.

REMOVAL - 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.

C. STEPS TOWARDS ELECTRONICALLY FRIENDLY JUDICIARY

► LIVESTREAMING OF CONSTITUTION BENCH CASES

In *Swapnil Tripathi v Supreme Court*, full court meeting of Supreme Court decided to live-stream all Constitution Bench proceedings of Supreme Court from September 27, 2022.

SWAPNIL TRIPATHI V SUPREME COURT (2018)

- SC accepted in principle the idea of live-streaming cases of public importance.
- Live streaming would "virtually" expand the court beyond the four walls of the courtroom.
- Appropriate Rules to be framed under Article 145 of the Constitution of India.
- SC observed - "Sunlight is the best disinfectant", live streaming of court proceedings will effectuate the "public right to know" and bring in more transparency in judicial proceedings.

CERTAIN PROHIBITIONS ON LIVE STREAM

Cases falling under the following categories shall be excluded as a class from live streaming:

- Matrimonial matters

- Matters involving interests of juveniles or protection and safety of the private life of the young offenders.
- Matters of National security
- To ensure that victims, witnesses or defendants can depose truthfully and without any fear.
- Special protection must be given to vulnerable or intimidated witnesses. It may provide for face distortion of the witness if she/he consents to the broadcast anonymously.
- To protect confidential or sensitive information, including all matters relating to sexual assault and rape
- Matters where publicity would be antithetical to the administration of justice, and
- Cases which may provoke sentiments and arouse passion and provoke enmity among communities.

MANNER OF LIVE-STREAMING

- Live-streamed and archived videos of the broadcast shall be made available on the official website of the Supreme Court.
- The recorded PART E broadcast of each day shall be made available as archives on the official website of the Supreme Court by the end of the day.
- Live streaming shall commence as soon as the judges arrive in the courtroom and shall continue till the Bench rises.

- The presiding judge of the courtroom shall be provided with an appropriate device for directing the technical team to stop live-streaming if the Bench deems it necessary in the interest of administration of justice.
- Live streaming of the proceedings should be carried out with a delay of two minutes.
- Proceedings shall only be live streamed during working hours of the court.
- Courtroom proceedings will continue to be live-streamed unless the presiding judge orders the recording to be paused or suspended.
- To give full effect to the process of live-streaming, advocates addressing the Bench, and judges addressing the Bar, must use microphones, while addressing the Court.
- Recording of courtroom proceedings shall be done by the Registry with the technical support of National Informatics Centre or any other public/PART E private agency authorised by the Supreme Court or the Ministry of Information and Technology; and
- The portions of proceedings which are not broadcast online, on the direction of the presiding judge of the Bench shall not be made part of the official records and shall be placed separately as 'confidential records'.

► LIVE TRANSCRIPTION OF COURT PROCEEDINGS USING AI

- Supreme Court has introduced live transcription of court proceedings on an experimental basis by employing Artificial Intelligence (AI) and high-tech tools on an experimental basis in the ongoing case of Maharashtra crisis (Uddhav Thackrey and Eknath Shinde).
- The live transcription of court proceedings will be displayed on a tv screen placed in the Chief Justice's Court facing the lawyers.
- Justice PS Narasimha said, "*This court will then be truly a court of record. Every word, every argument will be recorded and will be there for all times to come.*"
- The latest endeavour adds to a long list of technological reforms, including live-streaming, digitisation of court records, online RTI portal, digital courts desktop application, e-filing and online appearance slip for lawyers, driven by justice Chandrachud, who is also chairman of the e-Committee.

► 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.

At present we are in the Phase -II of the e-Courts

Mission Mode Project and the following works have been completed on this account:

1. District Court at Bihar Sharif and Sub-divisional Court at Hilsa has been fully computerised and working on CIS system with complete infrastructural setup.
2. Laptops and printers have been provided to all Judicial Officers with training on their usage on Ubuntu (Linux) Operating System.
3. All cases are listed in CIS and regularly updated on National Judicial Data Grid (NJDG).
4. KIOSK machine is installed at District Court at Bihar Sharif to facilitate the Advocates and public for information of the cases.
5. NSTEP is implemented and functional in District & Subdivision Court of Nalanda Judgeship.
6. Inter-Operable Criminal Justice System (ICJS) is functional in District & Subdivision Court of Nalanda Judgeship.

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

► NSTEP

- NSTEP is a centralised process service tracking application comprising of a web application and a complementary mobile app designed to streamline the process.
- NSTEP Mobile App provided to bailiffs and process servers enable transparent tracking of service of notices and summons in real-time.
- Once the process is adopted through CIS software by the respective courts, it will become available on the NSTEP web application in the electronic format.

- NSTEP web application enables allocation of published processes to bailiffs if service is to be affected within their jurisdiction. It also facilitates allocation of published processes to respective court establishments inter-district or inter-state.
- The Bailiffs can capture GPS location, photo of the receiver or premises [where none is available to be served, the signature of the receiver and on the spot recordal of reasons for service not being affected.
- The data captured is instantly communicated to the central NSTEP application. From NSTEP web application data is then sent forward to CIS enabling courts to track the status of service.
- NSTEP thus accomplishes the following significant goals: –
 - Enables serving of Notice/Summons in electronic form.
 - Posting and recordal of real time updates from remote locations reducing inordinate delays in process service
 - Time required for serving Inter-district or Inter-state process by Post is drastically reduced by serving it in electronic form.
 - Transparent tracking of service of process and summons by all stakeholders
 - GPS connectivity with Bhuvan Maps (India's geo-platform developed by ISRO)

► NATIONAL JUDICIAL DATA GRID

- National Judicial Data Grid (NJDG) is a database of orders, judgments and case details of 18,735 District & Subordinate Courts and High Courts created as an online platform under the eCourts Project.
- Data is updated on a near real-time basis by the connected District and Taluka courts. It provides data relating to judicial proceedings/decisions of all computerized district and subordinate courts of the country.
- All High Courts have also joined the National Judicial Data Grid (NJDG) through web services, providing easy access facility to the litigant public.
- NJDG works as a monitoring tool to identify, manage & reduce pendency of cases. It helps to provide timely inputs for making policy decisions to reduce delays in disposing of cases and helps in reducing case pendency.
- It also facilitates better monitoring of court performance and systemic bottlenecks, and, thus,

serves as an efficient resource management tool. To track cases related to land disputes, Land Records data of 26 States have been linked with NJDG.

► 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.
- ePrisons Application Suite, developed by National Informatics Centre (NIC), is cloud-based product designed with easy-to-use GUI and embedded with comprehensive security features. It can be easily adopted by any State Prisons Department with minimum customization efforts since all the possible customization features are parameterized and can be configured by the users.

WHAT IS 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

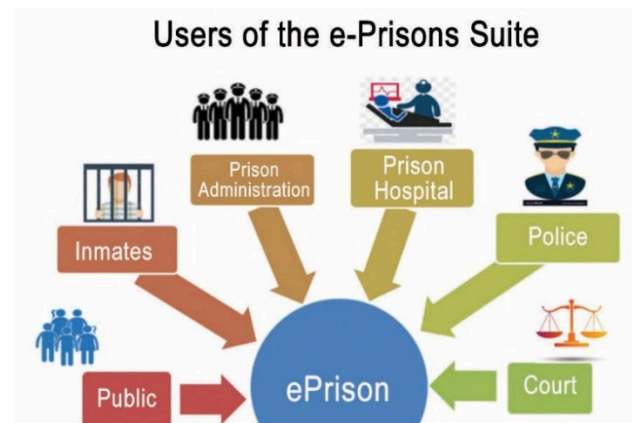
- The e-Prisons Project of Ministry of Home Affairs aims at computerization of the functioning of prisons in the country including digitisation and availability of prisoner's data (convicts, under-trials, detainees etc.) in an electric platform which will be accessible to designated authorities of central 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. The major modules of e-Prisons MIS are:

- Prisoner Information Management System (PIMS).
- Visitor Management System (e-Visitor).
- Hospital Management System (e-Hospital).
- Legal Aid Management System.
- Inventory Management System.
- Prison Management System (PMS).
- Police Intelligence System.
- Court Monitoring; and
- Kiosk Information.
- **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.
 - This portal also provides inmate tracking facilities in a secured way to various investigating agencies.
- **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 on boarding.



► 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.

► 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.
- It 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.

D. OTHER ISSUES RELATED TO INDIAN JUDICIARY

► BAR COUNCIL ALLOWS RESTRICTED ENTRY OF FOREIGN LAWYERS

- Bar Council of India (BCI) has decided to permit foreign lawyers and law firms to practice foreign law

in India on reciprocity basis along with certain restrictions.

- BCI has released **The Bar Council of India Rules For Registration and Regulation of Foreign Lawyers and Foreign Law Firms in India, 2022**, to facilitate the registration and practice of international lawyers in India.

Important Highlights of BCI Rules

- Foreign lawyer or law firm shall not be entitled to practice law in India without registration with the BCI.

- Foreign lawyers or foreign law firms shall not be permitted to appear before any courts, tribunals or other statutory or regulatory authorities.
- They shall be allowed to practice on transactional work /corporate work such as joint ventures, mergers and acquisitions, intellectual property matters, appearing in international arbitration cases, drafting of contracts and other related matters on reciprocal basis.
- They are also allowed to provide legal expertise/advise and appearing as a lawyer for a person, firm, company, corporation, trust, society etc. who/which is having an address or principal office or head office in a foreign country in any international arbitration case which is conducted in India and in such arbitration case “foreign law may or may not be involved
- Any Advocate enrolled with any State Bar Council in India and is a partner or Associate in any Foreign Law Firm registered in India.
 - can accept only the non-litigious matters and
 - can advise on issues relating to countries other than the Indian Laws only.
 - Such Lawyer shall have no advantage right of his being an Advocate enrolled in India.
- Foreign Law Firm or Individual Lawyers needs to register themselves with the BCI.
- BCI may also refuse to register any foreign lawyer or law firm if “in the opinion of the Council, the number of Foreign Lawyers or Foreign Law Firms of any particular Foreign country registered in India is likely to become disproportionate to the number of Indian Lawyers or Indian Law Firms registered or allowed to practice law in the corresponding foreign country.

► **NATIONAL MISSION FOR JUSTICE DELIVERY AND LEGAL REFORMS**

- **National Mission for Justice Delivery and Legal Reforms** was set up in 2011 with the twin objectives of
 - increasing access by reducing delays and arrears in the system and
 - enhancing accountability through structural changes and by setting performance standards and capacities.
- **The Mission has been pursuing a coordinated approach for phased liquidation of arrears and**

pendency in judicial administration, which involves better infrastructure for courts including.

- Computerization
- increase in strength of subordinate judiciary,
- policy and legislative measures in the areas prone to excessive litigation
- re-engineering of court procedure for quick disposal of cases and
- emphasis on human resource development.
- **It is chaired by Union Minister of Law and Justice.**
- **The major steps taken under various initiatives are as follows:**
 - 1. Improving infrastructure for Judicial Officers of District and Subordinate Courts**
 - 2. Leveraging Information and Communication Technology (ICT)** for improved justice delivery
 - 3. Filling up of vacant positions** in Supreme Court, High Courts and District and Subordinate Courts
 - 4. Reduction in Pendency through / follow up by Arrears Committees** - Arrears Committees have been set up in Supreme Court, High Courts, under District Judges to clear cases pending for more than five years.
 - 5. Emphasis on Alternate Dispute Resolution (ADR)**
 - 6. Initiatives to Fast Track Special Type of Cases** - The Fourteenth Finance Commission endorsed the proposal of the Government to strengthen the judicial system in States which included, inter-alia, establishing Fast Track Courts for cases of heinous crimes; cases involving senior citizens, women, children etc., and urged the State Governments to use the additional fiscal space provided in the form of enhanced tax devolution from 32% to 42% to meet such requirements.

► **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.

► VACATION BENCH OF SUPREME COURT

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

- **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.

► 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 - "Strategy for India@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.

► 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.**
- 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 in 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.

► ALTERNATE DISPUTE RESOLUTION

- Prior to CPC section 89, there was no provision which insisted the mandatory referral of the pending dispute to any form of ADR in India.
- Legal Services Authorities Act has given the powers to the parties to approach Lok Adalat for the disposal of the dispute. Based on the parties' request, the trial court can refer to the pending dispute to Lok Adalat.

Mechanisms of ADR in India under section 89 of CPC

1. Arbitration

2. Conciliation
3. Judicial settlement through Lok Adalat
4. Mediation

CHALLENGES TO ADOPTION OF ADR MECHANISMS

- Lack of knowledge about ADR mechanisms among litigants because of lack of creating awareness among litigants through judges and advocates. Advocates still do not promote this mechanism effectively to clients further creates lack of willingness among the litigants to pursue the case through this mechanism.
- Most advocates are not well trained about these mechanisms. There is lack of expertise among them about ADR route.
- Judicial attitudes of interference dilute finality of ADR.
- ADR mechanisms induce compromise and do not lead to justice. For ex. Mandatory conciliation in Sexual Harassment at workplace cases leads to additional pressures on victim of harassment.

ARBITRATION

- Arbitration is like a court procedure because the parties submit evidence similar to a trial where the third party hear the entire situation and give his decision which is binding upon the parties.
- In the process of arbitration, the cause is heard and determined between the parties in a dispute before the person selected by the parties or appointed under statutory authority i.e., The Arbitration and Conciliation Act, 1996.
- The objective of Arbitration is to settle the dispute which arose between the parties by one or more arbitrators appointed by them by going through the documents and evidence.
- The arbitrator or arbitral tribunal consists of a neutral person or persons responsible for resolving the dispute that the parties have submitted before them.
- Arbitration can be done by voluntary or compulsory method.
- **In Voluntary arbitration**, if a dispute arose between the two Parties and they are unable to resolve their differences by themselves, thereby the parties agreeing to present their Dispute to the fair authority and the decision will be binding upon both parties.
- **In Compulsory arbitration**, parties are required to accept arbitration without any willingness on their part.

CONCILIATION	MEDIATION
<ul style="list-style-type: none"> • Conciliator can formulate or re-formulate the terms of a possible settlement if he feels there exists elements of a settlement. • The 'Conciliator' under the <u>Arbitration and Conciliation Act</u>, apart from assisting the parties to reach a settlement, is also permitted to make "proposals for a settlement" and "formulate the terms of a possible settlement" or "reformulate the terms." 	<ul style="list-style-type: none"> • The Mediator, in contrast to the arbitrator or judge, has no power to impose an outcome on disputing parties. • The mediator has no authority to make any decisions that are binding on them, but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication.

• *If the role of the 'Conciliator' in India is pro-active and interventionist, the role of the 'Mediator' must necessarily be restricted to that of a 'facilitator.'*

► **ARBITRATION IN INDIA**

CHALLENGES TO ARBITRATION IN INDIA

- Litigation in courts in India is a time-consuming and expensive exercise. Commercial disputes have remained pending for years.
- Effective arbitration regime is prerequisite to attract and sustain foreign investment as foreign investors require a stable business environment and a strong commitment to rule of law.
- Issues with arbitration in India:
 - High costs and delays, making it no better than litigation.
 - Even after the Arbitration award, courts tend to intervene which compromises the finality of arbitration award.
 - Institutional arbitration has been slow to take off in India. This due to
 - lack of credible arbitral institutions

- misconceptions relating to institutional arbitration.
- lack of governmental support for institutional arbitration
- Judicial attitudes towards arbitration in general
- Despite the enactment of New Delhi International Arbitration Centre Act, the implementation of this has been slow.
 - Indian commercial disputes are often taken by MNCs in foreign jurisdictions.
 - Most e arbitration in India is ad-hoc.

SUGGESTIONS FOR MAINSTREAMING ARBITRATION

Law Commission of India and B N Srikrishna Committee have made far reaching suggestions for strengthening of Arbitration in India and Promotion of Institutional Arbitration.

1. Better facilities, infrastructure and expertise in Arbitral institutions.
2. An ecosystem needs to be created which professionalizes arbitrators in India. Exceptional foreign arbitrators should be welcome in India.
3. Accreditation of arbitrators should be done.
4. Creation of specialist arbitration bar and bench.
5. Empanelment of arbitrators must be based on domain knowledge and expertise in a particular trade / industry.
6. Inclusion of non-lawyers with technical knowledge in various sectors rather than including only retired judges and lawyers.
7. Government must give a big push to institutional arbitration by requiring disputes arising out of government contracts to be resolved by arbitration administered by an arbitral institution.
8. **Changes in arbitration culture:** Training and awareness programs relating to arbitration law and practice through bodies. Additionally, costs must be imposed on parties who delay the progress of arbitral proceedings.
9. NDIAC should be made operational at the earliest.

► **ARBITRATION AND CONCILIATION (AMENDMENT) ACT 2021**

SALIENT FEATURES

1. **Accreditation of Arbitrators:** Earlier there were

elaborate qualifications, eligibility criteria and norms for accreditation of arbitrators. The 8th Schedule of the act provided for exhaustive list of qualifications that an arbitrator needs to possess. The 2021 Act deleted the 8th schedule of primary act.

Impact

- Parties are free to appoint arbitrators regardless of their qualifications.
- This will attract eminent international arbitrators to India and further the goal of making India a hub of international arbitration.
- Give greater flexibility to the Arbitration Council of India and promote institutional arbitration.

2) Automatic stay on awards: The 2021 Amendment has introduced a material change by adding a proviso under section 36(3) to ensure that if courts are prima facie satisfied by the case made out of either (i) the arbitration agreement or contract, which is the basis of the award; or (ii) the making of the award, was induced or affected by fraud or corruption. It shall stay the award unconditionally pending disposal of the challenge.

Earlier in the earlier system, an automatic stay would not be granted on the award's operation by merely filing an application for setting it aside.

Impact

- Unconditional stay amounts to a blanket stay, which will hurdle India's efforts towards a pro-arbitration regime. It becomes easy for losing party to allege corruption and automatic stay on the arbitral award's enforcement.
- This may defeat the very purpose of ADR by drawing parties to courts and making it prone to litigation.
- This amendment does not describe either fraud or corruption, creating an ambiguous situation where defendant parties may suffer heat of litigation even if they are correct.
- The amendment has a retrospective effect which will cause issues for already settled cases.

► DRAFT MEDIATION BILL, 2021

Mediation as an Alternate Dispute Redressal mechanism offers an informal, simple, non-adversarial approach to resolve several types of disputes including civil,

commercial and family disputes etc., where parties are not being able to start any negotiation and reach settlement on their own.

Need for Mediation Act

1. Mediation for resolving disputes has gained popularity worldwide over last few decades amongst individuals, corporates and governments.
2. A robust and effective mediation results in better resolution as it
 - a. fosters collaborative problem solving.
 - b. reduces burden on the courts.
 - c. Mediation is cost and time effective.
 - d. Preserves relationships amongst disputants.
 - e. Enhances ease of doing business and improves India's attractiveness for FDI.
3. India has a long history of consensual dispute resolution and has made rapid advances in the use of structured mediation, especially in the court annexed mediation schemes of SC, HC and subordinate courts.
4. Enacting legislation is required to give mediation settlements the status of an order, judgement and decree.

The act aims to:

- a. Promote, encourage and facilitate mediation, especially institutional mediation for resolution of commercial disputes.
- b. Enforce domestic and international mediation settlement agreements.
- c. Provide a body for registration of mediators.
- d. Encourage community mediation.
- e. Make online mediation as an acceptable and cost-effective process.

► 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 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 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

- 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 Central Authority.
- 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 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

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 High Court.
- 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 activities of the Taluk Legal Services Committee and other legal services in the District
 - 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
 - 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.
- Taluk Legal Services Committee may perform all or any of the following functions, namely.
 - co-ordinate activities of legal services in the taluk
 - organize Lok Adalats within the taluk.
 - perform other functions assigned by District Authority

► LOK ADALATS

- **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. E.g., *State of Karnataka vs XYZD*. Under a Non-Compoundable offense, full trial is held which ends with the trial 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.
- 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.**

► 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 cannot 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 parts 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

	<p>both provisions in a harmonious manner.</p> <ul style="list-style-type: none"> • Harmonising different laws or provisions should not render either provision or law useless.
<p>Doctrine of Basic Structure</p>	<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 Parliament or Executive. • 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>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 resources. • 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)

7

SECTION

LEGISLATURE
& EXECUTIVE► **PARLIAMENTARY SOVEREIGNTY VS CONSTITUTIONAL SOVEREIGNTY**

Vice-President by questioning the legality of Kesavananda Bharati judgment and NJAC verdict has opened Pandora's Box on the issue of parliamentary sovereignty vis-à-vis the power of judiciary to review the amending powers of Parliament under Article 368. Let's analyse the statement of the Vice-President and then the concept of judicial independence and parliamentary sovereignty practised in Britain.

In his address, the Vice President presented the case that India should be a Parliamentary Sovereignty and not a constitutional sovereignty. He highlighted the case of the overturn of NJAC. To argue for the need for Parliamentary sovereignty, he highlighted the following points:

- **In a democracy, the will of the people should reign supreme and hence, Parliamentary sovereignty is inviolable.**
- **Constituent Power of Parliament under Article 368 is unqualified and supreme, not amenable to executive attention or judicial intervention.**
- **Amendment Power of Parliament Strengthened Democracy. Ex.** providing a comprehensive mechanism for Panchayati Raj, Municipalities and Co-operative Societies.
- **Supreme Court Declaring NJAC Act as Unconstitutional, and this diluted Parliamentary Sovereignty.**

This has led to a discussion between parliamentary and constitutional sovereignty and what is right for India. The United Kingdom has parliamentary sovereignty in practice and hence, we must understand the difference between the two systems.

COMPARISON BETWEEN PARLIAMENTARY & CONSTITUTIONAL SOVEREIGNTY

	Parliamentary Sovereignty	Constitutional Sovereignty
1.	The constitution is (or largely) unwritten and is flexible.	The constitution is written and strict.

2	There is no difference between constitutional law and common law.	There is a difference between constitutional law and common law.
3	No higher power may consider legislation approved by parliament to be unlawful or invalid.	The dominance of the constitution should indeed be supported by explicit or implicit provisions of the constitution.
4	Courts have no jurisdiction to declare an Act of Parliament void, <i>ultra vires</i> or unconstitutional.	There is some constitutional authority to oversee the legitimacy or criminality of parliamentary acts.
5.	Practised in the United Kingdom	Practised in India

Basic Structure Doctrine: This doctrine has clarified India's position of being a constitutional sovereignty as was expounded in the landmark judgment of the *Kesavananda Bharati Case* according to which the Basic Structure of the Constitution cannot be altered or amended by Parliament or the Executive. Basic Structure is not an exclusive list, and things can be added by Judiciary in future in list of Basic Structure.

ELEMENTS OF BASIC STRUCTURE

- 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 a welfare state contained in the DPSP.
- Sovereignty and unity and integrity of the nation.
- Essential features of individual freedoms.
- Judicial review (Minerva Mills Judgment).
- Secularism (S R Bommai Case).

► 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 is it 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 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 regarding 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 in the Central Hall of Parliament.

► 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 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 based on 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 based on the report.
- **Fresh Investigation** - The government may decide to launch fresh investigations based on 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 based on 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.

► DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEES

There are 24 Departmentally Related Standing Committees covering under their jurisdiction all the Ministries/ Departments of the Government of India. These Committees

have played an important role in not only making the executive accountable but also providing meaningful assistance to the executive through their comprehensive reports on important issues. Let us investigate the constitution, composition, functions and challenges in its functioning.

EXAMPLES - REPORT OF DRPSC

- **PERSONNEL, PUBLIC GRIEVANCES, LAW AND JUSTICE:** identified the shortcomings and suggested measures to facilitate effective and efficient redressal of public grievances. Suggested to forward grievances to state governments received on CPGRAMS.
- Various Bills such as **MEDIATION BILL 2021, WILDLIFE PROTECTION AMENDMENT BILL and ANTI DOPING BILL** have also been referred to respective DRPSCs.
- In its Report on **ELECTRIC & HYBRID MOBILITY - PROSPECTS AND CHALLENGES IN AUTOMOBILE INDUSTRY:** Committee considered suggestions from industry and stakeholders - SIAM, ACMA, Automobile companies etc. - suggested to scale up transition process to electric mobility.
- **COMPREHENSIVE AMENDMENT OF CRIMINAL LAWS** - Initiated by the DRPSC on Home Affairs based.

COMPOSITION

- In **1989**, in fact, 3 Standing Committees were constituted which dealt with Agriculture, Science and Technology and Environment and Forests.
- These Subject Committees were to examine the activities of the concerned Ministries/Departments and to report as to what economies, improvements in organisation, efficiency or administrative reforms consistent with the policy approved by Parliament might be affected. Apart from other functions, these Committees were to examine the Annual Reports and Plan Projects/activities of the concerned Ministries.
- In **1993**, it was finally decided to set up 17 Department-related Parliamentary Standing Committees each consisting of 15 members of Rajya Sabha and 30 from Lok Sabha to cover various Ministries/Departments of the Union Government to further strengthen the accountability of the Government to Parliament.
- With the addition of 7 more Committees in July 2004, the number of Department-related Parliamentary Standing Committees was raised to 24 but with reduced membership of **10 members from Rajya Sabha and 21 members from Lok Sabha.**

JURISDICTION

- Of the total Department-related Parliamentary Standing Committees, 8 were placed within the jurisdiction of the Chairman, Rajya Sabha and 16 within the jurisdiction of the Speaker, Lok Sabha.
- The Chairmen of the first 8 Committees are appointed by Chairman, Rajya Sabha and the remaining 16 by the Speaker of Lok Sabha.

- **Rules 268 to 277 of the Rules of Procedure and Conduct of Business in the Conduct of States** and **Rules 331 C to 331 N of the Rules of Procedure and Conduct of Business in Lok Sabha** govern the Constitution and functioning of these Committees.

DRPSC WHICH COMES UNDER THE PURVIEW OF CHAIRMAN - RAJYA SABHA	DRPSC WHICH COMES UNDER THE PURVIEW OF SPEAKER - LOK SABHA
<ol style="list-style-type: none"> 1. Committee on Commerce 2. Committee on Home Affairs 3. Committee on Human Resource Development 4. Committee on Industry 5. Committee on Science & Technology, Environment & Forest 6. Committee on Transport, Tourism and Culture 7. Committee on Personnel, Public Grievances, Law and Justice 8. Committee on Health and Family Welfare <p>DRPSC which comes under the purview of SPEAKER - LOK SABHA</p>	<ol style="list-style-type: none"> 9 Committee on Agriculture 10 Committee on Information Technology 11 Committee on Defence 12 Committee on Energy 13 Committee on External Affairs 14 Committee on Finance 15 Committee on Food, Consumer Affairs and Public Distribution 16 Committee on Labour 17 Committee on Petroleum & Natural Gas 18 Committee on Railways 19 Committee on Urban Development 20 Committee on Water Resources 21 Committee on Chemicals and Fertilizers 22 Committee on Rural Development 23 Committee on Coal and Steel 24 Committee on Social Justice & Empowerment

DRPSC MAKES THE EXECUTIVE MORE ACCOUNTABLE BY

- (a) **Considering the demands for grants** of the related Ministries/ Departments and report thereon. The report shall not suggest anything of the nature of cut motions.
- (b) **Examining Bills** pertaining to the related Ministries/ Departments, referred to the Committee by the Chairman or the Speaker, as the case may be, and report thereon.
- (c) **Considering Annual Reports** of the Ministries/Departments and report thereon; and
- (d) **Considering National Basic Long Term Policy Documents** presented to the Houses, if referred to the Committee by the Chairman or the Speaker and report on such policy documents.

IMPORTANT FACTS

- **The Standing Committees do not consider the matters of day-to-day administration** of the concerned Ministries/Departments. These Committees also do not generally consider the matters which are under consideration by other Parliamentary Committees.
- **A Minister is not nominated as a member of the Committee.** If a member, after his/her nomination to the Committee, is appointed a Minister, he/she ceases to be a member of the Committee from the date of such appointment.

► **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 have 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 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.

► 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.
 - o She/he voluntarily relinquishes his membership of such political party or
 - o 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 limited the size of council of minister.
- Constitution 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)** - 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)** - 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.

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

A 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.
- **Example** - Motion of thanks of President addressed by Prime Minister, Motion of Adjournment, Motion of No-confidence, Motion for removal of Speaker/Deputy Speaker.

A 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.

A 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 recommittal of Bill to a Committee.
- Amendments seek to modify or substitute only a part of the original motion. It is moved during 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 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)

- 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.
- 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.
- Speaker after 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.

A 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 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.

2. 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 purposes are other examples of such committees.

► OTHER COMMITTEES OF PARLIAMENT

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.
- Scrutinises 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 is 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.

► APPROPRIATION BILL, FINANCE BILLS AND MONEY BILL

During a debate in the Rajya Sabha, the finance minister provided a response regarding two Appropriation Bills that pertained to the additional expenditures incurred by the government in the financial years of 2021-22 and 2018-19. These Bills had already been approved by the Lok Sabha but were sent back to the Upper House after the Finance Minister's reply.

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 reflects 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 reflects 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:

- (a) Imposition, abolition, remission, alteration or regulation of any tax
- (b) Regulation of borrowing by the government.
- (c) Custody of **Consolidated Fund** or **Contingency Fund** of India, and payments into or withdrawals from these Funds
- (d) Appropriation of moneys out of the Consolidated Fund of India.
- (e) Declaring of any expenditure to be expenditure charged on the Consolidated Fund of India or the increasing of the amount of any such expenditure
- (f) 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.

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.

APPROPRIATION BILL

- **Article 110** defines **Money Bill** and **Article 110(1)(d) says** - a Bill shall be deemed to be a Money Bill if it contains only provisions dealing with - the appropriation of moneys out of the Consolidated Fund of India.
- Thus, appropriation Bill is a Money Bill and Rajya Sabha has only recommendatory power and it is not mandatory upon Lok Sabha to accept such recommendations provided by Rajya Sabha.
- According to **Article 114**, any appropriation of money from the Consolidated Fund of India can only be done with the approval of the Parliament.
- **Article 114 - A Bill shall be introduced in the Lok Sabha for the appropriation out of the Consolidated Fund of India of all moneys required to meet -**
 - (a) the grants so made by the House of the People
 - (b) the expenditure charged on the Consolidated Fund of India but not exceeding in any case the amount shown in the statement previously laid before Parliament.
- No money can be withdrawn from the CFI except under an Appropriation Act passed by Parliament.
- The amount withdrawn is used to meet the expense of the current financial year.

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

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.
 - **Article 123** empowers the President to promulgate such ordinances as the circumstances appear to him to require when –
 - (i) both Houses of Parliament are not in session
 - (ii) she/he is satisfied that circumstances exist which render it necessary for him to take immediate action.
 - An Ordinance promulgated shall have the same force and effect as an Act of Parliament.
 - However, the ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
 - An Ordinance may be withdrawn at any time by the President.
 - **Constitution 38th Amendment (1975)** – added Article 123(4) and made satisfaction of the President to issue an ordinance non-justiciable or beyond judicial review. Despite this, Supreme Court in State of *Rajasthan v Union of India* suggested that Presidential Satisfaction under Article 123(1) could still be questioned on the ground of mala fides or action taken in bad faith.
- **Constitution 44th Amendment (1976) – Deleted Article 123(4)** and restored the status quo ante. On the question of judicial review of Presidential satisfaction, Supreme Court in *A.K. Roy v Union of India* did observe that **judicial review is not totally excluded in regard to the question relating to the President's satisfaction.**

LIMITATIONS ON USE OF ORDINANCE

- Under the Constitution, limitations exist with regard to the Ordinance making power of the executive:

- **Legislature is not in session:** The President can only promulgate an Ordinance when either of the two Houses of Parliament is not in session.
- **Immediate action is required:** The President cannot promulgate an Ordinance unless he is satisfied that there are circumstances that require taking 'immediate action.'
- **Parliamentary approval during session:** Ordinances must be approved by Parliament within six weeks of reassembling, or they shall cease to operate. They will also cease to operate if resolutions disapproving the Ordinance are passed by both the Houses.
- An appropriation from out of Consolidated Fund cannot be made by an ordinance – Article 114(3).
- Ordinance can be made on entries under Union List (List I) & Concurrent List (List III) under Seventh Schedule but not on State List (List II). Ordinance can be made under Article 123 on List II only when proclamation of emergency is in operation.
- Like any other law made by Parliament, an ordinance is also subject to fundamental rights.

An ordinance comes to an end in the following situations:

- Resolution disapproving the ordinance are passed by both Houses of Parliament
- If the ordinance is not replaced by an Act within the stipulated period (maximum of 6 months + 1.5 months)
- If the executive lets it lapse without bringing it before the Houses of Parliament
- If it is withdrawn by the government at any time

Re-promulgation of Ordinance

- **Generally, the life of an ordinance ends after 7.5 months.** However, in the past, government in order to extend the life of an ordinance ended up re-issuing it repeatedly.
- **DC Wadhwa vs. State of Bihar, 1987:**
 - Ordinance is to be used in exceptional circumstances and not as substitute of law making.
 - Executive Cannot Usurp Legislature's Role as this would subvert democratic process.
 - Amounts to colourable legislation.
 - Re-promulgation Fraud on the Constitution

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:

- Amendment requiring **simple majority** for their passage in each House.
- Amendment requiring **special majority** for their passage in each House.
- 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**.

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)

ENTRENCHED PROVISION 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.

► NOMINATED MEMBERS OF RAJYA SABHA

Article 80 of the Indian Constitution provides for the composition of Council of State. Twelve members are to be nominated by the President having special knowledge or practical experience in the field of Literature, science, art and social service and not more than 238 representatives of States and UTs are to be elected by the elected members of Legislative Assembly of State in accordance with system of proportional representation by means of single transferable vote.

*Accordingly, President has nominated 4 new members to Rajya Sabha namely musician **Ilaiyaraaja**, track-and-field icon **PT Usha**, Telugu screenwriter **V Vijayendra Prasad**, and philanthropist and spiritual leader **Veerendra Heggade**. They are from the four southern states of Tamil Nadu, Kerala, Andhra Pradesh, and Karnataka.*

Rajya Sabha

- Rajya Sabha should consist of not more than 250 members - 238 members representing States and UTs, and 12 members nominated by President.
- Rajya Sabha is a permanent body and is not subject to dissolution. However, one third of members retire every second year, and are replaced by newly elected members. Each member is elected for a term of six years.
- Vice President of India is ex-officio Chairman of Rajya Sabha. House also elects a Deputy Chairman from among its members.
- There is also a panel of "Vice Chairmen" in Rajya Sabha. The senior most minister, who is a member of Rajya Sabha, is appointed by the Prime Minister as Leader of the House.

ABOUT NOMINATED MEMBERS OF RAJYA SABHA

- Conditions of Appointment:** Should be a citizen of India above 30 years of age & possessing such other qualifications as may be prescribed by law of Parliament.
- Enjoy all powers, privileges and immunities available to any elected members of Parliament.
- Can take part in proceedings of the House in a normal manner.
- While the nominated members of Rajya Sabha have a right to vote in the election of the Vice-President of India, they are not entitled to vote in the election of the President of India.
- They can participate in the impeachment process of the President.
- A nominated member of a House shall be disqualified for being a member of the House if he joins any political party after the expiry of six months from the date on which he takes his seat after complying with the requirements of **Article 99**.
- A nominated member has also been exempted from filing his assets and liabilities** under **Section 75A of the Representation of the Peoples Act, 1951** which requires the elected member to do so within 90 days of his making or subscribing oath/affirmation.
- Under Rule 3** of the Members of **Rajya Sabha (Declaration of Assets and Liabilities) Rules, 2004**, only elected members of the council are liable to furnish the declaration of their assets and liabilities, and assets of their spouse and dependent children.
- American Senate has no nominated members; all its members are elected.**

- **First woman nominated member of Rajya Sabha was Rukmini Devi Arundale (1952-56 & 1956-62).**

BENEFITS OF HAVING NOMINATED MEMBERS	CONCERNS FOR HAVING NOMINATED MEMBERS
<ul style="list-style-type: none"> • Rationale of having nominated members is to provide eminent persons a place in Rajya Sabha without going through the process of election. • Such eminent personalities provide insights and their constructive feedback on several issues improves quality of debates and helps to fine tune certain legislations from their area of expertise. 	<ul style="list-style-type: none"> • Politicisation of Nominated Route to Rajya Sabha - E.g.: Former Chief Justice of India becoming member of Rajya Sabha. • Lack of participation and poor attendance of such nominated members further defeats the purpose of nomination. • Prioritising personal work over sessions of Rajya Sabha.

► **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 performs 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.

Functions of Joint Committee on Offices of Profit:

- Examine the composition and character of all committees - membership of which may disqualify a 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. ____

► **SUSPENSION & WITHDRAWAL OF MP**

Several Members of Parliament, both from the Lok Sabha and Rajya Sabha, have faced suspension due to their disruptive behaviour on issues such as price rise. The Rajya Sabha voted to suspend a senior member of the Aam Aadmi Party for his unruly behaviour in the house, while in the Lok Sabha, four MPs from the Congress party were suspended by the Speaker Om Birla for the remainder of the ongoing session, due to their misconduct. The duration of

suspension varied, with some MPs being suspended for a week while others were suspended for the entire session.

DIFFERENCE BETWEEN SUSPENSION AND WITHDRAWAL

- **Withdrawal (Absent from remaining sitting on that Day)** – Under the Rules of Procedure of Lok Sabha and Rajya Sabha, if the Speaker/Chairman is of the opinion that the conduct of any member is grossly disorderly, may direct such member to withdraw immediately from the House. This would mean that such a member shall remain absent during the remainder of the day's sitting. (Rajya Sabha – Rule 255; Lok Sabha – Rule 373)
- **Suspension of Member (for specific period, may result in suspension for the entire session)** - Under the Rules of Procedure of Lok Sabha and Rajya Sabha, MPs can be suspended from the service of the House for a period not exceeding the remainder of the session. (Rajya Sabha – Rule 256; Lok Sabha – Rule 374). However, the suspension can be revoked through another motion passed in Lok Sabha or Rajya Sabha.

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.
- Council can terminate the suspension by passing another motion.
- So, unlike Lok Sabha, the motion for suspension of members 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 suspension 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 members can be terminated on presenting another motion in the House.

- The 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.
- The Committee on Ethics can also be asked to give its recommendations.
- Consequent to the findings of the committee a motion for expulsion is adopted by the house.

COMMITTEE ON ETHICS

- Consists of 15 members nominated by Speaker. **Chairperson of the Committee is appointed by Speaker** from amongst the Members of the Committee.
- **Functions of Ethics 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.
- Committee can conduct a **preliminary enquiry** on matters referred to it.
- Committee **can accept the matter for further investigation** if needed.
- **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 **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.

► PRIVILEGE OF MP DOES NOT EXTEND TO CRIMINAL CASES

Congress members forced adjournments in Upper House when Leader of Opposition Mallikarjun Kharge received summons from Enforcement Directorate to appear while the House was in session. Addressing the concerns of the MP, former Rajya Sabha Chairman M. Venkaiah Naidu said that members have a wrong notion that they have a privilege from action by investigating agencies while session is on.

CONSTITUTIONAL PROVISIONS FOR PARLIAMENTARY PRIVILEGES

- **Parliamentary privileges (Art 105 & 194)** are special rights, freedom of speech, immunities, exceptions enjoyed by members of the two houses of Parliament and their committees.
- **Privileges includes**
 - **Immunity from any Court proceedings in with respect to** anything said or any vote given by member in the Parliament.
 - **Immunity from any Court proceedings against the publication of any report**, votes, paper etc. by or under authority of the Parliament.
- These rights are also given to those individuals who speak and participate in any committee of Parliament, which includes **Attorney General of India and Union Ministers**.
- **President, who is integral part of the parliament, does not enjoy these privileges.**
- **Article 105 (3)** was amended by Constitution 42nd and 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 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.____
- **Parliament has not yet codified its privileges.**

FREEDOM OF PUBLICATION - ARTICLE 361-A

- **Article 361-A** was added by **Constitution 44th Amendment** which says that no person shall be liable to any proceedings, civil or criminal in any Court of law in respect of any publication in a newspaper of a substantially true report of any proceedings of either House of Parliament or Legislative Assembly, unless the publication is proved to have been made with malice. A similar immunity is extended to broadcast on air. Newspapers were not immune to publications of parliamentary proceedings prior to 44th Amendment.
- In the **Searchlight** case, SC ruled that publication of inaccurate or mashed version of speeches delivered in the House or misreporting the proceedings amounts to breach of privilege. The Court held that

publication of those parts of proceedings by a newspaper which were expunged by the House amounts to breach of privilege of the House and the offending party can act despite protection from **Article 361A.**

- Supreme Court held that House could impose prohibition on publication of any debates, proceedings even if such prohibitions amounted to violation of freedom of speech and expression under **Article 19 (1)(a).**

INCORPORATION OF PRIVILEGE UNDER SECTION 135A OF CIVIL PROCEDURE CODE (CPC)

- Former Rajya Sabha Chairman emphasised that under Article 105 of Constitution, MPs enjoy “certain privileges so that they can perform their parliamentary duties without let or hindrance”.
- “One of the privileges is that an MP cannot be arrested in a civil case 40 days before the commencement of the session or committee meeting, and 40 days thereafter.
- This privilege is already incorporated under Section 135A of Civil Procedure Code (CPC), 1908.”. However, the privilege does not extend to criminal cases as highlighted under Section 135A of CPC.
- However, in connection with criminal matters, MPs “are not on a different footing than a common citizen. **It means that an MP does not enjoy any immunity from being arrested in a criminal case during the session or otherwise.**

CIVIL PROCEDURE CODE (CPC) PROVIDES EXEMPTION ONLY IN CIVIL CASES

Section 135A - Exemption of members of legislative bodies from arrest and detention under civil process

(1) No person shall be liable to arrest or detention in prison **under civil process -**

(a) **if he is a member of -**

- (i) Either House of Parliament, or
- (ii) Legislative Assembly or Legislative Council of a State, or
- (iii) a Legislative Assembly of a Union territory, during continuance of any meeting of such House of Parliament or of Legislative Assembly or the Legislative Council.

(b) **if he is a member of any committee of**

- (i) Either House of Parliament, or
- (ii) Legislative Assembly of a State or Union territory, or

(iii) Legislative Council of a State, during continuance of any meeting of such committee.

(c) if he is a member of—

(i) either House of Parliament, or

(ii) a Legislative Assembly or Legislative Council of a State having both such Houses, during continuance of a joint sitting, meeting, conference or joint committee of Houses of Parliament or, Houses of State Legislature and during forty days before and after such meeting, sitting or conference.

ARTICLE 361 - PROTECTION OF PRESIDENT AND GOVERNORS

1. President, or Governor, shall not be answerable to any court for exercise and performance of powers and duties of his office or for any act done in exercise and performance of those powers and duties.
2. No criminal proceedings shall be instituted or continued against President, or Governor of a State, in any court during his term of office.
3. No process for arrest or imprisonment of President, or Governor of a State, shall issue from any court during his term of office.
4. No civil proceedings in which relief is claimed against President, or Governor of a State, shall be instituted during his term of office in any court in respect of any act done or purporting to be done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until expiration of two months next after notice in writing has been delivered to President or Governor, or left at his office stating the nature of the proceedings, the cause of action therefor, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

► STATE LEGISLATURES

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, briefly, 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 on 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.

- Accept the Bill
 - Reject the Bill
 - Don't take any action for 3 months.
 - Make amendments and send it back to assembly which is not acceptable to Assembly.
- In case (ii), (iii) & (iv) the Assembly can again send 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.

► OFFICE OF CHANCELLOR

West Bengal Government has decided to make its Chief Minister chancellor of its state-run universities by amending State Universities Act. This decision has been taken after continued strained relations with the Governor who presently is the Chancellor. Strained relations between Chief Minister and Governor on the issue of Universities have also been witnessed in Kerala and Tamil Nadu. Let us understand the controversy, laws pertaining to appointment of Chancellors and important recommendations of Sarkaria and Punchhi Commission's Report.

LEGAL POSITION OF THE VICE-CHANCELLOR

- **The Constitution of India is silent on the role of Governor** as Chancellors of State Universities.
- State Universities Act passed by respective state governments generally appoints the Governor as Chancellor of state universities by virtue of Governor's office.
- Ex., Uttar Pradesh State Universities Act, 1973 or West Bengal State Universities Act, 2007 appoints Governor as Chancellors of all state universities. Thus, Chancellors hold statutory powers.

► SUMMON BY GOVERNOR

Convening of sessions of legislative assemblies in various states has been in news in past one year.

- *The Punjab Governor has approved the convening of a one-day session of the Punjab Legislative Assembly, putting an end to the conflict between the Raj Bhavan and the Aam Aadmi Party-led government under Chief Minister Bhagwant Mann. Under Article 174(1), the Governor exercised his power to summon the Sixteenth Vidhan Sabha of the State of Punjab for its Third Session.*

- In Rajasthan, the summoning of a session had been a contentious issue previously. It is important to note that, as per Article 174, the Governor must follow the advice of his Council of Ministers while summoning the session, as this power is not discretionary.

POWER OF GOVERNOR UNDER ARTICLE 174 TO SUMMON THE HOUSE

Article 174 - Sessions of the State Legislature, prorogation and dissolution

A 174 (1) - 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, 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.

A 174 (2) - The Governor may from time to time— (a) prorogue the House or either House; (b) dissolve the Legislative Assembly.

CONFUSION REGARDING ARTICLE 163

The problem with Article 174 arises with the phrase "...as he thinks fit..." Now this phrase can be seen in the context of Article 163 which provides for discretionary power of the Governor.

Article 163 - Council of Ministers to aid and advise Governor

A 163 (1) - There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Governor in the exercise of his functions, except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.

CONSTITUTION BENCH JUDGMENT OF SC - NABAM REBIA & BAMANG FELIX V DEPUTY SPEAKER (ARUNACHAL PRADESH)

Speaker Rebia petitioned that the Governor's act of interfering in the functioning of the State legislature fell outside the scope of **Article 161** and **Article 163(2)**.

- **Quashed Governor's Order to Prepone the Assembly Session** - The Constitution Bench quashed the Governor's order dated 9.12.2015 postponing the 6th session of the Arunachal Pradesh Legislative Assembly by a month without consulting the Chief Minister, Council of Ministers, or the Speaker, for violating Article 174.
- **Governor's authority to call, dissolve, and advance a session is subject to judicial review** -
- **Governor's Power under Article 174 not a discretionary power** - Governor can summon,

prorogue and dissolve the House, only on the aid and advice of the Council of Ministers with the Chief Minister as the head. And not at his own under Article 174.

- **Powers of the Governor are not absolute** - Referring to Article 163, the Court noted that the Governor does not have vast discretionary powers and is necessarily bound by the constitutional framework. According to Article 163, the Governor may only exercise this power with the assistance of the Council of Ministers and Chief Minister.
- **Speaker cannot disqualify members when a motion of removal is pending against him** - Speaker's decision to disqualify rebelled MLAs under Article 179(c) amounted to an attempt to circumvent the votes of "all the then members", and as such, the Speaker's decision was unconstitutional.
- **President's Rule Unconstitutional** - Supreme Court reinstated the previous government and declared all the Governor's actions that led to the implementation of President's Rule unconstitutional. The Court also ordered a floor test to determine the Government's majority, restoring the floor test's credibility.
- **The Court also overruled the verdict of the Guwahati High Court** which found that the Governor's notice was unconstitutional because it breached Article 163 read with Article 174 of the Indian Constitution.

► KING CHARLES ADDRESSES BRITISH PARLIAMENT

King Charles III addressed both Houses of British Parliament (House of Commons & House of the Lords) after the demise of Queen Elizabeth II and pledged to follow the example of selfless duty set by his mother in upholding "the precious principles of constitutional governance". The address was delivered in the Westminster Hall where the King described Parliament as the living and breathing instrument of democracy. It is with these understandings; let us learn the difference in the functioning of Parliament in both India and Britain and the advantages and disadvantages of written and unwritten constitution.

INDIA ADOPTED THE WESTMINSTER MODEL

- India adopted Parliamentary form of Government based on the Westminster System of Britain which comprises:
 - Nominal and Real Executives
 - Majority Party Rule - Led by Prime Minister
 - Limited Government and Rule of Law
 - Cabinet Form of Government

- Role of Opposition Parties
- Parliament – having Two Houses
- Principle of Collective Responsibility
- Executive Responsible to the Legislature
- Dissolution of Lower House even prior to end of tenure
- Independence of Judiciary
- Elections based on first-past-the-post system.

• **Despite the similarities, there are certain differences in the functioning of Indian Parliamentary and other setups.**

BRITAIN	INDIA
<ul style="list-style-type: none"> • Constitutional Monarchy with the king as the nominal head. • Parliamentary Sovereignty as Parliament is the supreme authority. • Prime Minister should be a member of the House of Commons (Lower House). • Ministers have a legal responsibility as they are required to countersign the official acts of the Head of the state. • ‘Shadow Cabinet’ formed by the opposition to replace the ruling government once it falls. • Members of Britain’s Upper House i.e., House of Lords comprise religious leaders – Archbishops – and Hereditary Peers. • Judiciary in Britain is neither uniform nor integrated as different judicial systems are followed in England and Wales, Scotland and Northern Ireland. Supreme Court of 	<ul style="list-style-type: none"> • Republic with President as the nominal head. • Constitutional Sovereignty as parliament’s power is restricted due to basic structure doctrine. • Prime Minister should be a member of the House of Commons (Lower House). • Ministers are only accountable for their legislative and executive functions. No legal responsibility. • Shadow Cabinet does not exist in India. • Indian Upper House – Rajya Sabha – comprises indirectly elected members and those nominated by the President from the fields of Literature, Science, Art and Social Service. • Indian Judiciary functions in an integrated manner and the judicial systems followed through the country is uniform. India’s Supreme Court is the highest court of the country and below it is the High Courts at the state level followed by some other Subordinate Courts.

England acts as the final Court of Appeal.

IMPORTANCE OF CONVENTIONS IN WESTMINSTER SYSTEM

- Most of the procedures of the Westminster system have originated with the conventions, practices and precedents of the UK parliament, which are a part of what is known as the British constitution. Unlike the UK, most countries that use the Westminster system have codified the system in a written constitution.
- However convention, practices and precedents continue to play a significant role in these countries, as many constitutions do not specify important elements of procedure: for example, older constitutions using the Westminster system, such as the Canadian constitution and the Australian constitution, may not even mention the existence of the Cabinet and the title of the head of the government (Prime Minister), because these offices' existence and role evolved outside the primary constitutional text.

WRITTEN & UNWRITTEN CONSTITUTION

- **INDIA** - Constituent Assembly adopted a written constitution for India which provided for Sovereign Socialist Secular Democratic Republic with a parliamentary system of government.
- **Whereas United Kingdom** does not have a written Constitution (single document) as its constitution is found across various legislations, rules, parliamentary conventions, rule of law and common law among others.
- Various legislations of Britain including its Magna Carta, Government of India Acts inspired the Indian constitution makers to adopt importance highlights of parliamentary form of government.
- However, unlike United Kingdom which does not have a written constitution, important debates and deliberations of constituent assembly resulted in the adoption of written Indian Constitution on 26th November which came into effect on 26th January 1950 making India a Sovereign Democratic Republic with a parliamentary form of government.
- United Kingdom does not have a written Constitution (single document) as its constitution is distributed across various sources. UK Constitution mainly comprises:
 - Parliamentary Supremacy
 - Parliamentary Legislations & Conventions
 - Common Law

- Rule of Law (Glorious Revolution)
- Royal Prerogative – Power of Crown exercised by the PM.
- Judicial Decisions
- International Treaties
- Precedents

DELEGATED LEGISLATION

While upholding Centre's decision of demonetisation, one of the major issues before the Supreme Court was whether the power given by Parliament to the government to issue orders of demonetisation was an act of excessive delegation. The majority verdict upheld that the delegation of powers done by the Parliament was not excessive whereas the minority verdict held that the delegation of authority was arbitrary and excessive. Let us understand about delegated legislation and when does such delegation can be considered as excessive.

WHAT IS DELEGATED LEGISLATION?

- **Delegate** means representatives on behalf of someone else, like some higher authority. Similarly delegated legislation means power of legislation being delegated or authorised to some other agency other than the Parliament or State Legislature.
- **Delegation by Parliament** - Routinely Parliament routinely delegates certain functions to authorities established by law since every aspect cannot be dealt with directly by the law makers themselves. This delegation of powers is noted in laws, which are commonly referred to as delegated legislations.
- **Details of Delegated Legislation** - The delegated legislation would specify operational details, giving power to those executing the details. Regulations and by-laws under legislations are classic examples of delegated legislation.
- **Salmond defines 'Delegated Legislation'** as "that which proceeds from any authority other than sovereign power and is therefore dependent for its continued existence and validity on some superior or supreme authority.
- **Operational Details of Law transferred to other Agency** - Generally what happens is that the legislature enacts a law covering only the general principles and policies relating to the issue and confers rules making powers for operational and other purposes to the government or to some of its administrative agencies.
- **Part of Modern Administrative Process** - Delegated

Legislation is practiced in most democratic countries and is a part of modern administrative process. It is now a well-established proposition of law that power of delegated legislation is a constituent element of legislative power as a whole and the legislature often finds it convenient and necessary to delegate subsidiary or ancillary powers to delegates of their choice for carrying out policy laid down in the legislation.

DOCTRINE OF EXCESSIVE DELEGATION

- **Hamdard Dawakhana Case** - Supreme Court explained the idea of excessive delegation and held that Indian legislature cannot delegate unrestrained, uncanalised and unqualified legislative power on an administrative body.
- **Conditions on Delegated Legislation** - Indian Legislature can delegate legislative power subject to the conditions of laying down principles, standards, policy subject to which the delegate is to exercise its delegated legislative power. In case the legislature fails to do so, the law made by the delegated authority would be invalid.

► KERALA GOVERNOR WITHDRAWS HIS PLEASURE

Governor of Kerala has sought resignation of Vice-Chancellors and has also dismissed of Finance Minister based on withdrawal of his pleasure.

CONSTITUTIONAL PROVISIONS – GOVERNOR

- **Article 155 - Appointment of Governor** — The Governor of a State shall be appointed by the President by warrant under his hand and seal.
- **Article 156 - Term of office of Governor** —
 1. The Governor shall hold office during the pleasure of the President.
 2. The Governor may, by writing under his hand addressed to the President, resign his office.
 3. Subject to the foregoing provisions of this article, a Governor shall hold office for a term of five years from the date on which he enters upon his office: Provided that a Governor shall, notwithstanding the expiration of his term, continue to hold office until his successor enters upon his office.

Note* - *Constitution of India is silent on the removal of the Governor.*

DOCTRINE OF PLEASURE

- **Based on English Law** - The pleasure doctrine is a concept derived from English common law, under which the crown can dispense with the services of anyone in its employ at any time.
- **In England, a servant of the Crown holds office during the pleasure of the Crown and he can be dismissed from the service of Crown at pleasure.**
- The tenure of office of a civil servant can be terminated at any time without assigning any cause. Even if there exists any special contract between the Crown and the civil servant concerned, the Crown is not bound by it.
- The civil servant is liable to be dismissed without notice and they cannot claim damages for wrongful dismissal or immature termination of service.

DOCTRINE OF PLEASURE AS PRACTICED IN INDIA

- **Article 310 of the Constitution** says every person in the defence or civil service of the Union holds office during the pleasure of the President, and every member of the civil service in the States holds office during the pleasure of the Governor.
- **However, Article 311 imposes restrictions on the removal of a civil servant** -It provides for civil servants being given a reasonable opportunity for a hearing on the charges against them.
- **In practical terms, the pleasure of the President refers to that of the Union government**, and the Governor's pleasure is that of the State government.
- **The fundamental rights guaranteed under the constitution are restrictions on the pleasure doctrine as Articles 14, 15 and 16 of the Constitution imposed limitations on free exercise of Pleasure Doctrine.**
 - **Article 14 embodies the principle of reasonableness** the principle of reasonableness is an anti-thesis of arbitrariness. In this way, Article 14 prohibits arbitrary exercise of power under pleasure doctrine. In addition to article 14 of the constitution, Article 15 also restricts arbitrary exercise of power in matters of services.
 - **Article 15 prohibits termination of service on discrimination** on grounds of religion, race, caste, sex or place of birth or any of them.
 - **Another limitation is under Article 16(1)** which obligates equal treatment and bars arbitrary discrimination.
 - **Civil servants can file suit in a court of law or tribunal** for enforcing any condition of service or for claiming arrears of pay.

EXCEPTIONS TO DOCTRINE OF PLEASURE

- The following are expressly excluded by the Constitution from Doctrine of Pleasure. They are:
 - Supreme Court Judges (Article 124)
 - Comptroller and Auditor-General of India (Article 148)
 - High Court Judges (Article 217, 218)
 - A member of Public Service Commission (Article 317)
 - The Chief Election Commissioner.

MEANING OF WITHDRAWAL OF PLEASURE

- **"Pleasure of the Governor" did not mean the Governor has the right to dismiss the Chief Minister or Ministers at will.**
- The Governor can have his pleasure if the government enjoys a majority in the House.
- The Governor can withdraw his pleasure only when the government loses majority but refuses to quit. Then he withdraws the pleasure and dismisses it.
- Without the advice of the Chief Minister, a Governor can neither appoint nor dismiss a minister.
- **Surya Narain Choudhary vs Union of India (1981)** - Rajasthan High Court held that the pleasure of the President was not justiciable, the Governor had no security of tenure and can be removed at any time by the President withdrawing pleasure.

ABOUT GOVERNOR

The State Executive consists of the Governor, who is the head of the State, and the Council of Ministers with the Chief Minister at its head. The Governor 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.
- The governor is neither directly elected by the people nor indirectly elected by a specially constituted electoral college as is the case with the president.
- Under Article 155, Governor is appointed by the President by warrant under his hand and seal. In a way, he is a nominee of the Central government.

REMOVAL OF GOVERNOR

- **The Governor serves under the pleasure of the President** which practically means that the Governor serves under the pleasure of Prime Minister and his Cabinet. If this pleasure is withdrawn before completion of the five-year term, the Governor must step down.

- **As the President works on the aid and advice of the Prime Minister and the council of ministers**, in effect, the Governor can be appointed and removed by the central government. So, it is generally observed that after change of government in any state, Governors are then appointed, removed or transferred by the central government.
- **Thus, a Governor is a representative of the Union government in states** - Article 163 of the Constitution says the Governor will normally be aided and advised by the Council of Ministers except in those functions which require his discretion.
- **No Provision for Governor's Impeachment** - While the Governor's duties and responsibilities lie in a particular state, there is no provision for impeaching the Governor.

► RULE 267 OF RAJYA SABHA

Rule 267 of Rules of Procedure and Conduct of Business in Council of States (Rajya Sabha) allows for suspension of the day's business to debate an issue suggested by a member has become a cause of disagreement. Not a single notice under the rule moved by the Opposition has been accepted in the Winter Session.

PRECEDENT TO INVOKE RULE 267

- Six such notices were declined by Chairman Jagdeep Dhankhar, prompting Trinamool Congress member Derek O'Brien to point out the precedents. He said that there were 11 instances between 1990 and 2016 when this rule was invoked for various discussions.
- The last instance was in 2016 when then Chairman Hamid Ansari allowed for a debate on "demonetisation of currency". In this session, the members have moved notices under the rule demanding debate on various issues, including the India-China stand-off.

RULE 267 - SUSPENSION OF RULES (RULES OF PROCEDURE AND CONDUCT OF BUSINESS IN THE COUNCIL OF STATES)

- Any member, may, with the consent of the Chairman, move that any rule may be suspended in its application to a motion related to the business listed before the Council of that day and if the motion is carried, the rule in question shall be suspended for the time being:
- Provided further that this rule shall not apply where specific provision already exists for suspension of a rule under a particular chapter of the Rules.

► PRESIDENT'S PARDONING POWER

The remission granted by the Gujarat Government to 11 convicts in the Bilkis Bano case was challenged before the Supreme Court.

- **In Pardon**, it affects both the punishment prescribed for the offence and guilt of the offender. A full pardon may completely erase the guilt.
- **'Reprieve'** means a temporary suspension of the punishment awarded by a court of law. For example: Putting a stay order on the death sentence of a convict for certain temporary period.
- **'Respite'** means postponement of the sentence of punishment or reducing the sentence due to certain special circumstances such as disability, pregnancy etc.
- **Commutation** means changing the punishment from one category to another, such as changing the death sentence to life imprisonment.
- **Remission** is the reduction of the amount of a sentence without changing its character. Example: A person is imprisoned for 14 years in solitary confinement. In Remission, his sentence might be reduced to 10 years but the nature i.e., solitary confinement will not change.

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 based on **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/GOVERNOR 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.

MERCY PETITION

- **Appeal beyond SC** - 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.
- **Powers of the President & the Governors under Articles 72 and 161** - *"to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence.*
- **Decision Based on Aid & Advice of CoM** - 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.
- **Decision not constrained by time** - Clemency powers of President and Governor under Articles 72 and 161 respectively can be exercised before, during or after the trial.
- **Final Opportunity for the Convict** - It also allows both executive and judiciary to investigate the matter with compassionate ground.
- **USA** - Indian President's power of pardon is almost like that in America or Britain. The American President has power to grant reprieves and pardons for offences committed against United States except in cases of impeachment.
- **In Britain**, the Crown enjoys a prerogative to grant pardon to any criminal but the prerogative is exercised on ministerial advice.

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 VS 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 the death sentence. However, the governor can suspend, remit or commute a death sentence. Whereas the pardoning power of the President extends even to cases of death penalty.

KEHAR SINGH V UNION OF INDIA

- *The power to pardon is a part of constitutional scheme. It has been reposed by the people through the Constitution in the head of the state and enjoys high status. It is a constitutional responsibility of great significance, to be exercised when occasion arises.*
- *In most civilised societies, the deprivation of personal liberty and the threat of deprivation of life by the action of the state is regarded seriously and therefore recourse is provided against the judicial decisions.*
- *This is because there always remains the possibility of 'fallibility of human judgment' even in 'the most trained mind' and it has been considered appropriate in matters of life and personal liberty, 'the protection should be extended by entrusting the power to some high authority to scrutinize the validity of the threatened denial of life.*
- *The power so entrusted is a power belonging to the people and reposed to the highest dignitary of the country.*

POWER OF REMISSION UNDER CR.PC DIFFERENT FROM CONSTITUTIONAL POWERS OF PARDON

- **Suspend or Remit** - Criminal Procedure Code (Cr.PC) under Section 432 empowers central and state government to suspend or remit a sentence, in whole or in part, with or without conditions.
- **Commutation** - Section 433 empowers central and state governments to commute death sentence, imprisonment for life and rigorous imprisonment to a lesser degree.
- **State Government to Consult the Centre** - Section 435 of Cr.PC states that powers of state government

to suspend, remit or commute a sentence must be done in consultation with the central government if.

- The case was investigated by Central Bureau of Investigation (CBI) or
- The case was investigated by any other agency empowered to make an investigation into an offence under any Central Act.
- The offence involved misappropriation or destruction of, or damage to, any property belonging to the Central Government, or
- The offence was committed by a person in the service of the Central Government while acting in the discharge of his official duty.

● **Section 433A adds a restriction on powers of remission or commutation in certain cases.**

- It states that 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 has served at least 14 years of imprisonment.

● **Article 161 overrides Section 433A of Cr.PC** - 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 433-A of Cr.PC 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.

► **RELEASE OF A.G. PERARIVALAN**

- **Governor Sending the state government’s recommendation on remission** - Supreme Court held that there is no constitutional provision for the Governor to refer a recommendation made by the State Cabinet to the President of India.
- **On Centre’s Plea on “appropriate government”** - The Court rejected Centre’s argument which stated that the “appropriate government” to decide on remission of sentence in matters to which the executive power of the Union extends is the Union Government.
- **Union taking Precedence over State** - where both the state and Centre had the power to make laws, the Union Government’s power will take precedence only if “executive power had been expressly conferred on the Union under the Constitution or the law made by the Parliament, failing which the executive power of the State remained intact”.
- **Governor’s Power under Article 161 not immune from Judicial Review** - The judgment pointed out that the Governor’s power under Article 161 to grant pardons, reprieves, respites or remissions of punishment, is subject to judicial review. The Court also stated that non-exercise of the power under Article 161 is not immune from judicial review.
- **Not Fit to remand the matter back to the Governor for consideration** - considering appellant’s prolonged period of incarceration, his satisfactory conduct in jail as well as during parole, chronic ailments from his medical records, his educational qualifications acquired during incarceration and the pendency of his petition under Article 161 for 2.5 years after the recommendation of the State Cabinet.

► **ATTORNEY GENERAL & ADVOCATE GENERAL**

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

RESTRICTIONS ON ALL LAW OFFICERS INCLUDING AGI - THEY SHALL NOT

- Hold briefs against government of India or its affiliates.
- Advice 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 (GoI) permission.
- Accept appointment to any office in any company or corporation without GoI's permission.
- Advise any Ministry or Department of GoI 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.

► CASE OF MISSING DEPUTY SPEAKER

A Bench led by Chief Justice of India sought responses on a PIL that contends that not electing a Deputy Speaker to the 17th (present) Lok Sabha, (which was constituted on June 19, 2019) is "against the letter and spirit of the Constitution".

IS IT MANDATORY TO HAVE A DEPUTY SPEAKER?

- According to the constitutional experts, both **Articles 93 and 178** uses the word "**shall**", indicating that the election of Speaker and Deputy Speaker is mandatory under the Constitution.
- However, the term "**As soon as may be**", under **Articles 93 and 178** does not lay down a specific time frame within which election for the post of Speaker and Deputy Speaker is to be conducted.
- In general, the practice in both Lok Sabha and the state Assemblies has been to elect the Speaker during the (mostly short) first session of the new House, usually on the third day after the oath-taking and affirmations over the first two days.
- The election of the Deputy Speaker usually takes place in the second session and is generally not delayed further in the absence of genuine and unavoidable constraints.
- **Rule 8 of The Rules of Procedure and Conduct of Business in Lok Sabha** says the election of Deputy Speaker "shall be held on such date as the Speaker may fix". The Deputy Speaker is elected once a motion proposing his name is carried in the House and the date of election is to be fixed by the Speaker of Lok Sabha.

(It was on the aspect of Rule 8, a question was asked in the Prelims of 2022)

CONSTITUTIONAL PROVISIONS ON DEPUTY SPEAKER

- **Election (Article 93)** - 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 preside 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.)

Rule 200 of Rules of Procedure and Conduct of Business in Lok Sabha - A member wishing to give notice of a resolution, under clause (c) of article 94 of the Constitution, for the removal of the Speaker or the Deputy Speaker - shall do so in writing to the Secretary-General and shall furnish the full text of such resolution.

Do the powers of the Speaker extend to the Deputy Speaker as well?

- Article 95(1) says: "While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker".
- In general, the Deputy Speaker has the same powers as the Speaker when presiding over a sitting of the House. All references to the Speaker in the Rules are deemed to be references to the Deputy Speaker when he presides.
- **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.

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.
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- **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.

The 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.

GENERAL PARLIAMENTARY PRACTICE

- It has been usual practice to offer the post of Deputy Speaker to the Opposition — Charanjit Singh Atwal (SAD, then a constituent of NDA) was Deputy Speaker during 2004-09 when UPA-I was in power, Kariya Munda (BJP) occupied the post during 2009-14 (UPA-2), and M Thambidurai (AIADMK) was Deputy Speaker during the first Narendra Modi government (2014-19).

CAN THE COURTS INTERVENE IN CASES OF A DELAY IN ELECTING THE DEPUTY SPEAKER?

- **Courts usually do not intervene in the procedural conduct of Parliament.**
- **Article 122(1)** says: "The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure."
- **However, experts said that the courts do have jurisdiction** to at least inquire into why there has been no election to the post of Deputy Speaker since the Constitution does envisage an election "as soon as may be".

WHAT IS THE STAND OF UNION GOVERNMENT ON APPOINTING DEPUTY SPEAKER?

- According to the Union Government, there is no "immediate requirement" for a Deputy Speaker as "bills are being passed and discussions are being held" as normal in the House.
- One of the minister argued that "**there is a panel of nine members who are senior, experienced, and selected from different parties** and can act as chairpersons to assist the Speaker to run the House.

This panel of nine has Rama Devi, Kirit P Solanki, and Rajendra Agrawal of the BJP; Kodikunnil Suresh of the Congress; A Raja of the DMK; P V Midhun Reddy (YSRCP); Bhartruhari Mahtab (BJD); N K Premachandran (RSP); and Kakoli Ghosh Dastidar (TMC).

- **Nomination of Panel of Chairpersons** has been provided under **Rule 9 of the Rules of Procedure and Conduct of Business in Lok Sabha.**
 - **Rule 9** - At the commencement of the House or from time to time, as the case may be, the Speaker shall nominate from amongst the members a panel of not more than ten Chairpersons, anyone of whom may preside over the House in the absence of the Speaker and the Deputy Speaker when so requested by the Speaker or, in the absence of the Speaker, by the Deputy Speaker.

SPEAKER	DEPUTY SPEAKER
<ul style="list-style-type: none"> • Role corresponds to Speaker of House of Commons • Ensures smooth conduct of business of the house. • Presides over Joint Sitzings of both Houses. • Does not vote in ordinary proceedings – only cast his vote in case of tie. • maintains neutrality and disassociates himself from his political party. • He is the final interpreter of rules of procedure and constitutional provisions. • Has residuary power to issue directions – if matter not provided in the rules? • May withdraw a member from the house for a day or suspend for rest of the session. • Orders removal of unparliamentary words from being published. <ul style="list-style-type: none"> ▪ Determines cases for breach of privilege or contempt of house. • Authenticates the bill before passing it to the President for his assent. 	<ul style="list-style-type: none"> • Presides over the house in the absence of Speaker and cannot vote in such instances. • He has no functions or responsibilities – LS Secretariat • He has a right to speak in the house and vote when proceedings are presided by Speaker. • He also presides in Joint Sitting if Speaker is absent. • He may take part in active politics. • Chairs Budget Committee which approves the Budget proposals of the Secretariat before they are sent to Finance Ministry.

- Receives documents, petitions, messages addressed to the House and all orders of the House are executed by him.
- Constitutes Parliamentary Committees and nominate their Chairman – committees' function under his control and guidance.
- Business Advisory Committee, Rules Committee & General Purposes Committee works under his chairmanship.
- Certifies a Bill as Money Bill – Article 110
- Determines what matters are financial - to be initiated only in Lok Sabha – (Finance Bill A)
- He can issue summon – for members to appear before the house on charge of contempt or breach of privilege.
- Decides matter of anti-defection under Tenth Schedule
- Speaker is the ex-officio President of Indian Parliamentary Group which in India functions as the National Group of the Inter-Parliamentary Union & Main branch of Commonwealth Parliamentary Association
- Lok Sabha Secretariat functions under his direction & control.

► COMPARATIVE STUDY ON SPEAKER OF INDIA, USA & BRITAIN

United States Congress comprises of the House of Representatives which is their lower house (like Lok Sabha) and the Senate which is their upper House. Kevin McCarthy, Republican Member has finally been elected as the Speaker of House of Representatives after 15 rounds of voting.

ABOUT SPEAKER OF HOUSE OF REPRESENTATIVES

- **The Speaker is the presiding officer of the House** and is charged with numerous duties and responsibilities by law and by the House rules. Thus, the Speaker is simultaneously the House's presiding officer, party leader, and the institution's administrative head, among other duties.
- **Partisan Role** - The Speaker of the House of Representatives is elected by the members of the majority party and is typically a member of the leadership of that party. The Speaker presides over the House and enforces its rules, but also has significant influence over the legislative agenda and the functioning of committees.
- **The Constitution of United States** under Section 2 of Article 1 states that the House of Representatives shall choose their Speaker and other Officers; and shall have the sole Power of Impeachment.

ELECTION OF SPEAKER OF HOUSE OF REPRESENTATIVES

- **Qualification** - Article 1, section 2 of the US Constitution directs that the House choose its

Speaker and other officers. The constitution does not mention that Speaker has to be a member of the House but in practise only members of the House are elected as Speaker.

- **Term of Office** - The Speaker's term of office begins on his taking of his oath of office, which immediately follows his election and opening remarks. The term ends on the expiration of the Congress in which he was elected, unless he has resigned, died, or been removed from office.
- **Election** - The Speaker of the House of Representatives in the United States is elected by the members of the House of Representatives at the beginning of each new congressional session. The election of the Speaker is usually held on the first day of the new session, or shortly thereafter. To be elected Speaker, a candidate must receive a majority of the votes cast by the members of the House. If no candidate receives a majority on the first ballot, subsequent ballots are taken until a Speaker is elected.
- **Tenure of Office** - The Speaker is elected for the duration of the two-year congressional session (due to mid-term polls) although they may be re-elected for subsequent sessions.
- **Function** - Speaker presides over the House of Representatives and is responsible for maintaining order and decorum in the chamber, ruling on points of order, and deciding which bills and motions are taken up for debate. The Speaker also represents the

House in its dealings with other branches of government and serves as a spokesperson for the House on legislative and political matters.

- **Comparison with Britain** - In UK, the principle of 'once a speaker always a speaker' is followed. Speakers standing in general election generally gets elected unopposed by major political parties. There is no limit on holding the office of Speaker and the same person can be re-elected more than once. As per the British convention, even change of party does not impact the office of Speaker as he/she is elected unanimously by the House. However, in USA, the same person does not get re-elected as Speaker and the post is always contested on political lines depending on the number of seats won by democrats and republicans.

SPEAKER OF HOUSE OF COMMONS

- **Election** - The House of Commons in Britain elects its Speaker after every general election or in case of death, retirement or resignation or if the Speaker ceases to be an MP for any other reason.
- **Process of Election** - Once assembled after a General Election, MPs, led by the Father of the House, go to the House of Lords where they receive a message from the monarch asking them to elect a Speaker. They return to the House of Commons and begin the process immediately, under the direction of the Father of the House. The election is conducted using a secret ballot, and MPs can nominate candidates from among their own ranks.
- **The Father of the House** - is a title that is bestowed on the senior member of the House of Commons who has the longest continuous service. If two or more members have the same length of current uninterrupted service, then whoever was sworn in earliest, as listed in Hansard, is named as Father of the House.
- **If the MP who was Speaker before the general election is returned** at the election and wishes to stand for re-election as Speaker, that decision is taken immediately.
- **If there is no returning Speaker wishing to stand again or the House votes against the appointment of the former Speaker** - a contested election by exhaustive secret ballot must take place to choose a new Speaker.
- **Non-Political Role** - The Speaker is expected to remain politically impartial and to serve the interests of the House as a whole, rather than those of a particular political party.

► EARLY SUSPENSION OF WINTER SESSION

Government has decided to end the ongoing winter session on 23rd December 2022 instead of 29th December. The decision to recommend early conclusion of the session was taken at a meeting of Lok Sabha's Business Advisory Committee chaired by the Lok Sabha Speaker Om Birla. Both Lok Sabha and Rajya Sabha have their respective Business Advisory Committees.

Article 85 - Sessions of Parliament, prorogation and dissolution

1. The President shall from time to time summon each House of Parliament to meet at such time and place as he thinks fit, 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.
2. The President may from time to time—
 - (a) prorogue the Houses or either House.
 - (b) dissolve the House of the People.

CONDUCT OF BUSINESS BY PARLIAMENT

DURATION BETWEEN SESSIONS

- Parliament ordinarily meets in three sessions in a year. These are Budget Session, Monsoon session and Winter session. However, Constitution does not mention about the different sessions of Parliament.
- 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,
- The President shall address both Houses of Parliament (LS + RS) assembled 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.

- *Adjournment Sine Die* refers to adjournment of the House of Parliament for an indefinite period without assigning any specific day or date for its reconvening. The power of *Adjournment Sine Die* lies with the presiding officer of the House – Chairman/Speaker.

CHAIRMAN, DEPUTY CHAIRMAN AND VICE-CHAIRMAN

- Presiding Officers of Rajya Sabha have responsibility to conduct the proceedings of the House.
- Vice-President of India is *ex-officio* Chairman of Rajya Sabha.
- Rajya Sabha also chooses from amongst its members, a Deputy Chairman.
- There is also a **Panel of Vice-Chairmen** in Rajya Sabha, the members of which are nominated by the Chairman, Rajya Sabha.
- In the absence of the Chairman and Deputy Chairman, a member from the Panel of Vice-Chairmen presides over the proceedings of the House.

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.

BUSINESS ADVISORY COMMITTEE – LOK SABHA

- It is constituted at the commencement of new Lok Sabha after the general elections. No specific term of its office is laid down in the rules but like other parliamentary committees, it holds office until a new committee is nominated by the Speaker.
- In practice, however, the Committee is usually reconstituted every year and assumes office in the first week of June. It consists of 15 members including the Speaker who is the *ex-officio* Chairperson of the Committee. The members of the Committee are nominated by the Speaker.
- The Deputy Speaker, if he is not nominated on the Committee may also be invited to attend the sittings of the Committee, as a special invitee.

FUNCTIONS OF THE COMMITTEE

- **Time allotted for discussion** - The function of the Committee is to recommend the time that should be allocated for the discussion of the stage or stages of

Government Bills and other business as the Speaker, in consultation with the Leader of the House, may direct for being referred to the Committee.

- **Timetable for completion of work** - The Committee (in suitable cases) has the power to indicate in the proposed timetable the different hours at which various stages of a Bill or other Government business should be completed.
- **Priority of work decided by Government** - The Committee only allots time in respect of the business to be transacted by the House during the Government time. However, the priority in respect of these items is determined by Government.
- **Bills, Motions & Short Duration Question** - The Committee also selects Bills for discussion in the House, Motions and Short Duration discussions admitted by the Speaker and recommends time for discussions.
- **Late & Extra Sittings of House** - Committee recommends proposals for late sittings of the House, dispensing with the Question Hour or lunch hour, extension of sittings of the House beyond the normal hours of adjournment and fixing of additional sittings/ cancellation of sittings are placed before the Committee for its recommendation.

REPORT OF COMMITTEE CIRCULATED AMONG MEMBERS

- The recommendations of the Committee are presented to the House in the form of a report and Printed copies of the report are circulated to members.
- A motion that the House do agree with the report of the Committee is moved in the House on the following day.
- After the report is agreed to by the House, the allocation of time as approved by the House is notified and it takes effect as an order of the House.
- No variation is permissible in the allocation of time order except on a motion adopted by the House.
- The Speaker may, however, increase the time on any item by one hour in his discretion without a formal motion being moved.

BUSINESS ADVISORY COMMITTEE – RAJYA SABHA

- The committee recommends the time that should be allocated for the discussion of the stage or stages of such Government Bills and other business as the Chairman in consultation with the Leader of the House may direct for being referred to the Committee.

- The Committee also recommends the time that should be allocated for the discussion of stage or stages of Private members' Bills and Resolutions.
- It has the power to indicate in the proposed timetable the different hours at which the various stages of the Bill or other business are to be completed.
- The Committee performs such other functions as may be assigned to it by the Chairman from time to time.
- The timetable in regard to the business of the Rajya Sabha as settled by the Committee is reported by the Chair to the House, which is then notified in Rajya Sabha Parliamentary Bulletin Part-II.

► CONGRESS MOVES PRIVILEGE MOTION AGAINST PM

Congress leader KC Venugopal moved a motion of privilege against Prime Minister Narendra Modi in Rajya Sabha for his alleged defamatory remarks against Gandhi family.

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 news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.
- Each House also claims the right to punish with 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 the 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, like 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)
- 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.

► CONTESTING ELECTIONS FROM TWO SEATS

The Supreme Court refused to set aside a provision in the election law (RPA, 1951) namely Section 33(7) that allows candidates to contest polls from two constituencies simultaneously.

WHAT DOES THE ELECTORAL LAW SAY?

- **Section 33(7) of RPA, 1951** - an individual can contest from two parliamentary constituencies but, if elected from both, he has to resign one seat within 14 days of the declaration of the result, failing which both his seats shall fall vacant. (Provision of 14 days limit is provided under **Section 91 of Conduct of Election Rules**)
- A candidate could contest from multiple constituencies until 1996 when RPA 1951 was amended to set the cap at two constituencies.
- Despite contesting from two constituencies, the candidate can retain only 1 seat and cannot remain elected from two constituencies. This has also been provided under **Section 70 of RPA 1951** which states that —
 - If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State
 - then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman or to such other authority or officer as may be prescribed,
 - the remaining seats shall become vacant.
- RPA 1951 provides contrasting provision on contesting from more than 1 constituency. **Section 33(7)** of RPA, 1951 allows a candidate to contest on 2 Parliamentary or Assembly seats but **Section 70** of RPA, 1951 states that the candidate can retain only 1 seat and has to resign from the other seat if he/she wins both seats.

ARTICLE 101 – CONSTITUTION OF INDIA

- No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.
- No person shall be a member both of Parliament and of a House of the Legislature of a State,
- and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President,

- that person's seat in Parliament shall become vacant unless he has previously resigned his seat in the Legislature of the State.

SECTION 68 OF RPA, 1951

- **Vacation of seats when elected to both Houses of Parliament**
 - Any person who is chosen a member of both the Houses of the People and the Council of States and who has not taken his seat in either House.
 - may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within 10 days from the date, or the later of the dates, on which he is so chosen,
 - intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.
 - In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

SECTION 151A OF RPA, 1951

- **Bye-election for filling any 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 conducted if –**
 - the remainder of the term of a member in relation to a vacancy is less than one year; or
 - the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.

SUPREME COURT'S JUDGMENT

- The Court held that it is a policy matter and an issue concerning political democracy and hence it would be appropriate for the Parliament to take a call on the matter.
- CJI observed that this is a matter of legislative policy and ultimately it is Parliament's will as to whether the political democracy is furthered by granting such choice.
- The Court also held that contesting from two seats was not constitutionally immoral in a political democracy.
- The Court also emphasised that although letting a candidate appear in multiple seats would mean a bye-election if the candidate wins in both seats, thereby draining public exchequer, the issue fell squarely with the legislative domain.

RESERVATION RELATED ISSUES

► SC JUDGMENT ON EWS

Supreme Court by 3:2 majority has upheld the constitutional validity of Constitution 103rd Amendment and has held that the Constitution 103rd Amendment which provides for 10% reservation to the Economically Weaker Sections (EWS) in admissions to educational institutions and government jobs does not violate the basic structure of the constitution.

Basic concerns | With the SC scrutinising the EWS quota, senior advocate Gopal Sankaranarayanan had prepared the draft legal issues for the Bench to examine:

- Whether the 103rd Constitution Amendment Act removes the basis of Indra Sawhney judgment that quota cannot be given on a purely economic basis
- Whether the amendment breaches the Basic Structure of the Constitution in excluding the SEBCs, OBCs, SCs, STs from the scope of EWS reservation
- Whether it breaches the equality code and the Constitutional scheme by giving sanctity to the 'existing reservation', which is only created temporarily
- Whether it breaches the 50% quota limit by permitting EWS reservations up to 10% over and above the existing reservation
- Whether the imposition of EWS quota on private unaided institutions violates the Basic Structure



MAJORITY JUDGMENT - IMPORTANT HIGHLIGHTS

- **Reservation is an instrument of affirmative action** by the state to ensure an all-inclusive march towards the goal of an egalitarian society while countering inequalities.
- **Does not Violate Basic Structure** - Reservation singularly on economic background does not violate any essential feature of the Constitution and does not cause any damage to the basic structure of the constitution.
- **Does Not Violate Equality Code** - Exclusion of the reserved categories from the EWS quota does not violate the equality code and does not in any manner cause damage to the basic structure of the constitution.
- **Reservation for EWS over and above the 50 per cent cap does not violate the basic structure,**

saying that the ceiling, by itself, is not inflexible and in any case only applies to reservation envisaged by Articles 15(4), 15(5) and 16(4) of the Constitution.

- **Treating EWS as Separate Class Reasonable** - The amendment enabling state to make special provisions for EWS other than Scheduled Castes, Scheduled Tribes and Socially and Educationally Backward Classes is required to be treated as an affirmative action on the part of the Parliament for the benefit and betterment of the EWS category. Treating the EWS class of citizens as a separate class would be a reasonable classification cannot be called unreasonable or unjustifiable classification, much less a betrayal of basic feature or as violative of Article 14.
- **Does Not Affect Special Rights of SC/ST/OBC** - The Amendment creates a separate class of EWS from the general or unreserved category without affecting the special rights of reservations provided to the SC's, ST's and SEBC's. Therefore, exclusion of SC's, ST's and SEBC from such reservation is not unreasonable.

MINORITY JUDGMENT (Chief Justice U.U. Lalit and Justice S Ravindra Bhat)

- **Exclusion violates non-discrimination and non-exclusionary facet of the equality code** - The amendment by the language of exclusion undermines the fabric of social justice and thereby the basic structure of the Constitution. This exclusion violates the non-discrimination and non-exclusionary facet of the equality code and in turn, the basic structure.
- **Discrimination** - Though it creates opportunities for the EWS sections, the amendment, by keeping out the poor among the SCs, STs and SEBCs out of its limit purview, practices constitutionally prohibited principles of discrimination.
- **Permitting breach of 50% would result in compartmentalization and the rule of right to equality will become right to reservations taking us back to Champakam Dorairajan.**

SPECIFIC ISSUES**1. CAN THERE BE QUOTAS BASED ON ECONOMIC CRITERIA ALONE?**

MAJORITY JUDGMENT	MINORITY JUDGMENT
<ul style="list-style-type: none"> • Yes, poverty is an adequate marker of deprivation that the state can address through reservations. • EWS is deemed a separate and distinct category - other than the reservation provided under Article 15(4), 15(5) & 16(4). • Separate Reservations other than for SEBCs not barred by the Constitution - 	<ul style="list-style-type: none"> • Laws that provide benefits based on "only economic criteria" do not by themselves violate the right to equality. However, the Constitution envisages reservations to only be community-based and not individual-centric. • So, while access "to public goods" such as tax breaks, subsidies can be allowed, reservation in public employment would not be permissible. • It is inconceivable that the deletion of caste (as long as Indian society believes in and practices the caste system) as a proscribed ground through a constitutional amendment would stand scrutiny.

2. IS EXCLUSION OF SC/ST, SEBC FROM QUOTA DISCRIMINATORY?

MAJORITY JUDGMENT	MINORITY JUDGMENT
<ul style="list-style-type: none"> • NO - There cannot be competition of claims for affirmative action based on disadvantages. • Reservation cannot be denied to one section because that segment is otherwise not suffering from other disadvantages. • Reservation under Article 15(6) and 16(6) is separate and 	<ul style="list-style-type: none"> • The exclusion is the main ground for striking down the constitutional amendment as per the minority opinion. Justice Bhat gave three reasons why the exclusion of SC/ST/OBC is unconstitutional. • First, it "others" those subjected to socially questionable and outlawed practices, though they are amongst the poorest sections of society, and

distinct.

goes against the idea of fraternity.

- **Second**, the exclusion virtually confines SC/ST/OBC within their allocated reservation quotas (15 per cent for SCs, 7.5 per cent for STs, 27 per cent for OBCs).
- **Third**, it denies the chance of "mobility from the reserved quota (based on past discrimination) to a reservation benefit based only on economic deprivation."

3. CAN QUOTA FOR POOR BREACH THE 50% CEILING FOR RESERVATIONS?

MAJORITY JUDGMENT	MINORITY JUDGMENT
<ul style="list-style-type: none"> • No - Reservations for economically weaker sections of citizens up to 10% in addition to the existing reservations does not result in violation of any essential feature of the Constitution and does not cause any damage to the basic structure of the Constitution of India on account of breach of the ceiling limit of 50%. • This is because that ceiling limit itself is not inflexible and, in any case, applies only to the reservations envisioned by Articles 15(4), 15(5) and 16(4) of the Constitution of India. 	<ul style="list-style-type: none"> • The minority opinion warned that breaching it could "eat up the rule of equality." • The minority opinion also stated that going above 50 per cent "becomes a gateway for further infractions". • The question is also pending before another Constitution bench on whether a Tamil Nadu law providing for reservation in excess of the 50 per cent limit is unconstitutional. The matter is open and will be decided soon.

4. CAN PRIVATE COLLEGES BE FORCED TO HAVE EWS QUOTA? (YES)

- Unaided private institutions, including those imparting professional education, cannot be seen as standing out of the national mainstream.

- As held in the judgments, reservations in private institutions are not per se violative of the basic structure.
- Thus, reservations as a concept cannot be ruled out in private institutions where education is imparted.

ISSUES WHICH MAY EMANATE FROM EWS JUDGMENT

- SC Judgment allows state and centre to go beyond the limit of 50%
- It will lead to increase in demand of Caste Based Census
- New Yardsticks to determine "Backwardness" amidst shift in strategy for providing reservation from caste-based discrimination to class-based inequality.
- Use of Reservation as a Social Engineering tool for Vote-Bank Politics
- It may further fragment Indian Society
- Member of EWS need not prove historical backwardness or inadequate representation in services.

► DOPT PROVIDES CLARIFICATIONS ON EWS THROUGH FAQ

Based on the directions of Central Information Commission, DoPT has prepared a set of FAQs on the issue of EWS which may be of use while issuing Income & Asset Certificate to the candidates by the concerned authorities.

CLARIFICATIONS PROVIDED BY DOPT

Category of Applicant

- **OBCs/SC/ST Under Central List Not Eligible for EWS** - Applicants belonging to SC, ST or OBC included in the Central List residing in any of the States/UTs are not eligible for EWS reservation in respect of posts/services of the Government of India.
- **OBCs under State List Eligible for EWS** - People belonging to Other Backward Classes (OBC) communities in the State list but not in the Central list will be eligible to apply for posts and services of the Government of India under the EWS quota criteria, provided they fulfill other requirements. Such persons can apply for Income and Asset Certificate for applying to posts and services of the Government of India to avail EWS reservation.

Property

- **Property Held by Family in Different Locations will be Clubbed to check Threshold –**
Includes property of parents and siblings under 18 years of age.

- **Meaning of Family while determining EWS Reservation** - the term "Family" will include the person who seeks benefit of reservation, his/her parents and siblings below the age of 18 years, as also his/her spouse and children below the age of 18 years. Therefore, siblings/children of 18 years and above will not be counted under the definition of "Family" for applying to Income and Asset Certificate.
- **Property in different states to be clubbed** - If agricultural land/residential flat/plot of parents are in more than one State/District or within the same State/District, then all such land/properties will be clubbed to ascertain threshold of the property held by family.
- **Definition of residential flat/plot also includes Commercial Property** – as its exclusion will result in injustice.
- **Person can apply for the Income and Asset Certificate in the District of their permanent address.**
- **Property of grandparents not distributed among the parents of the applicants will not be counted towards calculating the assets** held by the parents of applicants for the purpose of Income and Asset Certificate.
- **Division of Plot in Urban and Rural Areas** – (Example - half of the residential plot, i.e. 90 square yards is in urban area and rest 90 square yards is in rural areas) - DoPT clarified that in cases where the residential plot of a candidate is divided between an area in a notified municipality and an area not in a notified municipality, the criteria for exclusion should be applied to each of the areas independently.
- **Residential plot means** a plot for the purpose of construction of residential house irrespective of the fact whether the house has been constructed or not. The entire area of the plot will be considered while assessing the eligibility of a candidate to get an Income & Asset Certificate. In this regard, rules/regulations framed by the respective Municipality/Panchayat shall be considered.

Vacancies

- **Unfilled Vacancy under EWS Quota Not to Be Carried Forward to Next Year as Backlog** - the unfilled vacancies to be filled treating them as unreserved. However, it should not result in excess representation in general category.
- **Excess Representations to be diverted** to the category in which shortfall exists.

Income

- **Family's earnings from monthly pension payouts** and all other sources like salary, agriculture, business, profession, etc. for the financial year prior to the year of application will be counted as the family's income.
- **Family's Gross Annual Income to be below Rs 8 Lakhs** are to be identified as EWS for benefit of reservation.
- **Amount of Income Tax Return shall not be counted** rather the Gross Salary or Gross Income.

Miscellaneous

- **Submitting Fake Income and Asset Certificate** – will amount to termination of the provisional service and actions shall be taken for such fraud under Indian Penal Code.
- **Relaxations in Age and Number of Attempts to EWS Candidates Not applicable** - The conditions prescribed for General category candidates in matters of Age and Number of attempts, would also apply to EWS candidates.

► PRINCIPLE OF MOBILITY NOT APPLICABLE IN HORIZONTAL RESERVATION

Odisha High Court has clarified that unlike 'vertical reservation' in which principle of mobility is applicable, 'horizontal reservation' for a particular social category can only be granted to candidates coming under that social category and not beyond that.

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 to as 'vertical reservations' and 'horizontal reservations'.
- Reservations in favour of Scheduled Castes, 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.

HIGHLIGHTS OF ODISHA HC JUDGMENT

- On the issue of vertical mobility, the Court explained that horizontal quota meant for unreserved category women cannot be occupied by SC/ST/OBC category women.
- Thus, the principle of mobility as applicable in case of social (vertical) reservations is not applicable to special (horizontal) reservation. This implies that the special reservations like women etc. have to be confined to their respective social categories.

► TRIPLE TEST FORMULA – OBC RESERVATION IN LOCAL BODIES

The Supreme Court (SC) by modifying its earlier order has allowed the implementation of reservation for Other Backward Classes (OBC) in the local body elections in Madhya Pradesh. The court had earlier rejected state government's decision and asked State Election Commission to notify local polls without OBC reservation.

WHAT MADE SUPREME COURT CHANGED ITS VERDICT?

- SC approved conduct of local elections in Madhya Pradesh with OBC reservation based on revised recommendations of State Backward Commission.
- Approval was given due to the following:
 - (i) Submission of revised recommendations of the State Backward Commission
 - (ii) Completion of delimitation exercise in the state and its notification thereof.
 - (iii) Maximum limit of 50% reservation was not breached.
- The empirical report was part of the **triple test formula** to provide reservation in local polls.

TRIPLE TEST FORMULA

Determination of Reservation to OBC in local bodies based on three following conditions:

1. Setting up dedicated Commission to conduct empirical inquiry into the nature of the

backwardness in local bodies.

2. To specify the proportion of reservation required to be provisioned local body-wise.
3. Such reservation shall not exceed aggregate of 50% of the total seats reserved for SCs/STs/OBCs taken together.

UNDERSTANDING SC JUDGMENT - K.

KRISHNAMURTHY (DR.) V. UNION OF INDIA

PETITIONER ARGUMENTS

- The petitioner challenged Articles 243D (6), 243-D (4), 243T (6) and 243D (4) of the Constitution on the grounds that reservation provided under the provisions is discriminatory in nature on the basis of caste and gender.

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.*

SC JUDGMENT

- **Reservation policy under Article 243-D and 243-T different from Article 15(4) & 16(4)** - and hence both kinds of reservations cannot be linked.
- **Socio-Economic Backwardness different from 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.
- **Backwardness in the social and economic parameter can act as a barrier** for the backward people to have effective political participation.
- **Reservation in the Local Self-Government beneficial for Society** – empowers weaker sections and makes governance more participatory, accountable and inclusive to the weaker section.

- **Creamy Layer cannot be excluded from reservation of OBC in local bodies** - at the level of Panchayat and Municipality.
- **Horizontal Reservation to be excluded while deciding the ceiling of 50% reservation**
- **Vertical Reservation - the upper ceiling of 50% in favour of SC/ST/OBCs should not be breached** in the context of local self-government. *Exceptions can only be made in order to safeguard the interests of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.*
- **Article 243-D (6) and Article 243-T (6) are Constitutionally Valid** – as they enable State Legislatures to reserve seats and chairperson posts in favour of backward classes.
- **Quantum of Reservation to be determined by respective state based on empirical findings** - into the patterns of backwardness that act as barriers to political participation.
- **Reservation of Chairperson posts as per Article 243-D (4) and 243-T (4) is constitutionally valid.**
- **Determination of Reservation to OBC in local bodies based on three following conditions:**
 1. To set up a dedicated Commission to conduct empirical inquiry into the nature of the backwardness in local bodies.
 2. To specify the proportion of reservation required to be provisioned local body-wise.
 3. Such reservation shall not exceed aggregate of 50% of the total seats reserved for SCs/STs/OBCs taken together.

► 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 is 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.

► 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 are 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 center can fix a reasonable time for states to conduct the review.

► CONSTITUTION 105TH AMENDMENT ACT

- The Constitution (One Hundred and Fifth Amendment) Act, 2021 by amending **Article 338B, 342A and 366(26C)** allows 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 castes 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 combing weaving, 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 NOT A 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 Scheduled 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 Chinnaiiah vs State of Andhra Pradesh and Others** - which disallowed such sub-categorisation in reservation for Scheduled Caste and Scheduled Tribes.
- **E.V. Chinnaiiah 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

- **Constitution 104th Amendment Act, 2019 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, **amendment did not extend the reservation for Anglo-Indians** in Lok Sabha & SLA under Article 334 for another 10 years.
- Scheduled Castes and Scheduled Tribes have yet not ceased to exist despite their progress in last 70 years.

WHO ARE ANGLO-INDIANS?

- 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.

► **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.

► ELECTION COMMISSIONERS TO BE APPOINTED BY A COMMITTEE: SC

In *Anoop Baranwal v. Union of India*, Constitution Bench of Supreme Court has held that Election Commissioners (ECs) including the Chief Election Commissioner (CEC) will be appointed by the President on the advice of a committee consisting of the Prime Minister, leader of opposition in Lok Sabha and the CJI till a specific law is framed by the Parliament. However, if the Leader of Opposition (LoP) has not been recognised by the Speaker, then the Leader of the largest Party in the Opposition in the Lok Sabha having the largest numerical strength will be in the committee to appoint the ECs and CEC.

CONDUCT OF ELECTIONS - ARTICLE 324(1)

- 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
- **Law Can be Made for Appointments** - The appointment of the Chief Election Commissioner and other Election Commissioners shall, subject to the provisions of any law made in that behalf by Parliament, be made by the President.

CONSTITUTION OF ELECTION COMMISSION - ARTICLE 324(2)

- **The Election Commission** shall consist of the **Chief Election Commissioner** and **such number of other Election Commissioners**, if any, as the President may from time-to-time fix.
- When any other Election Commissioner is so appointed the **Chief Election Commissioner shall act as the Chairman of the Election Commission**.

APPOINTMENT OF ELECTION COMMISSIONERS - ARTICLE 324(2)

- **Appointment of Election Commissioners** - the appointment of the Chief Election Commissioner and other Election Commissioners shall, **subject to the**

provisions of any law made in that behalf by Parliament, be made by the President.

It is here where the Supreme Court's judgment will have an impact. This is because the President has to go according to the advice tendered by the Committee comprising PM, LoP & CJI. This in a way takes away power from the central government to appoint ECs or CEC as per their choice.

- **Appointment of Regional Commissioners** - 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.

REMOVAL- ARTICLE 324(5)

- **The CEC shall be removed from his office** in like manner and on the like grounds as a Judge of the Supreme Court.
- Conditions of service of the Chief Election Commissioner shall not be varied to his disadvantage after his appointment.
- 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 as provided in the Constitution.

The Constitution Bench has asked to ensure parity for other Election Commissioners and suggested that Removal of Other Election Commissioners to be same as that of CEC.

THE ELECTION COMMISSION (CONDITIONS OF SERVICE OF ELECTION COMMISSIONERS AND TRANSACTION OF BUSINESS) ACT, 1991

The Act determines the conditions of service of the Chief Election Commissioner and other Election Commissioners and also provides for the procedure for transaction of business by the Election Commission.

Term of office

- The Chief Election Commissioner or an Election Commissioner shall hold office for **a term of six years from the date on which he assumes his office.**
- Provided that where the Chief Election Commissioner or an Election Commissioner attains the age of sixty-five years before the expiry of the said term of six years, he shall vacate his office on the date on which he attains the said age.
- Provided further that the Chief Election Commissioner or an Election Commissioner may, at any time, by writing under his hand addressed to the President, resign his office.
- **Explanation** — For the purpose of this section, the term of six years in respect of the Chief Election Commissioner or an Election Commissioner holding office immediately before the commencement of this Act, shall be computed from the date on which he had assumed office.

► INTRINSIC LINK BETWEEN DEMOCRACY & POLITICAL PARTIES

In any democratic country, political parties represent an institution through which people participate in legislative processes by electing party's candidates to various legislative bodies at national, state and local level. Thus, political party becomes the intrinsic link between the people and democratic process as it mobilises people to capture power through election. Political parties provide the crucial connection between social process and policymakers, and influence debates and policies on issues affecting the interests of various social groups in a political system.

INTRINSIC LINK WITH SOCIETY & DEMOCRACY

- Political parties form an important component of a political system. A political party is an institution which consists of leaders, followers, policies and programs.
- Its followers may have formal membership of the party or may support it without being formal members. Parties can be differentiated on the basis of leaders, policies and programs, ideologies and internal functioning.
- Political parties therefore provide the crucial connection between social process and policymakers, and influence debates and policies on issues affecting the interests of various social groups in a political system.
- The principal feature of a political party which distinguishes it from other organizations is that its

main purpose is to capture power which takes place through constitutionally envisaged democratic process.

- Political parties therefore connect individuals, state and society.

IMPORTANT ROLE PLAYED BY POLITICAL PARTIES

- They contest elections.
- They put forward different policies and programs and the voters choose from them.
- They play a decisive role in making laws for a country.
- They form and run governments by winning elections.
- They form part of legislature and hold the government accountable.
- Select one member in Parliament/State Legislature to play the role of "leader of opposition".
- They shape public opinion by raising and highlighting various issues or regional and national importance.
- They provide people access to government machinery and welfare schemes implemented by governments.

ROLE OF OPPOSITION PARTIES

- Opposition plays an important role by ensuring checks and balance on the political party in power. According to Indian Parliamentary setup, the executive or the government is responsible to the legislature as provided under **Article 75(3)**.
- The Opposition can be the single largest party or group of political parties forming part of legislature which holds the government accountable, participate in various parliamentary committees, scrutinises legislations and policies of the government.

STATUTORY RECOGNITION TO LEADER OF OPPOSITION

- Parliament has also given statutory recognition to the post of Leader of Opposition in Lok Sabha and Rajya Sabha through **THE SALARY AND ALLOWANCES OF LEADERS OF OPPOSITION IN PARLIAMENT ACT, 1977**.
- **However, it is the Chairman of Rajya Sabha and Speaker of Lok Sabha which finally recognises any member as Leader of Opposition** in Rajya Sabha and Lok Sabha respectively.
- The law extends to Leader of Oppositions in the Lok Sabha and the Rajya Sabha the same official status, allowances and perks that are admissible to Cabinet Ministers.

Section 2 – Definition

- In this Act, “**Leader of the Opposition**”, in relation to **either House of Parliament**, means that member of the Council of States or the House of the People, as the case may be, who is, for the time being, the Leader in that House of the party in opposition to the Government having the greatest numerical strength and recognised as such by the Chairman of the Council of States or the Speaker of the House of the People, as the case may be.

Explanation

- Where there are two or more parties in opposition to the Government, in the Council of States or in the House of the People having the same numerical strength, the Chairman of the Council of States or the Speaker of the House of the People, shall, having regard to the status of the parties, recognise any one of the Leaders of such parties as the Leader of the Opposition for the purposes of this section and such recognition shall be final and conclusive.

Section 3 - Salary, and daily, constituency and sumptuary allowances

- Each Leader of the Opposition shall, so long as he continues as such Leader, be entitled to receive a salary per mensem and allowance for each day at the same rates as are specified in section 3 of the Salary, Allowances and Pension of Members of Parliament Act, 1954 with respect to members of Parliament.

- The Speaker of Lok Sabha did not recognise the leader of opposition for the 16th and 17th Lok Sabha as the Congress party won 44 and 52 seats respectively.

THE QUORUM RULE FOR LEADER OF OPPOSITION

- Rule 389** of the Rules of Procedure and Conduct of Business in Lok Sabha states that all matters not provided for in the rules shall be regulated in such manner as the Speaker may, from time to time, direct.
- Based on this rule, first speaker of Lok Sabha **G.V. Mavalankar** issued certain **Directions**. The **Directions 120 and 121** issued under Rule **389** provides for Recognition of Party or Group and conditions for such recognition.
- Particularly, **Direction 121(1)(c)** requires a party to have at least a strength equal to the quorum fixed to constitute a sitting of the house i.e., one-tenth of the total number of members of the house. Hence, as per the present strength of Lok Sabha, there should be at

least 55 members in order to be recognised by the speaker.

- Similarly, **The Leaders and Chief Whips of Recognised Parties and Groups in Parliament (Facilities) Act, 1998** defines Recognised Group and Recognised Party.

“Recognised Group means,—

- Council of States** - every party which has a strength of not less than fifteen members and not more than twenty-four members in the Council.
- House of the People** - every party which has a strength of not less than thirty members and not more than fifty-four members in the House.

“Recognised Party” means,—

- Council of States** - every party which has a strength of not less than twenty-five members in the Council.
- House of the People** - every party which has a strength of not less than fifty-five members in the House.

LEADER OF OPPOSITION OF LOK SABHA**PARTICIPATES IN SELECTION COMMITTEES UNDER THE FOLLOWING LEGISLATIONS**

The Central Vigilance Commission Act, 2003	To Appoint Central Vigilance Commissioner
Right to Information Act, 2005	To Appoint Chief Information and Other Commissioners
Lokpal and Lokayuktas Act, 2013	To Appointment of Lokpal
Delhi Special Police Establishment Act, 1946	To Appointment of CBI Director
Protection of Human Rights Act, 1993	To Appointment of Chairperson of NHRC

► ELECTION COMMISSION TO DECIDE SYMBOLS DURING DISPUTE

Election Commission is empowered under Paragraph 15 of the Election Symbols (Reservation and Allotment) Order, 1968 to decide in relation to splinter groups or rival sections of a recognised political party. Conduct of Elections Rules, 1961 further empowers EC to specify symbols for elections in parliamentary and assembly constituencies. Recently, the Election Commission under Para 15 of the Election Symbols (Reservation and Allotment) Order, 1968 ruled that Eknath Shinde faction is entitled to the Shiv Sena's name and symbol of Bow and Arrow.

Paragraph 15 - Power of Commission in relation to splinter groups or rival sections of a recognised political party.

- Rival factions or splinter groups will submit their claims to the party symbol to the Election Commission (EC).
- EC after considering all the available facts and circumstances of the case and hearing both sides or splinter groups may decide:
 - That one rival section will be authorised to use the party symbol.
 - None of the factions are authorized to use the party symbol.
- Decision of the Commission shall be binding on all such rival sections or groups.

Rule 5 - Symbols for elections in parliamentary and assembly constituencies

(1) The Election Commission shall, by notification in the Gazette of India, and in the Official Gazette of each State, specify the symbols that may be chosen by candidates at elections in parliamentary or assembly constituencies and the restrictions to which their choice shall be subject.

The Election Symbols (Reservation and Allotment) Order, 1968 has empowered the Election Commission (EC) to allot symbols at elections in Parliamentary and Assembly Constituencies, recognition of political parties and suspend or withdraw recognition of recognised or unrecognised political party for its failure to observe Model Code of Conduct or follow lawful instructions of EC.

REGISTRATION OF POLITICAL PARTIES

- **Section 29A of Representation of People Act, 1951** provides for **registration with the Election Commission of associations and bodies as political parties.**
- **The Election Symbols Order further provides for Classification of Political Parties as**
 - 1. Recognised Political Parties**
 - A recognised political party shall either be a **National party** or a **State party**.
 - 2. Unrecognised Political Parties (RUPP).**
- However, Unrecognised Political Parties also need to furnish details to the Election Commission.

STATUTORY REQUIREMENTS FOR REGISTERED UNRECOGNISED POLITICAL PARTIES (RUPPS)

- **Section 29 C of RP Act 1951** requires a RUPP to furnish a contribution report under Conduct of Election Rules 1961. Such contributions are exempted from the provisions of Income Tax as an incentive to the parties for strengthening electoral democracy. Following details are needed to be provided:
 - Address of the headquarters of the Political Party including any changes.
 - Permanent Account Number and Income-tax Ward/Circle where return of the political party is filed.
 - Contributions received in excess of Rs.20,000 including particulars of donors.
 - Name of the bank and branch of the bank if payment made by cheque/demand draft.
- The political parties are mandated to furnish Audited Annual Statements as per ECI Transparent Guidelines.
- Every Political Party, for being registered by ECI under **Section 29 A (6)**, undertakes to include in its constitution that it must contest an election conducted by the Election Commission within 5 years of its registration.
- **Section 29A (9) of RPA, 1951** mandates every political party to communicate any change in its name, head office or office bearers, address or in any other material matters to the commission without delay.
- Upon participation in an election, political parties are required to furnish their election expenditure statement within 75 days in case of Assembly elections and within 90 days in case of Lok Sabha elections.

CONDITIONS FOR RECOGNITION AS A STATE PARTY

- **At the last General Elections to State Legislative Assembly** - securing not less than 6% of the total valid votes + win at least 2 seats in the state legislative assembly.
- **At the last General Election to Lok Sabha from the state** - securing not less than 6% of the total valid votes polled in the State + win at least 1 seat in Lok Sabha Election from the state.
- **At the last general election to State Legislative Assembly** - party winning at least 3% of the total number of seats in the Legislative Assembly, (any fraction exceeding half being counted as one), or at least 3 seats in the Legislative Assembly, whichever is more.
- **At the last General Election to Lok Sabha from the state** - win at least 1 for every 25 seats from a state in Lok Sabha Elections.
- **Political Party Securing at least 8%** of the total valid votes polled in the State.

CONDITIONS FOR RECOGNITION AS A NATIONAL PARTY

- Securing at least 6% of the valid vote in an Assembly or Lok Sabha General Election in any 4 or more states and winning at least 4 seats in a Lok Sabha General Election from any State or States.
- Win at least 2% of the total Lok Sabha seats and these seats must be won from 3 different states.
- The party is recognized as a State Party in at least 4 states.
- Latest addition to the list of National Party includes All India Trinamool Congress.

REGISTERED UNRECOGNISED POLITICAL PARTY - RUPP

- Any Political Party not recognised either as a state or national party but is registered with the Election Commission under Section 29A of the Representation of People Act, 1951.
- It is mandatory for RUPPs to implement the provisions of RPA, 1951 and must communicate to the Election Commission –
 - Any change in its name, head office, office-bearers, address or in any other material matters.
 - Furnish Contributions received as per Conduct of Election Rules, 1961.

POWERS OF EC UNDER THE ELECTION SYMBOLS (RESERVATION AND ALLOTMENT) ORDER, 1968

- If State or National Political Party fails to observe or has defied the orders of EC
 - to observe Model Code of Conduct (MCC), for Guidance of Political parties and “Candidates”
 - Conduct lawful directions and instructions of EC to ensure conduct of free, fair and peaceful elections or safeguarding the interests of the general public and the electorate in particular.
- Then the EC, based on relevant facts and giving reasonable opportunity of show cause to the political party.
 - May suspend or withdraw recognition of such party as the National or State party.

► CONTESTING ELECTIONS FROM TWO SEATS

Supreme Court refused to set aside a provision in the election law (RPA, 1951) namely Section 33(7) that allows candidates to contest polls from two constituencies simultaneously.

WHAT DOES THE ELECTORAL LAW SAY?

- **Section 33(7) of RPA, 1951** - an individual can contest from two parliamentary constituencies but, if elected from both, he has to resign one seat within 14 days of the declaration of the result, failing which both his seats shall fall vacant. (Provision of 14 days limit is provided under **Section 91 of Conduct of Election Rules**)
- A candidate could contest from multiple constituencies until 1996 when RPA 1951 was amended to set the cap at two constituencies.
- Despite contesting from two constituencies, the candidate can retain only 1 seat and cannot remain elected from two constituencies. This has also been provided under **Section 70 of RPA 1951** which states that —
 - If a person is elected to more than one seat in either House of Parliament or in the House or either House of the Legislature of a State
 - then, unless within the prescribed time he resigns all but one of the seats by writing under his hand addressed to the Speaker or Chairman or to such other authority or officer as may be prescribed,
 - the remaining seats shall become vacant.
- RPA 1951 provides contrasting provision on contesting from more than 1 constituency. **Section 33(7)** of RPA, 1951 allows a candidate to contest 2 Parliamentary or Assembly seats but **Section 70** of RPA, 1951 states that the candidate can retain only one seat and has to resign from the other seat if he/she wins both seats.

ARTICLE 101 - CONSTITUTION OF INDIA

- No person shall be a member of both Houses of Parliament and provision shall be made by Parliament by law for the vacation by a person who is chosen a member of both Houses of his seat in one House or the other.
- No person shall be a member both of Parliament and of a House of the Legislature of a State,
- and if a person is chosen a member both of Parliament and of a House of the Legislature of a State, then, at the expiration of such period as may be specified in rules made by the President,
- that person's seat in Parliament shall become vacant, unless he has previously resigned his seat in the Legislature of the State.

SECTION 68 OF RPA, 1951

- **Vacation of seats when elected to both Houses of Parliament**

- Any person who is chosen as a member of both the Houses of the People and the Council of States and who has not taken his seat in either House.
- may, by notice in writing signed by him and delivered to the Secretary to the Election Commission within 10 days from the date, or the later of the dates, on which he is so chosen,
- intimate in which of the Houses he wishes to serve, and thereupon, his seat in the House in which he does not wish to serve shall become vacant.
- In default of such intimation within the aforesaid period, his seat in the Council of States shall, at the expiration of that period, become vacant.

SECTION 151A OF RPA, 1951

- **Bye-election for filling any 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 conducted if –**
 - the remainder of the term of a member in relation to a vacancy is less than one year; or
 - the Election Commission in consultation with the Central Government certifies that it is difficult to hold the bye-election within the said period.

SUPREME COURT'S JUDGMENT

- The Court held that it is a policy matter and an issue concerning political democracy and hence it would be appropriate for the Parliament to take a call on the matter.
- CJI observed that this is a matter of legislative policy and ultimately it is Parliament's will as to whether the political democracy is furthered by granting such choice.
- The Court also held that contesting from two seats was not constitutionally immoral in a political democracy.
- The Court also emphasised that although letting a candidate appear in multiple seats would mean a bye-election if the candidate wins in both seats, thereby draining public exchequer, the issue fell squarely with the legislative domain.

► REMOTE VOTING FOR MIGRANT WORKERS

Given the regional variations in demographic trends and economic opportunities, India has a high rate of migration, which doubled in the census decade of 2001-2011. Migrants often see their political and economic rights compromised at their place of origin and residence. The Election

Commission of India (ECI) has now proposed a mechanism to facilitate remote voting for domestic migrants.

IMPORTANCE OF CONDUCTING ELECTIONS FOR A DEMOCRATIC NATION

- In any country practicing democratic norms, conduct of regular elections can be said to be the most visible symbol of the democratic process.
- In India, Article 324 of the Indian Constitution empowers the Election Commission with superintendence, direction and control of the preparation of the electoral rolls along with conduct elections to Parliament, State Legislatures and for the office of President and Vice-President.
- Even the Supreme Court has held that democracy is one of the inalienable basic features of the Constitution of India and forms part of its basic structure.
- It is here where the role of Election Commission becomes very significant to conduct a free, fair and transparent election in India as it enhances electoral trust among people which further improves the quality of democracy in India through greater voter participation.

MIGRANT POPULATION NOT ABLE TO VOTE IN INDIAN ELECTIONS

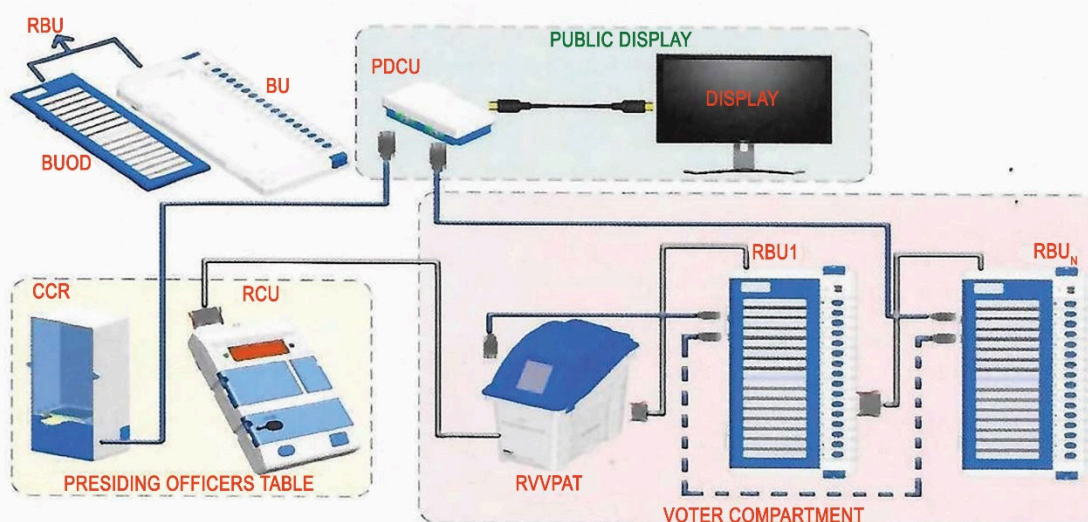
- **Dr. Shamseer V.P. v Union of India** - SC on the issue of alleged denial of voting opportunities for domestic migrants had directed the Election Commission to explore options for Remote voting for domestic migrants.
- **Inability to vote due to internal migration** (domestic migrants) is one of the prominent reasons to be addressed to improve voter turnout and ensure participative elections. Approximately 85% of the internal migration is within the States.
- **Reasons for Migration** - Although there is no central database available for migration within the country, the analysis of available data in public domain points to work, marriage and education related migration as important components of domestic migration.
- **Out-migration** (leaving one's place and settling in another) is predominant among the rural population in overall domestic migration.
- **Stagnation in Voter Turnout** - In its letter to parties, the EC expressed concern over the stagnation in voter turnout as approximately 1 out of 3 voters do not participate in the direct elections held in India.

Year of election	Registered Electors (Crores)	Voter turnout (%)
1951	17.32	45.67
1957	19.37	47.74
1962	21.64	55.42
2009	71.70	58.21
2014	83.40	66.44
2019	91.20	67.40

ABOUT REMOTE VOTING MACHINES

- The Remote Electronic Voting Machine (EVM) prototype can be used for up to 72 constituencies simultaneously from a single, remote polling booth.
- It is a standalone, non-networked system having same security features as that of existing EVMs.
- **RVM Contains the following components:**
 - Remote Control Unit – **RCU**
 - Remote Ballot Unit – **RBU**
 - Remote Voter Verified Paper Audit Trail – **RVVPAT**
 - Constituency Card Reader – **CCR**
 - Public Display Control Unit – **PDCU**
 - Remote Symbol Loading Unit – **RSLU**

Block diagram of RVM:



PROPOSED RVM VOTING METHOD

- Remote voters have to pre-register for remote voting facility by applying online/offline within a pre-notified time before election with his home constituency.
- Voter's details will be verified at home constituency and the voter's request for home voting will be approved after successful verification.
- Special multi-constituency remote voting polling stations will be set up in the places of their current residence.

CHALLENGES IN USING RVM		
ADMINISTRATIVE CHALLENGES	LEGAL CHALLENGES	TECHNOLOGICAL CHALLENGES
Identifying domestic migrants to set up separate polling stations. Providing remote voting facility for every election Provisions for polling agents and ensuring identification of voters to avoid impersonation. Appointing polling personnels for remote voting and its supervision	Defining Migrant Workers or domestic migrant Re-defining territorial constituency and remoteness. Ensuring registration of voters at their home constituency and at the place of voting i.e., their temporary stay Accommodate change in temporary	Method of remote voting Familiarity of voters with the new method for voting with multi-constituency Remote EVM or other technology Counting of Votes at Remote booths and then transmit the votes to their home constituencies.

<p>Implementing Model Code of Conduct at such polling stations or areas for conduct of elections in other place – especially for state assembly elections</p>	<p>place of such migrant voter – for example, a migrant voter registered in Delhi has shifted to Mumbai and his home constituency is in Kerala.</p> <p>Amending various Electoral Laws such as</p> <ul style="list-style-type: none"> • RP Act 1950 & 1951 • Conduct of Election Rules, 1961 • Registration of Electors Rules, 1960 	
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► MID-TERM ELECTIONS IN UNITED STATES

Mid-term elections was conducted in United States for 35 seats for the Senate and all 435 seats for the House of Representatives between the two political parties namely the Republicans and the Democrats. The elections will give voters an opportunity to express their views on Joe Biden's Presidency and the current direction of the country. The

results will also determine who will control either House of Congress without affecting the Presidentship of Mr. Joe Biden (Democrats). Based on the results so far, Republicans seems to be in control of the House of Representatives whereas the Democrats control the Senate. Now, in India, mid-term elections are not held and only by-polls are held in case of vacancy as we do not have a Presidential form of government but rather a Parliamentary Democracy.



WHEN IS MID-TERM ELECTION CONDUCTED IN UNITED STATES?

- **Two-Party System in USA** - Unlike India, which is a multi-party democracy, United States follows the two-party system which contests to control the US Congress.
- **Different Terms for Members of Senate and House of Representatives** - based on which elections are conducted.
 - The House of Representatives has 435 members who are elected every two years.
 - Senate has 100 members, each having a six-year term.
- **Mid-Term Poll After Every 2 Years** - as the members of the House of Representatives have two-year term, mid-term elections are held every two years after the Presidential Elections (mostly in first week of November) and two years prior to the next Presidential Elections.
- **For Example** – Presidential Elections were conducted in 2020 where Joe Biden became the President as Republican Party won the elections. So, now in 2022, the midterm elections are being conducted two years

prior to the next Presidential Elections due in November 2024.

- **Seats Put to Vote** - In the Midterm Elections, all 435 seats of the House of Representatives are contested and 1/3rd of the seats in Senate are contested.
- **Further, 36 States across the country will also elect their Governors.**

ARE MID-TERM ELECTIONS HELD IN INDIA?

- Indian Parliament comprises the Lok Sabha, Rajya Sabha and the President. Members of Lok Sabha are elected directly by the people in 530 territorial constituencies.
- Whereas Members of Rajya Sabha are elected indirectly by the elected members of the Legislative Assembly of the State in accordance with the system of proportional representation by means of the single transferable vote.
- So, based on Indian Parliamentary set-up, **Mid-term elections are NOT held in India** as the members of Lok Sabha are elected for a period of 5 years and the Council of Ministers remains collectively responsible to the House of the People.

- **Mid-term polls or early polls will only be held in India if the government has lost majority in Lok Sabha and the Prime minister has resigned and called for another general election.**
- In case a seat becomes vacant due to death, disqualification or resignation of Members of Lok Sabha or Rajya Sabha, then a by-poll is conducted for the remainder of the term.

► 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 RPA, 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

Representation of People Act, 1951	Conduct of Election Rules, 1961
Section 77 • mandates every candidate or his election agent.	Rule 86 – Particulars of account of election expenses (under sec 77 of RPA, 1951)

- 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.

Section 78

- mandates every contesting candidate § 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.

Section 10A –Disqualification for failure to lodge account of election expenses

- If the Election Commission is satisfied that a person–
- has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and
- has no good reason or justification for the failure.
- Election Commission shall, by order published in the Official Gazette, declare him to be disqualified and any such person shall be disqualified for a period of 3 years from the date of the order.

- Date and nature of expenditure – e.g. – printing, campaign,
- Amount paid & outstanding.
- Serial number of vouchers & bills
- Name and address of the person/company

Rule 87 – Notice by District Election Officer for inspection of accounts

Rule 88 - Inspection of account is allowed by any person including its attested copies.

Rule 89 – District Election Officer shall submit a Report to EC regarding submission/omission of election expenses.

Rule 89(8) - Report by DEO to EC on election expense by the Candidate

- 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 order.

► VIOLATION OF MODEL CODE OF CONDUCT

Violation of Model Code of Conduct is often alleged mostly by members of opposition for misuse of official functionaries 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 Sigh 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 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 aircraft, 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.**

► ELECTION PETITION

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 of forty-five days from the date of declaration of results.
- **Particulars** - An election petition must consist of 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.**

► DELIMITATION EXERCISE 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.

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.

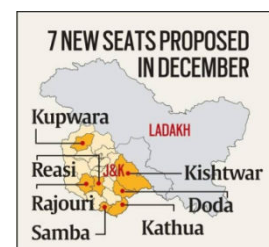
Opposition from Associate Members of National Conference (NC)

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**
 - (i) **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.
 - (ii) **Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner**, ex officio:
 - (iii) **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
 - (a) Being a member of the armed Forces of the Union ; or
 - (b) 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.
 - (c) Being a member of an Armed Police Force of a State and serving outside that state.
 - (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 ENSURE VOTING BY OVERSEAS VOTERS

Election Commission (EC) has proposed to change the rules pertaining to the conduct of elections to facilitate **Electronically Transmitted Postal Ballot System (ETPBS)** for overseas Indian voters. For this purpose, EC is in discussion with the Ministry of External Affairs to iron out logistical challenges in implementing the same. There are three categories of Electors in India: **1. General Electors, 2. Overseas (NRI) Electors and 3. Service Electors or Voters.** Union Law Minister stated that the total number of overseas voters on January 1 stood at over 1.15 lakh.

Who can Enroll as Overseas Elector/NRI Voter?

- A citizen of India, absent from the country owing to employment, education etc. who has not acquired citizenship of any other country and are otherwise eligible to be registered as a voter in the address mentioned in your passport.

Manner and procedure of registration of overseas electors

- It has been prescribed by the **Registration of Electors (Amendment) Rules, 2011**, notified by the Ministry of Law and Justice, Legislative Department, Government of India.
- According to **Rule 8A of Registration of Electors Rules, 1960** application for registration as Overseas Electors has to be made to Election Registration Officers in **Form 6A**.

CONSTITUTION OF INDIA

- **Article 326** declares that elections to the House of the People and to the Legislative Assemblies of States shall be on the basis of adult suffrage and every person who is a citizen of India and who is not less than 18 years of age on a prescribed date and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at any such election.
- Further **Section 62 of Representation of People Act, 1951** provides for the process of right to vote.

IMPORTANT HIGHLIGHTS - SECTION 62 - RIGHT TO VOTE (RPA-1951)

- 1) Only such persons shall be entitled to vote whose name is registered in a constituency.
- 2) A person shall not vote **if he/she is disqualified under Section 16, RPA-1950.**
- 3) If any person votes in more than one constituency, then their votes in every constituency shall be void.
- 4) Voting more than once in the same constituency will also result in making the votes void.
- 5) If a person is confined in a prison, whether under a sentence of imprisonment or transportation or otherwise or is in the lawful custody of the police – then such person cannot vote. However, a person in preventive detention can vote, including voting in the Presidential elections.
- 6) However, a person can vote as proxy for another candidate and such proxy vote shall not be declared as void.

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.

THE REPRESENTATION OF THE PEOPLE ACT, 1950**Section 20A - Special provisions for citizens of India residing outside India -**

(1) Notwithstanding anything contained in this Act, every citizen of India—

- (a) whose name is not included in the electoral roll.
- (b) who has not acquired the citizenship of any other country; and
- (c) who is absenting from his place of ordinary residence in India owing to his employment, education or otherwise outside India (whether temporarily or not),

shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence in India as mentioned in his passport is located.

(2) The time within which the name of persons referred to in sub-section (1) shall be registered in the electoral roll and the manner and procedure for registering of a person in the electoral roll under sub-section (1) shall be such as may be prescribed.

(3) Every person registered under this section shall, if otherwise eligible to exercise his franchise, be allowed to vote at an election in the constituency.

SERVICE VOTERS

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

- (a) Being a member of the armed Forces of the Union; or
- (b) 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.
- (c) 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 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.

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.

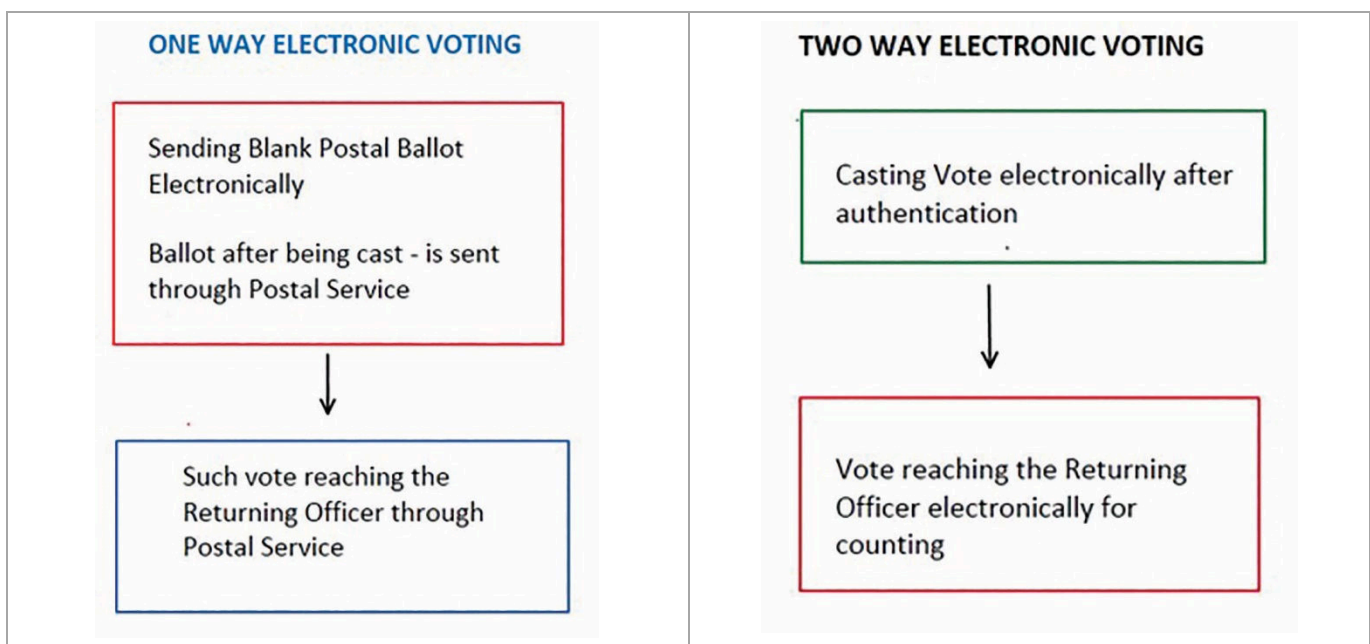
FUNCTIONALITY - ETPBS

- 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.



Providing Overseas Voters, the Right to Vote	
BENEFITS	CONCERNS
<ul style="list-style-type: none"> • It will increase voter 	<ul style="list-style-type: none"> • Logistical Challenge to conduct voting either at

participation. <ul style="list-style-type: none"> • It will cater to the vast Indian diaspora living abroad. 	Indian Embassies abroad or some other place which needs to be sanitized for voting. <ul style="list-style-type: none"> • It may impact several
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- | | |
|---|--|
| <ul style="list-style-type: none"> Remove compulsions on part of Indians to travel to India especially for voting purpose. It will fulfill the mandate of Article 326 and Section 62 of RPA, 1951 – which provides for <u>right to vote for every citizen registered in the electoral roll.</u> | <p>rights (employment, residence etc.) of such NRIs who intend to settle permanently in foreign countries.</p> |
|---|--|

KEY CONCERNS ON ONLINE VOTING USING BLOCKCHAIN TECHNOLOGY

Despite the benefits, security concerns have been raised by experts on the following grounds:

- Hacking of Blockchain Technology may result in:
 - Impersonation of voters
 - Transfer of votes for rival candidates
 - Cloning of biometric authentication
 - Denial-of-service attack might disallow citizens to register and vote
 - Disenfranchise a group or community of citizens
 - Decrypting votes casted
- Open to misuse by foreign intelligence & corporates
- Voting Preference and Pattern may become Public which is opposed to secret ballot

WHAT NEEDS TO BE DONE TO ALLOW ONLINE VOTING FOR NRIS – WAY FORWARD

- If online voting is to be allowed by the government, then **Section 20A of Representation of People Act, 1950 along with the Registration of Electors Rules, 1960 needs to be amended** to allow online voting by NRIs even from outside India.
- Aspects related to logistics must be sorted out with the help of Ministry of External Affairs to allow smooth voting process for the overseas voters.
- Two Way Electronic Voting can also be considered by the Election Commission by plugging the loopholes of online voting for the overseas voters.

► 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.
- 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 for at least five years.
- VVPAT does not need electricity & 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 & UNDERTRIALS

ABOUT UNDERTRIAL PRISONERS

- Undertrial prisoners are those accused facing trial in any court and during such trial are kept in judicial custody in prison.
- When undertrial prisoners are kept in prison, it alters the basic criminal jurisprudence which believes that an accused unless proven guilty cannot be considered as a criminal in the eyes of law.

PROBLEMS FACED BY UNDERTRIAL PRISONERS

- **Undertrials are subjected to psychological and physical deprivations of jail life**, usually under more difficult conditions than are imposed on convicted defendants.
- **Significantly affects their socio-economic standing** – Loss of job and the social stigma in the society increase the burden of their detention as such burden generally falls heavily on the innocent members of the family.

- **Lack of legal aid** - majority of the undertrial prisoners lacked legal awareness and necessary means to approach the courts. Thus, there is a need to improve access to justice especially for the vulnerable sections as it will also help to achieve the goals of Article 39A.

MODEL PRISON MANUAL 2016

According to the **Model Prison Manual 2016** published by the Ministry of Home Affairs, defines the terms 'prisoner', 'convict' and 'undertrial prisoner'.

- **Prisoner:** Any person confined in prison under the order of a competent authority.
- **Convict:** Any prisoner under sentence of a court exercising criminal jurisdiction or court martial and includes a person detained in prison as per Chapter VIII of the Code of Criminal Procedure of 1973 (SECURITY FOR KEEPING THE PEACE AND FOR GOOD BEHAVIOUR) and the Prisoners Act.
- **“Criminal Prisoner”** means any prisoner duly committed to custody under the writ, warrant or order of any Court or authority exercising criminal jurisdiction, or by order of a Court-martial
- **Under-trial prisoners:** A person who has been committed to judicial custody pending investigation or trial by a competent authority.

Basically, the subsection disqualifies any person who is in confined in a prison no matter the reason and disqualifies any person in police custody.

This means that convicted prisoners, undertrial prisoners and anybody in police custody does not have the right to vote if the person is in such imprisonment or such custody. Further, Article 326 also provides for certain caveat on a citizen's right to vote.

CONSTITUTION OF INDIA, RPA, 1950 & RPA, 1951

- **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.
- **Section 16 - Disqualifications for registration in an electoral roll (RPA-1950)**
- A person shall be disqualified for registration in an electoral roll if he:
 - (a) is not a citizen of India; or
 - (b) is of unsound mind and stands so declared by a competent court; or
 - (c) is for the time being disqualified from voting under the provisions of any law relating to corrupt practices and other offences in connection with elections.
- The name of disqualified person shall be struck off from the electoral roll in which it is included.

*However, if name of a person is struck off from electoral roll on **grounds of corrupt practices**, then their name shall be reinstated in the electoral roll if such disqualification has been removed by a law authorizing such removal.*

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

The Supreme Court will soon examine whether non-transparent mechanism of electoral bond which allows for anonymous funding/contribution to the political parties should be taken by constitution bench or not.

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 fingernail 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 fool proof 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 apply to the Commission within a period of 30 days from the date of its formation.

► 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 firsthand 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.
- 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.

► 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 centers
- Counting of the votes
- Declaration and Publication of results in Election

► 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 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	RPA 1950 (Section 13A)	EC Appoints 1 CEO for each state

(CEO)	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.

► 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
<ul style="list-style-type: none"> • Qualification of voters • Preparation of electoral rolls. • Delimitation of constituencies. • 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 	<ul style="list-style-type: none"> • Qualifications and disqualification for conduct of elections • Notification of general elections to LS & State Legislative Assemblies • 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

for the filling of seats in the Council of States allotted to Union territories.

- 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

► IMPORTANT ROLE OF ELECTION COMMISSION

- Supervisory Powers to Conduct Elections
- Preparations of Electoral Rolls
- Notifying the elections – this initiates the electoral process.
- Appointment of Chief Electoral Officer, Returning Officers, Observers and other electoral officers to ensure smooth conduct of elections.
- Registration of political parties
- Appointing dates for nomination of candidates
- Scrutiny of candidate's documents filed for nomination.
- Adjournment of poll in emergencies by Returning Officer or the Presiding Officer
- Ensuring security of EVMs & VVPAT
- Counting of votes and Declaration of results
- Conduct of bye-elections
- Declarations of assets and liabilities
- Ensuring compliance of Model Code of Conduct
- Providing limit on election expenses under Conduct of Elections (Amendment) Rules, 2014
- Allotting Symbols to independent candidates

► 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.

► 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 cast 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 polls are 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 results 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.**

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.

CONSTITUTIONAL, STATUTORY & OTHER BODIES

- o Principles to be followed in making appointments, promotions and transfers from one service to another.
- o On all **disciplinary matters** affecting a person serving under the Government of India or the Government of a State in a civil capacity
- o On any claim by **serving** or has **served members** under the Government of India or the Government of a State or under the Crown
- o 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 Governor	By writing under his hand addressed to the 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

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 way 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

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**.

FIFTEENTH FINANCE COMMISSION

The Fifteenth Finance Commission (XVFC) led by Chairman Sh. N. K. Singh submitted its Report **for the period 2021-22 to 2025-26** to the Hon'ble President of India. As per the terms of reference, the Commission was mandated to give its recommendations for five years from 2021-22 to 2025-26.

TERMS OF REFERENCE - FIFTEENTH FINANCE COMMISSION

The Commission may consider proposing measurable performance-based incentives for States, at the appropriate level of government, in following areas:

- Efforts made by the States in expansion and deepening of tax net under **Goods and Service Tax (GST)**
- Efforts and Progress made in moving towards replacement rate of population growth.
- Achievements in implementation of flagship schemes of Government of India, disaster resilient infrastructure, sustainable development goals, and quality of expenditure.
- Progress made in increasing capital expenditure, eliminating losses of power sector, and improving the quality of such expenditure in generating future income streams.
- Progress made in increasing tax/non-tax revenues, promoting savings by adoption of Direct Benefit Transfers and Public Finance Management System, promoting digital economy and removing layers between the government and the beneficiaries.
- Provision of grants in aid to local bodies for basic services, including quality human resources.
- Control or lack of it in incurring expenditure on populist measures.
- Progress made in sanitation, solid waste management and bringing in behavioral change to end open defecation.

RECOMMENDATIONS - FIFTEENTH FINANCE COMMISSION

While considering the grants for local bodies for the year 2020-21, XVth FC has made significant departures from the FC-XIV in some of these aspects. Accordingly, FC-XV has decided to:

- **Recommend grants to all tiers of the Panchayati Raj** so as to enable pooling of resources across villages and blocks to create durable community assets and improve their functional viability.
- **Recommend grants to the Fifth and Sixth Schedule areas and Cantonment Boards.**
- Provide for **tied grants** in the critical sectors of **sanitation and drinking water** in order to ensure additional funds to the local bodies over and above the funds allocated (both Union and State share) for these purposes under the centrally sponsored schemes (CSS), Swachh Bharat and Jal Jeevan Missions.
- **Given the projection of 38 per cent urbanisation in India by 2025** and further acceleration of this trend with economic growth, the changing sectoral composition of gross domestic product (GDP) and rural-urban migration, has recommended to

increased share of urban local bodies grants to 40 per cent over the medium term.

- Has recognised that larger cities will tend to grow faster with the agglomeration effect. Hence, **the Fifty Million-Plus cities** in the country need differentiated treatment, with special emphasis on meeting the challenges of bad ambient air quality, ground water depletion and sanitation.

Accordingly, Fifteenth Finance Commissions has made the following recommendations for empowerment of local bodies:

- **Distribution of grants between rural and urban local bodies in the ratio of 67.5:32.5** to all tiers in the Panchayat - village, block and district - create durable community assets, improve overall functioning and provide employment opportunities.
- **Give grants to the Fifth and Sixth Schedule areas and Cantonment Boards.**
- **Special focus on districts having higher concentration of SC/ST population.**
- **Provide tied grants to rural local bodies** - improve sanitation, ensure open-defecation free (ODF) status, supply of drinking water, rainwater harvesting and water recycling.
- **Tied grants have also been allocated to ULBs (which are over and above central sponsored schemes) for drinking water including rainwater harvesting and recycling and solid waste management.**

In tied grants, states have to spend on the areas or schemes specified by the center. So, there is no financial and operational autonomy in spending of the amount granted as tied grants by the center.

- **Provided additional funds to ULBs for issues critical for planned urbanisation - problems of sanitation, air quality, ground water depletion, supply and management of water and efficient solid waste management.**
- **Asked states to draw a detailed project report** for capacity development and address the infrastructural issues.
- Thus, implementation of these suggestions of XVth FC will be critical in empowering local bodies in India.

► ELECTION COMMISSION

In a landmark judgment (Anoop Baranwal v. Union of India), Constitution Bench of Supreme Court has held that the Election Commissioners (ECs) including the Chief Election Commissioner (CEC) will be appointed by the

President on the advice of a committee consisting of the Prime Minister, leader of opposition in Lok Sabha and the CJI till a specific law is framed by the Parliament.

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 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. (E.g., 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

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 recommendations 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 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 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

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

Duty of Commission to make recommendations to the President:

- Progressive use of Hindi language for official purposes of the Union
- Restrictions on the use of the English language for all or any of the official purposes of the Union
- 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

► **CENTRAL CONSUMER PROTECTION AUTHORITY**

Consumer Protection Act, 2019 has constituted the Central Consumer Protection Authority (CCPA) and Section 18 of the Act empowers CCPA protect, promote and enforce the rights of consumers as a class, and prevent violation of consumers' rights. Further, CCPA is empowered to prevent

unfair trade practices and ensure that no person engages himself in unfair trade practices.

RECENT GUIDELINES OF CCPA

- **Hotels or restaurants shall not add service charge automatically in the food bill without consumer's consent.**
- **Regulations on Misleading Advertisements** – to ensure that consumers are not fooled with unsubstantiated claims, exaggerated promises, misinformation and false claims.

- **Notice Issued to App Based Taxi like Ola and Uber for unfair trade practices and violation of consumer rights.** Major issues raised are – deficiency in service, inadequate consumer grievance redressal mechanism, unreasonable levy of cancellation charge, charging different rates for similar routes, Inclusion of charges for add-on services by pre-ticked boxes without consumer's consent.
- **Prohibition on Selling Jammers or other through e-commerce platforms** – without authorization/license under the Indian Telegraph Act, 1885 or Indian Wireless Telegraphy Act (IWTA) 1933, unless exempted by rules, is illegal. Jammers come under the purview of IWTA, 1933 and the Act lays down that license is required for possession and use of jammers.

WHAT IS THE GRIEVANCE REDRESSAL MECHANISM FOR CITIZENS?

- **The consumer may lodge a complaint on the National Consumer Helpline (NCH),** which works as an *alternate dispute redressal mechanism*.
- **The consumer may also file a complaint** against unfair trade practice with the **Consumer Commission** or file complaint electronically through **e-daakhil portal**.
- **The consumer may submit a complaint to the District Collector** of the concerned district for investigation and subsequent proceeding by the CCPA.

DUTIES OF CCPA

The Central Consumer Protection Authority shall:

- Protect, promote and enforce the rights of consumers as a class, and prevent violation of consumer's rights under this Act.
- Prevent unfair trade practices and ensure that no person engages himself in unfair trade practices.
- Ensure that no false or misleading advertisement is made of any goods or services which contravenes the provisions of this Act, or the rules or regulations made thereunder.
- Ensure that no person takes part in the publication of any advertisement which is false or misleading.

TO PERFORM ITS DUTY, CCPA UNDER CONSUMER PROTECTION ACT 2019 IS EMPOWERED TO:

- **Inquire or investigate** into violations of consumer rights or unfair trade practices, either by themselves or on a complaint received or as per Central Government's directions.

- **File complaints** before the District Commission, the State Commission or the National Commission.
- **Intervene in any proceedings** before the District, State Commission or National Commission in respect of any allegation of violation of consumer rights or unfair trade practices.
- **Review the matters** relating to, and the factors inhibiting enjoyment of, consumer rights, including safeguards provided for the protection of consumers under any other law and recommend appropriate remedial measures for their effective implementation.
- **Recommend adoption of international covenants** and best international practices on consumer rights to ensure effective enforcement of consumer rights.
- **Undertake and promote research** in the field of consumer rights and spread and promote awareness on consumer rights.
- **Encourage NGOs and other institutions** working in the field of consumer rights to co-operate and work with consumer protection agencies.
- **Issue safety notices to alert consumers** against dangerous or hazardous or unsafe goods or services.
- **Issue necessary guidelines to prevent unfair trade practices** and protect consumers' interest.
- **Impose a penalty in respect of such false or misleading advertisement,** by a manufacturer or an endorser – up to Rs. 10 Lakhs and for every subsequent contravention – may impose penalty up to Rs. 50 Lakhs.

APPEAL AGAINST ORDERS OF CCPA - A person aggrieved by any order passed by the Central Authority may file an appeal to the **National Commission** within a period of thirty days from the date of receipt of such order.

► UNIQUE IDENTIFICATION AUTHORITY OF INDIA

*Unique Identification Authority of India (UIDAI) has been constituted under the **Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016**. UIDAI aims to empower **residents of India** with a unique identity and a digital platform to authenticate anytime, anywhere.*

COMPOSITION OF UIDAI - The Authority shall 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.

CHIEF-EXECUTIVE OFFICER OF UIDAI - There shall be a chief executive officer of the Authority, not below the rank of Additional Secretary to the Government of India, to be appointed by the Central Government. The chief executive officer shall have administrative control over the officers and other employees of the Authority. The chief executive officer shall be the legal representative of the Authority and shall be responsible for

- Day-to-day administration of the Authority.
- Implementing the work programs and decisions adopted by the Authority.
- Drawing up of proposal for the Authority's decisions and work program.
- Preparation of the statement of revenue and expenditure and the execution of the budget of the Authority.
- Performing such other functions, or exercising such other powers, as may be specified by regulations.

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.

► 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 (TDSAT) to take over the adjudicatory and disputes functions from TRAI.
- TDSAT 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 TDSAT.
- 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.

► LOKPAL & LOKAYUKTA

FIRST ARC ON LOKPAL

Idea to constitute two-tier Lokpal and Lokayukta was first proposed by First Administrative Reform Commission. As per the proposal,

- Lokpal should deal with complaints against Ministers and Secretaries of Central Government as well as in the states.
- The Lokayukta, one for the Centre and one in each State, should attend complaints against the rest of the bureaucracy.
- Each government department should have suitable machinery to receive and investigate complaints and set in motion the administrative process to provide remedies.
- The Lok Pal may either act on the complaints made by an affected citizen or on his own cognition.
- He shall investigate cases related to maladministration, involving acts of injustice, corruption and favoritism. The investigations and proceedings should be conducted in private and should be informal in character.
- If there are criminal charges against a public official, he can bring it to the notice of Prime Minister, or Chief Minister and they can then set the machinery of law in motion and inform the Lok Pal.

LOKPAL AND LOKAYUKTA ACT, 2013

- **The Lokpal & Lokayukta Act, 2013** establishes Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries.
- A complaint under the Lokpal Act must pertain to an offence under the Prevention of Corruption Act against a public servant. When a complaint is received, the Lokpal may order a preliminary inquiry by its Inquiry Wing, or refer it for investigation by any agency, including the CBI, if there is a *prima facie* case.
- Thus, the Act provides for an **Enquiry Wing** and a **Prosecution Wing** headed by their respective Directors.
- **The inquiry Wing** conducts preliminary inquiry into any offence alleged to have been committed by a public servant punishable under the Prevention of Corruption Act, 1988.
- **The Prosecution Wing can file a case** in accordance with the findings of investigation report, before the **Special Court** for prosecution of public servants in relation to any offence punishable under the **Prevention of Corruption Act, 1988**.
- Jurisdiction of the Lokpal Act includes **offices of Prime Minister, Ministers, members of Parliament, officers belonging to Group A, B, C and D and officials of Central Government**.

WHAT ARE THE JURISDICTIONS AND POWERS OF LOKPAL?

- The Lokpal is vested with the power of search and seizure and also powers under the Civil Procedure Code for the purpose of conducting preliminary inquiry & investigation and power of attachment of assets and taking other steps for eradication of corruption.
- Lokpal will have power of superintendence and direction over any central investigation agency including CBI for cases referred to them by the 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** - CVC shall proceed in accordance with the provisions of the **Central Vigilance Commission Act, 2003**.
- Lokpal can also inquire against any society, 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.
- 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.

IF A CHARGE IS MADE AGAINST THE PM?

- 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 its chair and all members, considers the initiation of a probe, and at least two-thirds of the members approve it.
- Any such inquiry shall be held in camera and if the Lokpal concludes that the complaint deserves to be dismissed, the records of the inquiry shall not be published or made available to anyone.

EXPENSES OF LOKPAL TO BE CHARGED ON CONSOLIDATED FUND OF INDIA

- The administrative expenses of the Lokpal, including all salaries, allowances and pensions payable to or in respect of the Chairperson, Members or Secretary or other officers or staff of the Lokpal, shall be charged upon the Consolidated Fund of India and any fees or other moneys taken by the Lokpal shall form part of that Fund.

► **CENTRAL VIGILANCE COMMISSION**

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 of 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 consist 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 on grounds of misbehavior or incapacity.
 - On order of the President
 - And after an enquiry has been conducted by the Supreme Court

► NATIONAL & STATE HUMAN RIGHTS COMMISSION

NHRC is a statutory body that was established in 1993 through the **Protection of Human Rights Act (PHRA), 1993**.

IMPORTANT HIGHLIGHTS ABOUT NATIONAL HUMAN RIGHTS COMMISSION

- **The Protection of Human Rights Act, 1993** was enacted to provide for the constitution of
 - National Human Rights Commission (NHRC)
 - Respective State Human Rights Commission (SHRC) &
 - The Human Rights Courts
- **Paris Principles** - NHRC has been established in conformity with the Paris Principles, adopted at the first international workshop on national institutions for the promotion and protection of human rights held in Paris in October 1991, and endorsed by the General Assembly of the United Nations by its **Resolutions 48/134 of 20 December 1993**.
- As per **Resolution 48/134** adopted by General Assembly - *A national institution shall be vested with competence to promote and protect human rights.*
- **The NHRC is an embodiment of India's concern for the promotion and protection of human rights. Section 2(1)(d) of the PHRA** defines Human Rights as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or

embodied in the International Covenants and enforceable by courts in India.

- **Post 2019 Amendment, NHRC shall consists of**
 - a Chairperson who has been a Chief Justice of India or a Judge of the Supreme Court,
 - one Member who is, or has been, a Judge of the Supreme Court,
 - one Member who is, or has been, the Chief Justice of a High Court,
 - three Members out of which at least one shall be a woman, to be appointed from amongst persons having knowledge of, or practical experience in, matters relating to human rights.

APPOINTMENT OF MEMBERS OF NHRC

- The Chairperson and the Members shall be appointed by the President by warrant under his hand and seal.
- **Appointment Committee** - Appointment of the Chairperson & Members shall be made after obtaining the recommendations of a Committee consisting of

Prime Minister	Chairperson
Speaker of the House of the People	Member
Minister in-charge of the Ministry of Home Affairs in the Government of India	Member
Leader of the Opposition in the House of the People	Member
Leader of the Opposition in the Council of States	Member
Deputy Chairman of the Council of States	Member

- No sitting Judge of the Supreme Court or sitting Chief Justice of a High Court shall be appointed except after consultation with the Chief Justice of India.

REMOVAL & RESIGNATION - NHRC

- The Chairperson or any Member may, by notice in writing under his hand addressed to the President of India, resign his office.
- Chairperson or any Member shall only be removed from his office by order of the President of India on the ground of proved misbehavior or incapacity after the Supreme Court has on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or the Member ought on any such ground to be removed.

TERM OF OFFICE - NHRC

- **Chairperson shall hold office for a term of 3 years** from the date on which he enters his office or until he attains the age of 70 years, whichever is earlier and shall be eligible for re-appointment.
- **Member shall hold office for a term of 3 years** from the date on which he/she enters upon office and shall be eligible for re-appointment.
- **On ceasing to hold office** - Chairperson or a Member shall be ineligible for further employment under the Government of India or under the Government of any State.

COMPOSITION - SHRC

- **The State Commission shall consist of:**
 - A Chairperson who has been a Chief Justice or a Judge of a High Court.
 - One Member who is, or has been, a Judge of a High Court or District Judge in the State with a minimum of seven years' experience as District Judge.
 - One Member to be appointed from among people having knowledge of or practical experience in matters relating to human rights.
- **Chief Executive Officer** - There shall be a Secretary who shall be the Chief Executive Officer of the State Commission and shall, subject to control of the Chairperson, exercise all administrative and financial powers of the State Commission.
- Two or more State Governments may, with the consent of a Chairperson or Member of a State Commission, appoint such Chairperson or such Member of another State Commission simultaneously if such Chairperson or Member consents to such appointment. Such appointments must be made after obtaining the recommendations of the Appointment Committee.

APPOINTMENT - SHRC

- **The Chairperson and Members shall be appointed by the Governor by warrant under his hand and seal.**
- Appointment of Chairperson & Members shall be made after obtaining the recommendation of a Committee consisting of:

Chief Minister	Chairperson
Speaker of the Legislative Assembly	Member
Minister in-charge of the Department of Home in that State	Member

Leader of the Opposition in the Legislative Assembly	Member
For states having Legislative Council- Chairman and Leader of the Opposition in that Council	Members

- Sitting Judge of a High Court or a sitting district judge shall not be appointed except after consultation with the Chief Justice of the High Court of the concerned State.

RESIGNATION & REMOVAL - SHRC

- **Resignation** - The Chairperson or a Member of a State Commission may, by notice in writing under his hand addressed to the Governor, resign his office.
- **Removal** - Chairperson or any Member of the State Commission shall only be removed from his office by order of the President on the ground of proved misbehavior or incapacity after the Supreme Court, on a reference being made to it by the President, has, on inquiry held in accordance with the procedure prescribed in that behalf by the Supreme Court, reported that the Chairperson or such Member ought on any such ground to be removed.

TERM OF OFFICE - SHRC

- **Chairperson** shall hold office for a term of 3 years from the date on which he enters his office or until he attains the age of 70 years, whichever is earlier and shall be eligible for re-appointment.
- **Member** shall hold office for a term of 3 years from the date on which he enters his office and shall be eligible for re-appointment.
- No Member shall hold office after he has attained **the age of seventy years.**
- **On ceasing to hold office** - Chairperson or a Member shall be ineligible for further employment under the Government of a State or under the Government of India.

AMENDMENTS UNDER PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT, 2019

- The amendments address the concerns raised at certain global platforms and also by respective State Governments as they faced difficulties in finding suitable candidates to the post of Chairperson of the respective State Commissions owing to the earlier eligibility criteria for the post.
- **Amendment made NHRC more compliant with Paris Principles** - regarding NHRC's autonomy, independence, pluralism and wide-ranging functions in order to effectively protect and promote human rights.

THE PROTECTION OF HUMAN RIGHTS (AMENDMENT) ACT, 2019, PROVIDES FOR THE FOLLOWING CHANGES

- **Retired Judge of SC can be appointed as Chairperson** - A person who has been a Judge of the Supreme Court is also made eligible to be appointed as Chairperson of the Commission in addition to the person who has been the Chief Justice of India.
- **3 Members to be appointed (instead of 2)** from amongst people having knowledge of, or practical experience in, matters relating to human rights. Out of these 3, 1 member shall be a Woman.
- **Deemed Members of NHRC** - To include Chairperson of the National Commission for Backward Classes, Chairperson of the National Commission for Protection of Child Rights and the Chief Commissioner for Persons with Disabilities as deemed Members of the Commission as members of NHRC.
- **Reduction in Tenure** - To reduce the term of the Chairperson and Members of the Commission and the State Commissions from 5 to 3 years and the fact that they shall be eligible for re-appointment.
- **Eligibility for Chairperson of SHRC** - A person who has been a Judge of a High Court is also made eligible to be appointed as Chairperson of the State Commission in addition to the person who has been the Chief Justice of the High Court.
- **SHRC for certain UTs** - The Central Government may confer upon the State Commission the functions relating to human rights being discharged by the Union territories, other than the Union territory of Delhi, J&K and Ladakh.
- **NHRC for UTs of Delhi, J&K and Ladakh** - Functions relating to human rights in case of Union territory of Delhi, Jammu and Kashmir and Ladakh shall be dealt by NHRC.

THE COMMISSION SHALL, PERFORM ALL OR ANY OF THE FOLLOWING FUNCTIONS, NAMELY

- (a) **Inquire**, on its own initiative or on a petition presented to it by a victim or any person on his behalf, into complaint of
 - (i) violation of human rights or abetment or
 - (ii) negligence in the prevention of such violation, by a public servant.
- (b) **Intervene in any proceeding** involving any allegation of violation of human rights pending before a court with the approval of such court.
- (c) **Visit, under intimation to the State Government**, any jail or any other institution under the control of

the State Government, where persons are detained or lodged for purposes of treatment, reformation or protection to study the living condition of the inmates and make recommendations thereon.

- (d) **Review the safeguards by or under the Constitution or any law** for the protection of human rights and recommend measures for their effective implementation.
- (e) **Review the factors, including acts of terrorism** that inhibit the enjoyment of human rights and recommend appropriate remedial measures.
- (f) **Study treaties and other international instruments** on human rights and make recommendations for their effective implementation.
- (g) **Undertake and promote research** in the field of human rights.
- (h) **Spread human rights literacy** among various sections of society and promote awareness of the safeguards available for the protection of these rights through publications, the media, seminars and other available means.
- (i) **Encourage the efforts of non - Governmental organizations and institutions** working in the field of human rights.
- (j) **Any other functions as it may consider necessary for the promotion of human rights.**

► NATIONAL COMMISSION FOR MINORITIES

The issue of district-wise identification of minorities has been raised by the petitioner but the same has already been rejected by Eleven Judge Constitution Bench of Supreme Court in the T.M.A. Pai Foundation case of 2002 and Bal Patil verdict of 2005 where the Court clarified that the unit for determining status of both linguistic and religious minorities would be 'State'.

MINORITIES IN INDIA

- The Union Government set up the National Commission for Minorities (NCM) under **The National Commission for Minorities Act, 1992**.
- Initially five religious' communities, viz., **Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis)** were notified as minority communities by the Union Government.
- Further vide notification dated 27th January 2014, **Jains** were also notified as another minority community.

- Union Government constituted **National Commission for Minorities** and State Government constituted **State Minorities Commissions** in their respective State Capitals.
- For example, **The Delhi Minorities Commission** has been set up under **The Delhi Minorities Commission Act, 1999**. The Commission comprises a Chairman and two Members from the Minority Communities of Delhi, nominated by the Govt. of NCT of Delhi.
- These organisations are set-up to safeguard and protect the interests of minorities as provided in the Constitution of India and laws enacted by the Parliament and the State Legislatures.
- Aggrieved persons belonging to the minority communities may approach the concerned State Minorities Commissions for redressal of their grievances.
- Aggrieved persons may also send their representations to the National Commission for Minorities, after exhausting all other official mechanisms of remedies available to them.

ABOUT OF NATIONAL MINORITIES COMMISSION

- It shall consist of a **Chairperson, a Vice-Chairperson and five Members** to be **nominated** by the Central Government from amongst persons of eminence, ability and integrity.
- Five Members including the Chairperson shall be from amongst the minority communities.
- The Chairperson and every Member shall hold office for a **term of three years** from the date he assumes office.
- The Central Government shall cause the **recommendations of National Minority Commission** to be **laid before each House of Parliament** along with a memorandum explaining the action taken or proposed to be taken on the recommendations relating to the Union and the reasons for the non-acceptance, if any, of any of such recommendations.
- **CAG can audit the accounts of the Commission.**
- The Commission shall, while performing its functions mentioned **shall have all the powers of a civil court trying a suit** and in particular, in respect of the following matters, namely –
 - 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

NATIONAL COMMISSION FOR MINORITIES EDUCATIONAL INSTITUTIONS

- **It is a statutory body** constituted under *the National Commission for Minorities Educational Institutions Act, 2004*.
- **The Commission looks into specific complaints** regarding deprivation or violation of rights of minorities to establish and administer educational institutions of their choice.
- **The Commission is a quasi-judicial body** and has been endowed with the powers of a Civil Court. It is to be headed by a Chairman who has been a Judge of the High Court and three members are to be nominated by Central Government.

FUNCTIONS OF NATIONAL COMMISSION FOR MINORITIES EDUCATIONAL INSTITUTIONS

- Regarding affiliation of a minority educational institution to a university is concerned, the decision of the Commission is considered as final. The Commission has powers to advise the Central Government or any State Government on any question relating to the education of minorities that may be referred to it.
- The Commission can make recommendations to the Central Government and the State Governments regarding any matter which directly or indirectly deprives the minority community of their educational rights enshrined in Article 30.

FUNCTIONS OF NATIONAL COMMISSION FOR MINORITIES EDUCATIONAL INSTITUTIONS

The Commission has three roles namely to perform adjudicatory function, advisory function and has recommendatory powers on certain matters.

1. **Advise the Central Government or any State Government** on any question relating to the education of minorities that may be referred to it.
2. **Enquire into complaints** regarding
 - deprivation or violation of rights of minorities to establish and administer educational institutions of their choice.
 - look into any dispute relating to affiliation to a University and
 - report its finding to the appropriate Government for its implementation.

3. **Intervene in any proceeding** involving any deprivation or violation of the educational rights of the minorities before a court with the leave of such court.
4. **Review the safeguards provided by or under the Constitution or any law** for protection of educational rights of the minorities and recommend measures for their effective implementation.
5. **Specify measures to promote and preserve the minority status and character of institutions** of their choice established by minorities.
6. **Decide all questions relating to the status of any institution as a Minority Educational Institution** and declare its status as such.
7. **Make recommendations to appropriate Government** for the effective, implementation of programs and schemes relating to Minority Educational Institutions.

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 PROTECTION OF CHILD RIGHTS

CONSTITUTION

- Set up in 2007 under **Commissions for Protection of Child Rights (CPCR) Act, 2005**.
- Works under administrative control of Ministry of Women & Child Development.
- The 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

- Central Government shall appoint Chairperson and other Members.
- Chairperson shall be appointed on 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 laws 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

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.

► 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 eight states including Sikkim, Chairman and 3 members who are nominated by the country's President.

► 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.

► SECURITIES AND EXCHANGE BOARD OF INDIA (SEBI)

SEBI was earlier constituted as a non-statutory body on April 12, 1988, through a resolution of the Government of India. SEBI was then established as a **statutory body** in the year 1992 under **The Securities and Exchange Board of India Act, 1992** to protect the interests of investors in securities and to promote the development of, and to regulate, the securities market.

COMPOSITION OF THE BOARD

The Board shall consist of the following members, namely:

- a Chairman
- two members from amongst the officials of the Ministry of the Central Government dealing with Finance and administration of the Companies Act
- one member from amongst the officials of the Reserve Bank of India
- five other members of whom at least three shall be the whole-time members, to be appointed by the Central Government.

BROAD FUNCTIONS PERFORMED BY SEBI

- Regulate the business in stock exchanges and any other securities markets.
- Register and regulate intermediaries in the securities market such as sub-brokers, share transfer agents, bankers to an issue, trustees of trust deeds, registrars to an issue, merchant bankers, underwriters, portfolio managers, investment advisers etc.
- Registering and regulating the working of venture capital funds and collective investment schemes including mutual funds.
- Prohibiting fraudulent and unfair trade practices relating to securities markets.
- Promoting investors 'education and training of intermediaries of securities markets.
- Prohibiting insider trading in securities.

- Regulating substantial acquisition of shares and takeover of companies
- Regulate or prohibit issue of prospectus, offer document or advertisement soliciting money for issue of securities in the secondary market.
- Prohibits manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.
- Investigate matters where transactions in the securities market have taken place against the interest of investors or detrimental to securities market or for violation of laws under SEBI Act or its rules or regulations.
- Provides for penalties for irregularities under the SEBI Act.
- The Board can appoint an officer not below the rank of a Division Chief to be an adjudicating officer for holding an inquiry.

SECURITIES APPELLATE TRIBUNAL

- SEBI Act 1992 also provides for establishment, jurisdiction, authority and procedure of Appellate Tribunal.
- A Securities Appellate Tribunal shall consist of a Presiding Officer and two other members, to be appointed, by notification, by the Central Government.

QUALIFICATION OF PRESIDING OFFICERS & OTHER MEMBERS OF TRIBUNAL

- A person shall not be qualified for appointment as the Presiding Officer of the Securities Appellate Tribunal unless he –
 - (a) is a sitting or retired Judge of the Supreme Court or a sitting or retired Chief Justice of a High Court; or
 - (b) is a sitting or retired Judge of a High Court who has completed not less than seven years of service as a Judge in a High Court.
- **Presiding Officer of Securities Appellate Tribunal shall be appointed by Central Government in consultation with the Chief Justice of India or his nominee.**

TENURE

- The Presiding Officer and every other Member of a Securities Appellate Tribunal shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for re-appointment.

- No person shall hold office as the **Presiding Officer of the Securities Appellate Tribunal** after he has attained the age of **sixty-eight years**.
- No person shall hold office as a **Member of the Securities Appellate Tribunal** after he has attained the age of **sixty-two years**.

► BAR COUNCIL OF INDIA

- It is a statutory body constituted under the Advocates Act, 1961.
- It performs regulatory function by prescribing standards of professional conduct and etiquette and by exercising disciplinary jurisdiction over the bar.
- It also sets standards for legal education and grants recognition to Universities whose degree in law will serve as qualification for enrolment as an advocate.
- In addition, it performs certain representative functions by protecting the rights, privileges and interests of advocates and through the creation of funds for providing financial assistance to organise welfare schemes for them.

COMPOSITION OF BAR COUNCIL OF INDIA

- There shall be a Bar Council for the territories to which this Act extends to be known as the Bar Council of India which shall consist of the following members, namely:
 - (a) The Attorney-General of India, ex officio.
 - (b) The Solicitor-General of India, ex officio.
 - (c) One member elected by each State Bar Council from amongst its members.
- No person shall be eligible for being elected as a member of the Bar Council of India unless he/she possesses the following qualifications: persons who have for at least ten years been advocates on a State roll.

FUNCTIONS OF BAR COUNCIL UNDER ADVOCATES ACT

- To lay down standards of professional conduct and etiquette for advocates.
- To lay down procedure to be followed by its disciplinary committee and the disciplinary committees of each State Bar Council.
- To safeguard the rights, privileges and interests of advocates.
- To promote and support law reform.
- To deal with and dispose of any matter which may be referred to it by a State Bar Council.

- To promote legal education and to lay down standards of legal education. This is done in consultation with the Universities in India imparting legal education and the State Bar Councils.
- To recognise Universities whose degree in law shall be a qualification for enrolment as an advocate - The Bar Council of India visits and inspects Universities or directs the State Bar Councils to visit and inspect Universities for this purpose.
- To conduct seminars and talks on legal topics by eminent jurists and publish journals and papers of legal interest.
- To organise legal aid to the poor.
- **To recognise on a reciprocal basis, the foreign qualifications in law obtained outside India for the purpose of admission as an advocate in India.**
- To manage and invest the funds of the Bar Council.
- To provide for the election of its members who shall run the Bar Councils.

BAR COUNCIL OF INDIA CAN CONSTITUTE FUNDS FOR

1. Giving financial assistance to organise welfare schemes for poor, disabled or other advocates,
2. Giving legal aid, and
3. Establishing law libraries.

Bar Council of India can also receive grants, donations, and gifts for any of these purposes.

FUNCTIONS OF STATE BAR COUNCILS

- Admit persons as advocates on its roll.
- Prepare and maintain such roll.
- Entertain and determine cases of misconduct against advocates on its roll.
- Safeguard the rights, privileges and interests of advocates on its roll.
- Promote the growth of Bar Associations for the purposes of effective implementation of the welfare schemes for advocates.
- to promote and support law reform.
- to conduct seminars and organise talks on legal topics by eminent jurists and publish journals and papers of legal interest.
- to organise legal aid to the poor in the prescribed manner
- to manage and invest the funds of the Bar Council
- to provide for the election of its members
- to visit and inspect Universities in accordance with the directions given by Bar Council of India

- constitute one or more funds to provide.
 - financial assistance to organise welfare schemes for the indigent, disabled or other advocates.
 - giving legal aid or advice
 - establishing law libraries

► NARCOTICS CONTROL BUREAU

*Narcotics Control Bureau (NCB) was established under **Narcotics Drugs and Psychotropic Substances (NDPS) Act 1985** for the purpose of effectively preventing and combating abuse of narcotics drugs and psychotropic substances and its illicit trade.*

FUNCTIONS

- 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.
- 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.
- Ministry of Home Affairs has taken the following steps to improve the technical and monitoring capability of NCB personnel:
 - In-house training programs on crypto currencies, dark-net, digital surveillance, cybercrime information, cybercrime forensics, digital forensics etc. were conducted to improve technical competence and monitoring capabilities of NCB officials.
 - NCB officials also attend various workshop and training programs conducted by International organizations like United Nations Office on Drugs and Crime (UNODC) and International Narcotics Control Bureau (INCB) etc. to enhance their technical capabilities and update themselves with the latest advancements.

► NON-CONSTITUTIONAL & NON-STATUTORY BODIES

► 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

Department of Industrial Policy & Promotion, **Ministry of Commerce & Industry**, is the nodal ministry for QCI.

NATIONAL BOARD FOR QUALITY PROMOTION

- 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 backpressure on suppliers to ensure quality of their products and services.

► LAW COMMISSION OF INDIA

The Union Cabinet has approved constituting India's 22nd Law Commission for a period of three years. The Law Commission on a reference made by the Central Government or Suo-motu, undertakes research in law, review of existing laws in India for making reforms and suggest enacting new legislations. It also undertakes studies and research for bringing reforms in the justice delivery systems for elimination of delay in procedures, speedy disposal of cases, reduction in cost of litigation etc.

ABOUT LAW COMMISSION

- The Commission was originally constituted in **1955** and is **re-constituted every three years.**
- Constitution of India does not provide for creation of Law Commission of India and hence, it is **not a constitutional body.**
- Constitution of Law Commission is not done under any legislation and hence, it is a **non-statutory body.**
- It is constituted through a government order and hence, it is created through **an executive order.**
- The Reports of the Law Commission are considered by the Ministry of Law and Justice in consultation with the concerned administrative Ministries and are submitted to Parliament from time to time.
- The reports of Law Commission are cited in Courts, in academic and public discourses and are acted upon by concerned Government Departments depending on the Government's recommendations.

CERTAIN RECOMMENDATIONS

- As of now, the law commission is **neither a permanent body nor a statutory body.**
- In 2015, a proposal was mooted to make the law panel into a permanent body either through an **Act of Parliament** or an **executive order** (resolution of the Union Cabinet).
- However, the move was shelved after the Prime Minister's Office felt that the present way of constituting the Law Commission should continue.
- Even in 2010, the then UPA government also had prepared a draft Cabinet note to give **statutory status** to the Law Commission and in this regard, the Law Ministry had mooted to bring the **Law Commission of India Bill, 2010.** But the idea was shelved.

► SEVENTH GOVERNING COUNCIL MEETING OF NITI AAYOG

Prime Minister of India chaired Seventh Governing Council meeting of NITI Aayog and lauded the collective efforts of all the States in the spirit of cooperative federalism to address various challenges including fighting COVID despite resource limitations.

GOVERNING COUNCIL OF NITI AAYOG

- **Composition** - The Governing Council of NITI Aayog, comprising Chief Ministers of all the States and Union Territories with legislatures and Lt Governors of other Union Territories, came into effect on 16 February 2015 via a notification by the Cabinet Secretariat.
- **The meetings of Governing Council have been held under the chairmanship of the Hon'ble Prime Minister** with Chief Ministers/Lt Governors of the States/UTs and other members of the Governing Council.
- **The Governing Council is the premier body tasked with evolving a shared vision of national priorities and strategies**, with the active involvement of States, in shaping the development narrative. The Governing Council, which embodies the objectives of cooperative federalism, presents a platform to discuss inter-sectoral, inter-departmental and federal issues to accelerate the implementation of the national development agenda.

IMPORTANT HIGHLIGHTS OF THE MEETING – SUGGESTIONS OF PRIME MINISTER

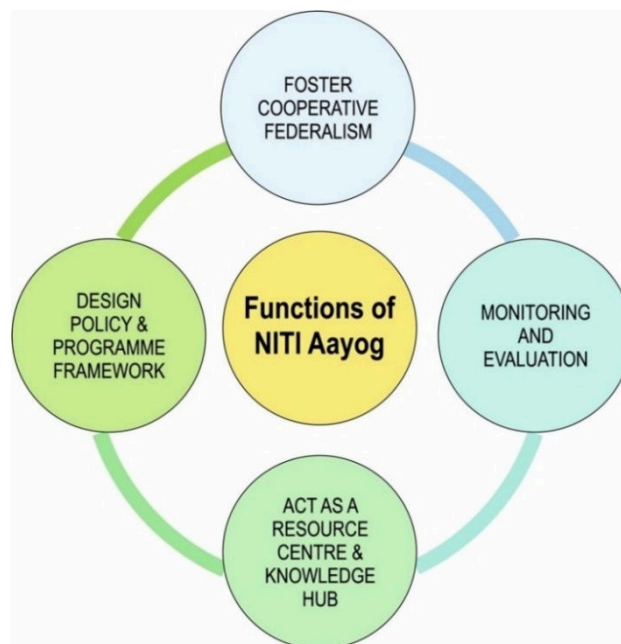
- **The Seventh Governing Council discussed four key agenda items:**
 1. Crop diversification and achieving self-sufficiency in pulses, oilseeds and other agri-commodities.
 2. Implementation of National Education Policy (NEP) in school education
 3. Implementation of National Education Policy in higher education and
 4. Urban Governance.
- **Agriculture Sector** - Prime Minister suggested focusing on modernized agriculture, animal husbandry and food processing to become self-sufficient and a global leader in the agriculture sector.
- **Rapid Urbanization** - can become India's strength instead of weakness by leveraging technology to ensure ease of living, transparent service delivery, and improvement in the quality of life for every citizen of urban India.

- **Each State to focus on promoting its 3Ts** -Trade, Tourism, Technology
- **Vocal for Local** - States must focus on reducing imports, increasing exports and identifying opportunities for the same in every state. People should be encouraged to use local goods wherever possible.
- **Need to improve GST Collections** - Increasing GST collection requires collective action by the Centre and States. It is crucial for strengthening our economic position and becoming a USD 5 trillion economy.
- **National Education Policy (NEP)** - has been formulated after considerable deliberations and there is a need to involve all stakeholders in its implementation and develop a clear, time bound roadmap for the same.

FORMATION OF NITI AAYOG

- NITI Aayog was formed by resolution of Union Cabinet in 2015 under Government of India (Allocation of Business) Rules, 1961.
- The Aayog has been mandated to foster cooperative and competitive federalism, evolve a national consensus on developmental goals, redefine the reforms agenda, achieve SDG goals, act as a platform for resolution of cross-sectoral issues between Center and State Governments, capacity building and to act as a Knowledge and Innovation hub.

FUNCTIONS OF NITI AAYOG



STEPS TAKEN IN COOPERATIVE FEDERALISM

- **Governing Council (Chief Ministers- States and UT's) to resolve differences** and chart a common course to progress and prosperity.

- **Subgroups of Chief Minister for**

- MGNREGS & Agriculture - Five critical areas for improving MGNREGA were suggested:

1. Reducing the cost of cultivation
2. Enhancing production through the efficient use of water or other inputs.
3. Providing remunerative price to farmers by incentivising aggregation and market infrastructure.
4. Rehabilitating agricultural land and assets after natural disasters.
5. Re-planting using the MGNREGA fund and bringing diversification in agriculture.

- Centrally Sponsored Schemes
- Skill Development
- Swachh Bharat

- **Task force on Agriculture Development:**

- To coordinate and develop synergy with Central Ministries and State Government task forces.
- Recommend strategies for reinvigorating agriculture.
- To formulate strategies for reforms, innovation and technology diffusion
- To identify successful experiments and programs for states and UT.

- **NITI Forum for North-East** - to address various challenges in the region and recommend requisite interventions to achieve sustainable economic growth.

- **Sustainable Development in the Indian Himalayan Region**

- **Development Support Services for States and UTs** to achieve transformational and sustained delivery of infrastructure projects. **DSSS has the following key objectives:**

- Establish Centre-State partnership model for cooperation.
- Reimagine and transform delivery of infrastructure projects.
- Establish PPPs as governance tools supporting larger development agenda.

- Address key structural issues that States face in conceiving, structuring and implementing infrastructure projects.

- Build institutional and organisational capacities of States and State-level institutions to conceive, conceptualise, structure and implement infrastructure projects.

- **Project SATH-E**, 'Sustainable Action for Transforming Human Capital-Education' - aims to identify and build three 'role model' States for the school education sector.

- **E-Amrit** is a one-stop destination for all information on electric vehicles—busting myths around the adoption of EVs, their purchase, investment opportunities, policies, subsidies, etc.

- The portal has been developed and hosted by NITI Aayog under a collaborative knowledge exchange program with the UK government and as part of the **UK-India Joint Roadmap 2030**, signed by the Prime Ministers of the two countries.

COMPETITIVE FEDERALISM

- NITI Aayog endeavors to promote competitive federalism by facilitating improved performance of States/UTs.

- It encourages healthy competition among states through transparent rankings, in various sectors, along with a hand-holding approach.

- Some of the indices launched by NITI Aayog are School Education Quality Index, State Health Index, Composite Water Management Index, Sustainable Development Goals Index, India Innovation Index and Export Competitiveness Index.

- NITI Aayog also releases delta rankings for the performance of Aspirational Districts every month.

- The ranking of States in various social sectors based on quantitative objective criteria encourages them, and even districts, to improve their performance.

- NITI Aayog works closely with all stakeholders, including the State/UT Governments, concerned Ministries/Departments in developing indicator frameworks, review mechanisms and capacity-building.

► COOLING OFF PERIOD FOR RETIRED BUREAUCRATS

All India Services Death-cum-Benefits Rules and the Central Civil Services (Pension) Rules provides for cooling off period of 1 year after retirement.

CENTRAL CIVIL SERVICES (PENSION) RULES – RULE 9

- It applies to Central Service Group 'A' officers.
- It prohibits commercial employment of such officers for 1 year after retirement. This is referred as cooling-off period for such bureaucrats.
- If the retired officer wishes to join commercial employment before 1 year, then prior sanction of central government is mandatory.

ALL INDIA SERVICES (DEATH-CUM-RETIREMENT BENEFITS) RULES, 1958 – RULE 26

- It applies to three All India Service officers – IAS, IPS & IFS (Forest) and provides for a cooling off period of 1 year after retirement.
- If the pensioner accepts private join within 1 year and without government's sanction, then the central government can suspend whole or part of pension for specified period.

WHAT DOES COMMERCIAL EMPLOYMENT INCLUDES POST RETIREMENT?

- It is an employment, whether paid or honorary,
- in any capacity including that of an
 - agent under a company
 - firm
 - co-operative society
 - body or individual engaged in trading, commercial.
 - industrial, financial or professional business, and
 - includes a directorship of such company or partnership of such firm.
- But does not include employment under a body corporate, wholly or substantially owned or controlled by Government.

WHEN CAN GOVERNMENT ALLOW OR TURN DOWN REQUEST FOR COMMERCIAL EMPLOYMENT FROM PENSIONERS

- The CCS (Pension) Rules specify several factors for the government to consider while granting or refusing permission, these include:

- **Whether no-objection has been obtained** for the proposed commercial employment from the cadre controlling authority and from the office where the officer retired.
- **Whether the officer has been privy to sensitive or strategic information in the last 3 years** of service which is directly related to the work of the organisation the officer proposes to join.
- **Whether there is conflict of interest** between the policies of the office he has held in the last three years and the interests/work of this organisation
- **Whether the organisation works against India's foreign relations, national security and domestic harmony;** and
- **Whether the organisation he proposes to join is undertaking any activity for intelligence gathering.**

- According to these rules, "conflict of interest" does not include normal economic competition with the government or its undertakings".

IS THERE A COOLING-OFF PERIOD FOR BUREAUCRATS JOINING POLITICS ON TAKING VOLUNTARY RETIREMENT?

- There is no specific rule providing for a cooling-off period for retired bureaucrats joining politics.
- However, the rule specifies that every government employee shall always maintain political neutrality and commit himself to and uphold the supremacy of the Constitution and democratic values.

► SELF HELP GROUPS

Self-help group is a method of organising the poor people and the marginalized to come together to solve social or economic problem. Ministry of Rural Development conducted a 15-day country-wide campaign in September to speed up mobilisation of left-out poor rural poor women across 34 states and Union Territories into women's Self-Help Groups (SHGs) under Deendayal Antyodaya Yojana-National Rural Livelihoods Mission's fold (DAY-NRLM).

STEPS TAKEN BY GOI TO PROMOTE SHGs IN INDIA

- The idea of galvanizing group of women for their economic development was first tapped through Aajeevika - National Rural Livelihoods Mission (NRLM) launched in 2011.
- In November 2015, the program was renamed Deendayal Antyodaya Yojana (DAY-NRLM).
- NRLM with the help of World Bank enabled the rural poor to increase household income through sustainable livelihood enhancements and improved access to financial services.
- National Rural livelihood Mission is India's flagship program to reduce poverty by mobilizing poor rural women into **self-help groups** and building community institutions of the poor.
- India's SHG movement has evolved from small savings and credit groups that sought to empower poor rural women, into one of the world's largest institutional platforms of the poor.

SHG-BANK LINKAGE PROGRAM

- It was introduced by NABARD in 1992 has ensured growth of SHGs in bridging the financial network gap and spreading banking facilities among poor.
- The SHGs follow 'Panchsutras' –
 1. Conduct of regular group meeting
 2. Regular savings within the group
 3. Internal lending based on the demand of members.
 4. Timely repayment of loan and
 5. Maintenance of proper books of accounts

IMPORTANT ROLE PLAYED BY SHGs

- Credit Mobilisation through Micro-financial Institutions
- **Financial Inclusion**
- **Strengthening women empowerment** E.g., Kerala's Kudumbashree, Women SHGs can avail of Mudra or NABARD assistance under Dhaanyalakshmi scheme.
- **Helped to counter Left Wing Extremism** through Scheme for promotion of Women SHGs (WSHGs) in backward & LWE districts of India of NABARD.
- **Facilitating poverty alleviation** by providing livelihood opportunities – E.g., Livelihood and Enterprise Development Programs (LEDPS)
- **Improve financial and social status** of women and make them self-reliant.
- **Ensuring Rural Development**

- **Strengthening of grass root democracy** by acting as a pressure group in gram Panchayats.
- **Fighting social ills** such as dowry and alcoholism. E.g., Jeevikadidi.
- **Strengthening human resources** by promotion of education, health and capacity building.
- **Promotion of training & capacity building programs** - through seminars & workshops for the benefit of SHGs with the help of NABARD.
- **Generate Social Capital** by providing a platform to address individual concerns.
- **Enhanced political participation** in local bodies.

► AN IMPACT EVALUATION STUDY OF DAY-NRLM

- An impact evaluation study of DAY-NRLM was conducted during 2019-20 by the International Initiative for Impact Evaluation (3ie) with the support of the World Bank.
- The assessment covered 9 states with around 27,000 respondents and 5,000 SHGs across Bihar, West Bengal, Odisha, Jharkhand, Madhya Pradesh, Chhattisgarh, Maharashtra, Rajasthan and Uttar Pradesh.
- The evaluation indicates that an additional exposure to the Mission for 2.5 years led to:
 - (i) Increase in income by 19% over the base amount.
 - (ii) Decline in share of informal loans by 20%
 - (iii) Increase in savings by 28%
 - (iv) Improved labour force participation - proportion of females reporting secondary occupation is higher (4%) in treatment areas.
 - (v) Improved access to other Schemes - Significant increase in number of social schemes availed by treatment households (6.5% higher over the base value of 2.8 schemes).

► CITIZENS' CHARTER

A Model Panchayat Citizens Charter/ framework for delivery of the services across the 29 sectors, aligning actions with localised Sustainable Development Goals (SDGs) has been prepared by Ministry of Panchayati Raj (MoPR) in collaboration with National Institute of Rural Development & Panchayati Raj (NIRDPR). The Citizen Charter would ensure transparent and effective delivery of public services for sustainable development and

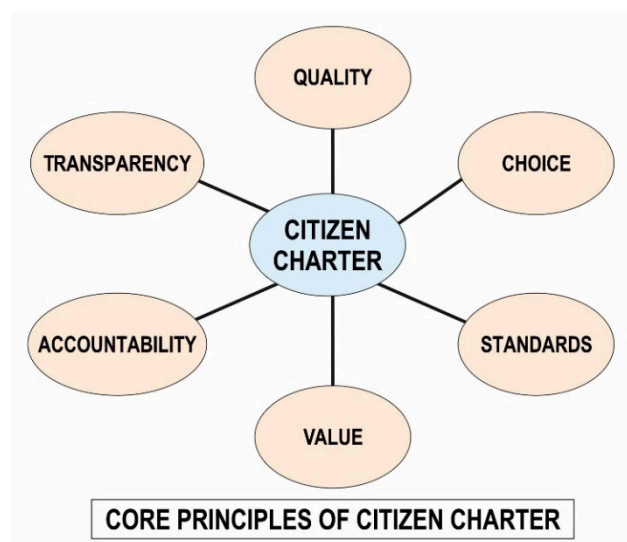
enhanced citizen service experiences, deepening inclusive and accountable Local Self Governments by incorporating diverse views while designing and delivering services.

IMPORTANCE OF CITIZENS' CHARTER

Citizen's Charter is a document which represents a systematic effort to focus on the commitment of the Organisation towards its Citizens in respects of Standard of Services, Information, Choice and Consultation, Non-discrimination and Accessibility, Grievance Redress, Courtesy and Value for Money. This also includes expectations of the Organisation from the Citizen for fulfilling the commitment of the Organisation.

COMPONENTS OF CITIZEN CHARTER

1. Vision and mission statement
2. Service standards/Procedures
3. Grievance redressal mechanisms



SEVOTTAM MODEL

Sevottam is an assessment and improvement model that has been developed with the objective of improving the quality of public service delivery in the country. The Second ARC in its 12th Report on "Citizen Centric Administration had recommended that Union and State Government organisations having public interface should mandatorily implement the seven-step model. The word "Sevottam" is a combination of two Hindi words: Seva (Service) and Uttam (Excellent). It means "Service Excellence", emphasizing the idea of "Service". It symbolizes the change in mindset within the Government, from administration and control to service and enablement.

The Seven Steps are:

1. Define your services and identify your clients.
2. Set standards and norms for each service.

3. Develop capability to meet the set standards.
4. Perform to achieve the standards.
5. Monitor performance against the set standards.
6. Evaluate impact through an independent mechanism.
7. Continuous improvement based on monitoring and evaluation.

The key components of Sevottam have the following objectives:

1. **Successful implementation of Citizen's Charters**
 - o Opening up channel to receive citizens' inputs to improve service delivery.
 - o Charter to publicly declare information on citizens' entitlements.
 - o making citizens better informed and
 - o Empowering them to demand better services.
2. **Service Delivery Preparedness and achievement of Results**
 - o Learning to manage key inputs for good service delivery.
 - o Building capacity to continuously improve service delivery.
 - o An organization can have an excellent performance in service delivery only if it is.
 - o Identify services rendered, the service delivery process, its control and delivery requirements.
3. **Sound Public Grievance Redress Mechanism**
 - o Increased satisfaction of citizens through improved grievance redressal mechanism
 - o Determination of organisations' response to citizens' grievance should also improve continuously.

► MODEL PANCHAYAT CITIZENS CHARTER/Framework

- Ministry of Panchayati Raj has prepared a Model Panchayat Citizens Charter/ framework for delivery of the services across the 29 sectors, aligning actions with localised Sustainable Development Goals (SDGs) for the Panchayats to adopt & customize.
- The aim is to provide services to people in a time bound manner, redressing their grievances and improving their lives.
- '*Meri Panchayat, Mera Adhikaar- Jan Sevaayein Hamaare Dwaar*' campaign was rolled out from 01st July to 30th September 2021. The campaign had

emerged as an effective strategy for ensuring the Gram Panchayats have a Citizen Charter approved by the respective Gram Sabhas in place, cataloguing the different categories of services rendered to the citizen by the Panchayat and the time limit for such service.

- As on date, over 2.32 Lakh Gram Panchayats across 31 States/ UTs have conducted Gram Sabha and 2.15 Lakh Gram Panchayats have now finalised their Citizen Charters.
- **With Panchayats being the State subject**, the service delivery and the related grievance redressal mechanisms are determined, managed and monitored by the **respective State Government themselves**.

► THREE TIER APPEAL MECHANISM UNDER RTI

The RTI Act provides for setting up of the practical regime of Right to Information for citizens to secure the right to access to information held by or under the control of public authorities.

- **The legislative intent behind the enactment of the RTI Act is to -**
 - Foster transparency & accountability in the working of every Public Authority.
 - Fulfills rights of citizens to seek information from public authorities.
 - Bridging gap between information provider and the information seeker.
 - Enhance efficiency in administration of public authorities.
 - Mitigate corruption.
 - Promote good governance.
 - Harmonise citizens' rights with preserving national security.

THREE TIER SYSTEM UNDER RTI ACT

FIRST TIER

- **Central Assistant Public Information Officer/ Central Public Information Officer (CAPIO/CPIO)** - provides information to an RTI applicant within 30 days of the receipt of a request as per section 7, unless:
 - it is exempted from disclosure under section 8; or
 - relates to a third party or
 - held by another Public Authority – in such instance, application to be transferred within 5 days of receipt of application.

SECOND TIER

- The Second tier is designated as the **First Appellate Authority (FAA)**.
- An RTI applicant:
 - who does not get the required information within 30 days or
 - is aggrieved by the decision of CPIO.

May within 30 days – file his first appeal FAA – officer senior in rank to CPIO

THIRD TIER

- At the third tier, **the Central Information Commission** has been established as the apex appellate authority under the RTI Act 2005.
- **Second appeal** can be filed before the Central Information Commission against the order of FAA, if the RTI Applicant is not satisfied or receives no order from FAA within 90 days.

(C) FILING ANNUAL REPORT BY CIC & SIC – RTI ACT

- Central Information Commission has produced Annual Report for 2019-20.
- The Central and State Information Commissions shall prepare and forward yearly report to respective central and state governments about implementations of RTI Act.
- Information related to public authorities (Reply to RTI Applications) shall be collected by each Ministry and their Departments shall be forwarded to CIC & SIC.
- Annual Report of Central Information Commission - laid before both Houses of Parliament
- Annual Report of State Information Commission - laid before House/s of State Legislature (including Legislative Council).

The Annual Report must contain the following information:

- Number of requests made to each Public Authority.
- Number of decisions where applicants were denied access to information including documents.
- Provisions of RTI Act (e.g.: under Section 8) under which information was denied and number of times information was denied.
- Number of appeals referred to the Central Information Commission or State Information Commission for review - the nature of the appeals and the outcome of the appeals.
- Particulars of any disciplinary action taken against any officer.

- Amount of charges collected by each Public Authority under this Act.

► INDIAN ARMY CAN GET EXEMPTION FROM RTI

Indian Ex-Services League, an association of ex-servicemen, family pensioners and next-of-kin of the armed forces personnel has written to PM Narendra Modi against exempting Indian Army from RTI Act.

REASON FOR REQUEST

- RTI helps to maintain transparency in the functioning of the Indian Army.
- RTI acts as a powerful tool for family members of serving officials and veterans to seek information from the government or to seek documents or service records of army officials.
- RTI Act helps to address myriad grievances of army personnel and their family members regarding service issues or pension matters.
- It has been observed that seeking information through RTI has reduced litigation in Court.
- Section 8 and 9 of RTI Act provides adequate protection for sensitive information which the Army do not want to disclose.

SECTION 24 OF RTI ACT - EXEMPTS CERTAIN CENTRAL INVESTIGATIVE AGENCIES

- The provisions of RTI Act shall not apply to the intelligence and security organisations specified in the Second Schedule of the Act.
- However, information pertaining to allegations of corruption and human rights violations shall not be excluded of such central investigative agencies.
- Information about allegations of violation of human rights shall only be provided after the approval of the Central Information Commission.
- Such information shall be provided within 45 days from the date of the receipt of request.
- Central Government by amendment may add or omit any intelligence or security organisation from the Second Schedule. Such amendment shall be laid before each House of Parliament.

► INTEGRITY PACT

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.**
- **It 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 investigate 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
 - i. *adequate means of livelihood,*
 - ii. *proper distribution of community resources for the welfare of all specially the weak,*
 - iii. *distribution of wealth equitably in the society for the common good of all.*
- Thus, the concept of CSR instils 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 RECRUITMENT AGENCY

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

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

- *Convening of the meetings of Cabinet & its committees on the orders of 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.*

► 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 investigate 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.

► 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 –

- tie-in arrangement.**
- exclusive supply agreement.**
- exclusive distribution agreement.**
- refusal to deal.**
- 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 –
 - operate independently of competitive forces prevailing in the relevant market; or
 - 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 fulfil 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.

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.

SIX PILLARS OF MISSION KARMAYOGI

- Policy Framework,
- Institutional Framework
- Competency Framework,
- Digital Learning Framework (Integrated Government Online Training Karmayogi Platform (iGOT-Karmayogi),
- electronic Human Resource Management System (e-HRMS), and
- 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.

I-GOT-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-iGOT Karmayogi** 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)

► INFORMATION-MONITORING, EVALUATION & 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.

► NATIONAL EDUCATION POLICY, 2020

Union Cabinet has approved National Education Policy 2020 based on recommendations of Kasturirangan Committee. NEP is based on the pillars of "access, equity, quality, affordability, accountability" and transform India into a "vibrant knowledge hub".

REFORMS IN SCHOOL EDUCATION

- NEP 2020 suggests a slew of reforms for school education, with a focus on **flexibility of subjects and eliminating silos between streams of learning**. Another goal of NEP is to achieve **100 percent Gross Enrolment Ratio in preschool to secondary level by 2030**.
- 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:
 - **Foundation stage** is three years of anganwadi or preschool + two years in primary school in grades 1-2 covering ages 3 to 8 years.
 - **Preparatory stage** covering ages 8 to 11 years or grades 3-5
 - **Middle stage** covering ages 11 to 14 years or grades 6-8
 - **Secondary stage** covers 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 can **practice more critical thinking** and among other things, more **analysis-based learning**.

- 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

- **Promote multilingualism and a learning of native languages**. There will also be reforms to the assessment system.
- **Board exams will be made 'easier', testing 'primarily core capacities/competencies'** rather than rote learning.
- 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*, "**medium of instruction until at least grade 5, but preferably till grade 8 and beyond, will be home language/mother tongue/local language/regional language**", to be followed in both public and private schools.
- Implements **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 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**.

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

- Aim to **increase the Gross Enrolment Ratio in higher education**, including vocational education from 26.3 percent as of 2018 to 50 percent by 2035.
- **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.
- **MPhil program has been discontinued by 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 considering 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.

► ASPIRATIONAL DISTRICT PROGRAM

United Nations Development Program (UNDP) India has lauded Aspirational Districts Program (ADP) as 'a very successful model of local area development 'that 'should serve as a best practice for several other countries where regional disparities in development status persist for many reasons'.

ASPIRATIONAL DISTRICT PROGRAM

- 'Transformation of Aspirational Districts' Program aims to expeditiously improve the socio-economic status of 117 districts from across 28 states.
- **The three core principles** of the program are –
 1. **Convergence** (of Central & State Schemes),
 2. **Collaboration** (among citizens and functionaries of Central & State Governments including district teams), and
 3. **Competition among districts**.
- Driven primarily by the States, this initiative focuses on the strengths of each district, and prioritizes the attainable outcomes for immediate improvement.
- Districts will be ranked on their "incremental progress" through **Delta Ranking**.
- Aspirational Districts program, through real-time monitoring and proactive course corrections, reinforces the mechanisms of cooperative & competitive federalism between Centre and States, down to the districts.
- NITI Aayog has entered into partnership with Tata Trusts, and Bill & Melinda Gates Foundations (ID Insight) to assist the districts in enumerating improvement in key performance indicators a through household survey.

FOCUS THEMES – ADP

The program focuses on 5 main themes which have a direct impact on quality of life and economic productivity of citizens.

Themes	Weight Allotted
Health & Nutrition	30%
Education	30%
Agriculture & Water Resources	20%
Financial Inclusion & Skill Development	10%
Basic Infrastructure	10%

► MAYOR'S ELECTIONS IN DELHI

*Election for Mayor in Delhi was delayed as the LG gave voting rights to the nominated members (aldermen) which is prohibited under **Article 243R(2)(a)** and under the Delhi Municipal Corporation Act, 1957. Supreme Court ordered that LG cannot allow voting rights to aldermen.*

SUPREME COURT'S JUDGMENT

- Based on **Article 243R** and **Section 3(3) of Delhi Municipal Corporation Act, 1957**, Supreme Court held that persons nominated by administrator do not have the right to vote.
- Election of Deputy Mayor can only take place after the elections for Mayor is conducted. This has been provided under *The Delhi Municipal Corporation (Procedure and Conduct of Business) Regulations, 1997.*
- After the election for Mayor is conducted, the mayor shall act as Presiding Authority for conducting the election of Deputy Mayor and members of Standing Committee.
- Nominated members cannot vote either in the elections for Deputy Mayor and Standing Committees.
- CJI emphasised that Aldermen (nominated members) cannot vote and that is the basic principle of democracy.

RELATED CONSTITUTIONAL PROVISIONS**Article 243R - Composition of Municipalities**

(1) All the seats in a Municipality shall be filled by persons chosen by direct election from the territorial constituencies in the Municipal area and for this purpose each Municipal area shall be divided into territorial constituencies to be known as wards.

(2) The Legislature of a State may, by law, provide—

(a) for the representation in a Municipality of

1. persons having special knowledge or experience in Municipal administration.
2. the members of the House of the People and the members of the Legislative Assembly of the State

representing constituencies which comprise wholly or partly the Municipal area.

3. the members of the Council of States and the members of the Legislative Council of the State registered as electors within the Municipal area.
4. the Chairpersons of the Committees constituted under clause (5) of article 243S: Provided that the persons referred to in paragraph (i) shall not have the right to vote in the meetings of the Municipality.

(b) the manner of election of the Chairperson of a Municipality:**Article 243ZA - Elections to the Municipalities:**

1. 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 referred to in **Article 243K**.
2. Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Municipalities.

Article 243K - Elections to the Panchayats:

1. 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 a State Election Commission consisting of a State Election Commissioner to be appointed by the Governor.
2. Subject to the provisions of any law made by the Legislature of a State, the conditions of service and tenure of office of the State Election Commissioner shall be such as the Governor may by rule determine.

DELHI MUNICIPAL CORPORATION ACT, 1957 - PROVISIONS RELATING TO THE MAYOR

(a) The Corporation shall be composed of the councillors.

(b) The following persons shall be represented in the Corporation, namely:

- ten persons, who are not less than 25 years of age and who have special knowledge or experience in

municipal administration, to be nominated by the Administrator.

- Provided that the persons nominated under this sub-clause shall not have the right to vote in the meetings of the Corporation.

(c) Councillors shall be chosen by direct election

based on adult suffrage from various wards. (Section 35 of the act mentions, Annual election of Mayor and Deputy Mayor).

Section 35 - Annual election of Mayor and Deputy Mayor

- **Election** - The Corporation shall at its first meeting in each year elect one of its members to be the Chairperson to be known as Mayor and another member to be the Deputy Mayor of the Corporation.
- **Vacancy** - On the occurrence of any vacancy in the office of Mayor or the Deputy Mayor, Corporation shall within one month of the occurrence of such vacancy elect one of its members as Mayor or Deputy Mayor.
- **Reservation** - during the duration of the Corporation, the office of the Mayor shall be reserved in favour of a member who is a woman for the first year of the Corporation and in favour of a member belonging to a Scheduled Caste for the third year of the Corporation.

Section 36 - Term of Office of Mayor & Deputy Mayor

- The Mayor or the Deputy Mayor shall hold office from the time of his election until the election of his successor in office.
- Or unless in the meantime he resigns his office as Mayor or Deputy Mayor or
- Unless in the case of the Deputy Mayor he is elected as Mayor.

Section 37 - Discharge of functions of the Mayor by the Deputy Mayor

- **Vacancy** - When the office of the Mayor is vacant, the Deputy Mayor shall act as Mayor until new Mayor is elected.
- **Absent** - When the Mayor is absent from his duty on account of illness or any other cause, the powers, duties and functions of the Mayor shall be exercised and performed by the Deputy Mayor.
- **Delegation of Power** - The Mayor may by order in writing delegate any of his powers, duties and functions to the Deputy Mayor.

Section 38 - Resignation of Mayor and Deputy Mayor

- The Mayor may, by writing under his hand addressed to the Deputy Mayor and delivered to the Municipal Secretary, resign his office.
- The Deputy Mayor may, by writing under his hand addressed to the Mayor and delivered to the Municipal Secretary, resign his office.
- A resignation of Mayor or Deputy Mayor shall take effect from the date on which it is delivered.

► 6TH CRM ON MGNREGA – 2022

National Level Monitoring, Common Review Mission and Internal Audits are some of the periodic exercises carried out to monitor implementation of MGNREGA at grassroot level. The Ministry of Rural Development in its Sixth Common Review Mission (CRM) has called for decentralisation of the program to allow greater flexibility in its implementation.

UNDERSTANDING MGNREGA

- **Mahatma Gandhi National Rural Employment Guarantee Act, 2005** is the foundation for the Mahatma Gandhi National Rural Employment Guarantee Scheme (MGNREGS) and provides guaranteed employment.
- **Demand Based Employment** - MGNREGA is bottom-up, people centred, demand-driven, self-selecting and rights-based program. It provides a legal guarantee for wage employment by providing allowances and compensation both in cases of failure to provide work on demand and delays in payment of wages for work undertaken.
- **Involvement of Panchayats** - Plans and decisions regarding the nature and choice of works to be undertaken, the order in which each worksite selection etc., are all to be made in open assemblies of the Gram Sabha (GS) and ratified by the Gram Panchayat.
- **Institutionalising Social audit** - The Gram Sabha conducts regular social audits of all the projects under the Scheme taken up within the Gram Panchayat.
- **The mandate of the MGNREGA** is to provide at least 100 days of guaranteed wage employment in a financial year to every rural household whose adult members volunteer to do unskilled manual work.
- **Core objectives of MGNREGS:**
 - (a) Providing not less than one hundred days of unskilled manual work as a guaranteed employment in a financial year to every household in rural areas as per demand, resulting in creation

of productive assets of prescribed quality and durability.

- (b) There is also a provision for additional 50 days of unskilled wage employment in a financial year in drought/natural calamity notified rural areas.
- (c) Strengthening the livelihood resource base of the poor.
- (d) Proactively ensuring social inclusion and
- (e) Strengthening Panchayati Raj Institutions.

• **Goals of MGNREGA are:**

- (a) Social protection for the most vulnerable people living in rural India by guaranteeing wage employment opportunities.
- (b) Enhance livelihood security of the rural poor through generation of wage employment opportunities in works leading to creation of durable assets.
- (c) Rejuvenate natural resource base of rural areas.
- (d) Create a durable and productive rural asset base.
- (e) Empowerment of the socially disadvantaged, especially, women, Scheduled Castes (SCs) and Scheduled Tribes (STs), through the processes of a rights-based legislation.
- (f) Strengthen decentralised, participatory planning through convergence of various anti-poverty and livelihoods initiatives.
- (g) Deepen democracy at the grassroots by strengthening Panchayati Raj Institutions.

• **State Government may by notification make rules to carry out the provisions of Act** subject to the conditions of consistency with Mahatma Gandhi NREGA and rules made by the Central Government.

• **Transfer of Funds** - MGNREGA is demand driven wage employment program and resource transfer from Centre to States is based on the demand for employment in each State.

PERMISSIBLE WORK UNDER MGNREGA

- MGNREGA Act allows Central Government to add new works in the permissible list of works under Schedule 1 of the Act.
- As per Schedule 1 of Act, there are 265 permissible works under Mahatma Gandhi NREGA.
- The demand from States to add work in the list of permissible works is examined in consultation with stakeholders.

- Also, the list of permissible works is reviewed annually by a Committee of Central Government having different States as member of the Committee.
- Recently, plantation of Dragon-fruit under horticulture plantation has been permitted under the Scheme against the request from States keeping in view the local requirements and the objective of MGNREGA Act.
- Some of recently added works in the list of permissible works under Mahatma Gandhi NREGA are given below:
 - Construction of bio-gas plant for individual
 - Unskilled wage component towards the construction of bio-gas plant for community.
 - Maintenance of tunnel constructed by Border Road Organisation (BRO); and
 - Maintenance of bridges constructed by Border Road Organisation (BRO)

► **PAHARIS AS SCHEDULED TRIBE**

Gujjar & Bakerwals are opposed to G.D Sharma Commission's recommendations to include Paharis in ST list.

LIST OF SCHEDULED TRIBES IN JAMMU & KASHMIR

Jammu & Kashmir

1.	Balti	7.	Mon
2.	Beda	8.	Purigpa
3.	Bot, Boto	9.	Gujjar
4.	Brokpa, Drokpa, Dard, Shin	10.	Bakarwwal
5.	Changpa	11.	Gaddi
6.	Garra	12.	Sippi

PAHARI COMMUNITY

- Pahari Community includes Hindus and Muslims and is largely based on the language spoken by them in the hills. They largely reside in Rajouri, Poonch, Baramulla, Anantnag and Kupwara districts.
- Although the Gujjar-Bakerwal tribes and Pahari community are born in the same social and cultural milieu, the former (Gujjar-Bakerwal) live a nomadic life, shuttling between Kashmir and Jammu regions with their livestock, while the latter (Pahari) are socially stratified, economically well-off and culturally moored with caste and other ethnic divisions.
- Paharis are largely found in the region between the Jhelum and Chenab rivers in the districts of Poonch

and Rajouri in Jammu and Uri of Baramulla district and Karnah and Tanghdar in Kupwara district.

SCHEDULED TRIBES

- Framers of Constitution realised that certain communities in the country were suffering from extreme social, educational and economic backwardness on account of the primitive agricultural practices, lack of infrastructure facilities and geographical isolation.
- Constitution of India in **Article 366 (25)** prescribe that Scheduled Tribes means such tribes or tribal communities as are deemed under **Article 342** of the Constitution to be Scheduled Tribes.

ARTICLE 342 (1)

- The President may - with respect to any State or Union Territory,
- and where it is a State, after consultation with the Governor thereof,
- by a public notification,
- specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe

ARTICLE 342 (2)

- Parliament may be law.
- include in or exclude from the list of Scheduled Tribes (prepared through Presidential notification)
- any tribe or tribal community or part of or group within any tribe or tribal community

Based on **Article 342**, Parliament enacted **THE CONSTITUTION (SCHEDULED TRIBES) ORDER, 1950** which contains a list of tribes or groups designated as Scheduled Tribes. This Order is amended from time to time to include more groups or communities within the ST Fold.

CRITERIA TO DESIGNATE AS ST

The criteria presently followed for specification of a community as a Scheduled Tribe are:

- (i) indications of primitive traits
- (ii) distinctive culture
- (iii) geographical isolation
- (iv) shyness of contact with the community at large, and
- (v) backwardness

- While the Constitution is silent about the criteria for specification of a community as a Scheduled Tribe. The words and the phrase 'tribes or tribal communities or part of or groups within tribes or tribal communities'

in **Article 342** have to be understood in terms of their historical background of backwardness.

• **Primitiveness, geographical isolation, shyness and social, educational & economic backwardness due to these reasons are the traits that distinguish Scheduled Tribe communities of our country from other communities.**

- It considers the **definitions of tribal Communities** adopted in the **1931 Census**.
- These facts are the basis for the provision in Article 342(1) which mandates to specify the tribes or tribal communities or part of or groups within tribes or tribal communities as Scheduled Tribe in relation to that State or Union Territory as the case may be.
- Thus, the list of Scheduled Tribes is State/UT specific and a community declared as a Scheduled Tribe in a State need not be so in another State.
- Presidential notifications under Clause 1 of Article 342 of Constitution are issued as the Constitution Orders.

► SEED SCHEME FOR ECONOMIC EMPOWERMENT OF DNT/NT/SNT

Union Social Justice Ministry has received more than 400 applications online from across the country for benefits under Scheme for Economic Empowerment of Denotified, Nomadic, Semi-nomadic (SEED) Tribes.

SCHEME FOR ECONOMIC EMPOWERMENT OF DNTS (SEED) HAS 4 COMPONENTS

1. **Educational empowerment** - Free coaching to students from these communities for Civil Services, entry to professional courses like medicine, engineering, MBA, etc. Selection of candidates for each course will be based on system generated merit list through a portal.
2. **Health Insurance** through Pradhan Mantri Jan Arogya Yojana - PMJAY - of National Health Authority - to provide financial assistance to National Health Authority (NHA) in association with State Health Agencies (SHAs) for undertaking providing a health insurance cover of Rs.5 lakhs per family per year to DNT, NT and SNT families as per norms of "Ayushman Bharat Pradhan Mantri Jan Arogya Yojana.
3. **Livelihoods to support income generation** - provide financial assistance to National Rural Livelihood Mission (NRLM) for undertaking institution building in association with State Rural Livelihoods Mission (SRLM) of state Governments/UTs at community level as a livelihood initiative to enhance productivity growth in key livelihood sectors for

employment generation for DNT/NT/SNT communities through investments in institutional support, technical assistance.

4. **Housing (through Pradhan Mantri Awas Yojana PMAY/IAAY)** - as large number of families belonging to the DNT/NT communities are without permanent shelters and dwellings. A separate outlay for PMAY has been proposed to provide houses only for DNTs living in rural areas who have not taken benefits of the Pradhan Mantri Awas Yojana as SC, ST, OBC and are living below poverty line. The admissible support is Rs 1.20 lakhs in plains and 1.30 lakhs in hilly areas.

ABOUT DNT/NT/SNT

- **De-notified Tribes (DNTs), Nomadic Tribes (NTs) & Semi Nomadic Tribes** are the one of the most deprived and economically weaker communities in India.
- **Denotified Tribes (DNTs)** are communities that were 'notified' as being 'born criminals' during the British regime under a series of laws starting with the Criminal Tribes Act of 1871.
- **Subjugation Affected Lives & Livelihood** - These communities were subjugated, persecuted and neglected. The policies of the colonial government affected lives and livelihood adversely.
- **Lack of State Support Even after Independence** - they have not benefitted much from the planned development of over seven decades. They were deprived of state support like the SCs/STs.
- **Alienation from Mainstream** - This led to the forcible alienation from their traditional occupations and habitations. They remained hunter gatherers and pastoral/peripatetic.

IMPORTANT COMMITTEES

- **Ayyangar Committee** - These Acts were repealed based on recommendation of Ayyangar Committee, 1949 by the Government in 1952, and these communities were accordingly "De-Notified".
- **Renke Commission** - In India, roughly 10% of the population is Denotified and Nomadic. **The Renke commission (2008)** estimated their population to be around 10.74 crore based on 2001 Census.
- **Idate Commission** - National Commission for De-notified, Nomadic and Semi-Nomadic Tribes (NCDNT) was constituted by Government of India in February 2014 to prepare a state-wise list of castes belonging to De-notified, Nomadic and Semi-Nomadic Tribes under the chairmanship of Shri Bhiku Ramji Idate. This commission was also tasked to evaluate the

progress of development of these communities in the states so that a systematic approach can be developed for the development of these communities.

RECOMMENDATIONS OF IDATE COMMISSION (NCDNT) ARE

1. Setting up of a Permanent Commission at the Centre for Denotified, Nomadic and Semi-Nomadic Communities.
2. Setting up of a Separate Department/Directorate for DNT/NT communities in States.
3. Define NT and DNT. Uniformity in categorization of DNT/NT as SC/ST/OBCs across the States/UTs. Issue of single caste certificate. Sub-quota for DNT/NT/SNT within the quota of SC/ST/OBCs.
4. Caste based Census in respect of DNT/NT/SNT communities in 2021 Census.
5. Creating awareness among DNT/NT/SNT communities for their inclusion in mainstream.
6. Sensitization of different government officials, law enforcing authorities & local bodies so that DNT/NT/SNT do not get differential treatment and benefits of mainstream schemes reach them.
7. Schemes focusing DNT/NT/SNT communities for their health, education, housing, traditional art, traditional expertise.
8. Livelihood of DNT/NT/SNT communities is largely dependent on the forests. Review "Indian Forest Act" and "Wildlife Protection Act" to give them their natural habitats.

ISSUES OF DE-NOTIFIED, NOMADIC AND SEMI-NOMADIC TRIBES

1. **No Permanent Commission for DNTs**
2. **Lack of Constitutional Support**
3. **Many have not been categorised as SC or ST or any reserved categories.**
4. **Budgetary allocation has been reduced** to Rs 28 crore for 2022-23 against the budgetary allocation of Rs 50 crore for 2021-22.
5. **Vulnerable & Wrongly Stigmatised:** Historically, Nomadic Tribes and De-notified Tribes never had access to private land or home ownership. The National Commission to Review the Working of the Constitution (NCRWC), 2002 held that DNTs have been **wrongly stigmatised as crime prone and subjected to high handed treatment as well as exploitation by the representatives of law and order and general society.**

6. **Issues with the functioning of the Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities (DWBDNC).**
7. **Inconsistencies Observed while classifying them under SC, SC and OBC** - For example, some communities such as the **Banjaras** were under the SC list in Delhi, the ST list in Rajasthan and the OBC list in Uttar Pradesh.
8. **Classification Important for success of SEED** - categorisation of DNTs, NTs and SNTs is essential for the implementation of SEED because there is no schedule in the Constitution providing for their reservation.

► KARNATAKA REJECTS OVER 83% OF FRA CLAIMS

In Karnataka, over 83% of claims received from Scheduled Tribes and other traditional forest dwellers were rejected till November 2022 under the Forest Rights Act.

SCHEDULED TRIBES & OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT

- The 2006 Act is also referred as Forest Rights Act (FRA) recognises and vests 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 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.

► **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.

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** of Schedule Tribe Component is to channelize/monitor the flow of outlays and benefits from general sectors in Central Ministries/Departments for 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

► **PARTICULARLY VULNERABLE TRIBAL GROUPS - PVTG**

Ministry of Tribal Affairs is also implementing a scheme of *Eklavya Model Residential Schools (EMRS)* to provide quality education to Scheduled Tribes (ST) students including *Particularly Vulnerable Tribal Groups (PVTG)* students (Class 6th to 12th) in remote areas.

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.

► CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

Criminal Procedure (Identification) Act, 2022 provides legal sanction to law enforcement agencies for “taking measurements of convicts and other persons for the purposes of identification and investigation of criminal matters”. While the legislation was enacted earlier this year, the Ministry of Home Affairs notified it to come into effect from August 4, 2022. It also repeals the existing Identification of Prisoners Act, 1920.

The 2022 Act defines Measurement – and it 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.

HOW WILL THE MEASUREMENTS HELP?

Measurements and photographs for identification have three main purposes:

- (i) establish the identity of the culprit against the person being arrested.
- (ii) identify suspected repetition of similar offences by the same person and
- (iii) to establish a previous conviction.

REASONS TO INTRODUCE THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022

THE IDENTIFICATION OF PRISONERS ACT, 1920	THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022
<ul style="list-style-type: none"> • The Identification of Prisoners Act, 1920 was enacted to authorise the taking of measurements and photographs of convicts and other persons. • The term "measurements" used in the 1920 Act is limited as <u>it only allows taking finger impressions and foot-print impressions of limited category of convicted and non-convicted persons</u> and photographs on the order of a Magistrate. • 1920 Act limited the category of prisoners whose records could be taken. Thus, it was considered necessary to expand the “ambit of persons” whose measurements can be taken as this will help the investigating agencies to gather sufficient legally admissible evidence and establish the crime of the accused person. 	<ul style="list-style-type: none"> • In the present time, modern technology allows to capture and record appropriate body measurements with the help of forensic experts. • The Act provides for legal sanction for taking appropriate body measurements of persons who are required to give such measurements. • Improve efficiency of investigation and will also help in increasing the conviction rate. • It is for these reasons, the Act seeks to <ol style="list-style-type: none"> (i) 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. (ii) Empower the National Crime Records Bureau to collect, store and preserve the record of measurements and for sharing, dissemination, destruction and disposal of records. (iii) Empower a Magistrate to direct persons accused of criminal activities to give measurements. (iv) Empower police or prison officer to take measurements of any person who resists or refuses to give measurements.

WHOSE MEASUREMENT CAN BE TAKEN?

- According to the **CRIMINAL PROCEDURE (IDENTIFICATION) Act, 2022** – the following person

would be required to give his/her measurements who has been –

- (a) convicted of an offence punishable under any law for the time being in force
 - (b) ordered to give security for his good behaviour or maintaining peace under Criminal Procedure Code
 - o to ensure the person does not disturb public tranquility/peace.
 - o to ensure the person does not indulge in seditious activities,
 - o to ensure the person does not get involved in rioting.
 - o to ensure the person does not promote enmity between different groups on grounds religion, race, place of birth, residence, language etc.
 - (c) arrested in connection with an offence punishable under any law for the time being in force or detained under any preventive detention law.
- **Further, a person shall also allow his measurements to be taken by a police officer** or a prison officer in such manner as may be prescribed by the Central Government or the State Government.
 - **Arrested persons will not be obliged to give their biological samples** unless they have committed an offence against a woman or a child, or an offence punishable with a minimum of seven years of imprisonment.

NATIONAL CRIME RECORDS BUREAU (NCRB) TO COLLECT SUCH MEASUREMENTS

- **The National Crime Records Bureau** shall, in the interest of prevention, detection, investigation and prosecution of any offence under any law for the time being in force:
 - (a) **Collect the record of measurements** from State Government or Union territory Administration or any other law enforcement agencies.
 - (a) **Store, preserve and destroy** the record of measurements at national level.
 - (b) **Process such records** with relevant crime and criminal records; and
 - (c) **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

- o has not been previously convicted of an offence punishable under any law with imprisonment for any term; and
- o 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.

RESISTANCE BY PERSON IN GIVING HIS MEASUREMENTS

- Refusal to give measurements under the Act will be considered an offence under Section 186 of Indian Penal Code which makes it an offence for obstructing public servant in discharge of their duties.
- Thus, if a person resists the authorities to collect his measurements, then it will be lawful for the police officer or prison officer to take such measurements in such manner as prescribed.

BAR OF SUIT

No suit or any other proceeding shall lie against any person for anything done or intended to be done in good faith under this Act or any rule made thereunder.

► PLACES OF WORSHIP ACT – GYANWAPI MOSQUE

After the claims of a Shivling being discovered inside the mosque, Hindu organisations have claimed worshipping rights inside the mosque. Anjuman Intezamia Masjid Committee, which manages the mosque in its petition, has sought protection under the Places of Worship (Special Provisions Act).

SUPREME COURT JUDGMENT – A BALANCING ACT

- The Court directed the District Magistrate of Varanasi to protect the SHIVLING which was found in the mosque premises.
- The Court at the same time also allowed Muslims to offer Namaz till the District Judge pronounce its verdict.

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

- The law was passed in 1991 by the **P V Narasimha Rao-led Congress government.**
- 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.

- 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*. Justice Ranjan Gogoi while pronouncing the Five Judge Constitution Bench in Ram Janmabhoomi dispute stated that the Court was making an exception in Ayodhya case as it was an ongoing episode.

INDIAN SECULARISM & PLACES OF WORSHIP ACT (AYODHYA VERDICT OF SC)

- The Constitution Bench in Ayodhya dispute had said that *“history and its wrongs shall not be used as instruments to oppress the present and the future.”*
- **Non-retrogression is a foundational feature of the fundamental constitutional principles of which secularism is a core component.**
- The Places of Worship Act is, thus, a legislative intervention which preserves non-retrogression as an essential feature of our secular values.
- The Court held that the Places of Worship Act, 1991 is a legislative intervention which preserves non-retrogression as an essential feature of our secular values.

IMPORTANT PROVISIONS OF THE ACT

- **Prohibits Conversion** - 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.
- **Froze religious character of place of worship as on 15th August 1947** and prohibited conversion of religious denomination or places of worship.
- **Pending Cases ceases to exist (abate)** - 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.
- **Abatement of suit means that the suit ceases to exist and no proceeding can be conducted.**
- **Cases after 15th August 1947** - 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 1991 LEGISLATION DOES NOT APPLY TO (EXCEPTIONS)

- **Ancient or Historical Monument** - 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.

- **Court's Decisions** - Any Court proceedings finally decided, settled or disposed of by a Court, Tribunal or other authority before the commencement of this Act. (1991)
- **Amicable Settlement of Dispute** - Any dispute with respect to any such matter settled by the parties amongst themselves before such commencement.
- **Acceptance without Protest** - 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.

► COMPETITION (AMENDMENT) BILL, 2022

With the changing dynamics of Indian economy, proliferation of technological advancements such as increasing use of Artificial Intelligence in digital commerce (use of algorithms for price determination), amendments became necessary to regulate and further redefine anti-competitive practices in India.

UNDERSTANDING CARTELS & THE PROCESS OF CARTELISATION

- **According to International Competition Network (ICN)** (global body dedicated to enforcing competition), there are three components of Cartels: 1. An Agreement 2. Between Competitors & 3. Restrict Competition.
- **Agreements forming cartel need not be formal or written** and mostly involve secret conspiracies.
- According to ICN, four categories of conduct are commonly identified across jurisdictions (countries)
 1. Price Fixing
 2. Output Restrictions
 3. Market Allocation
 4. Bid-rigging
- So, participants in hard-core cartels agree to insulate themselves from the rigours of a competitive marketplace and substitutes cooperation for competition.

IMPACT OF ANTI-COMPETITIVE AGREEMENTS

- Can create artificial demand by holding supplies.
- Raising prices in a collaborative manner.

- Impacts choices for consumers and distorts market conditions.
- Consolidates positions of cartels in the market – at the cost of its competitors
- Cartels indirectly, undermine overall economic efficiency and innovations.

SALIENT FEATURES OF THE COMPETITION (AMENDMENT) BILL, 2022

1. Regulation of Combination based on “Deal Threshold Value” - for assessing whether a merger or acquisition qualifies as a “combination” and requires notification to the Competition Commission of India (CCI).

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
Section 5 currently says parties indulging in merger, acquisition, or amalgamation need to notify the Commission of the combination only based on ‘asset’ or ‘turnover’.	Proposes the introduction of an additional “deal value” threshold and makes it mandatory to notify the Competition Commission of India (CCI) <ul style="list-style-type: none"> (a) with a deal value in excess of INR 2,000 crores and (b) where either party has “substantial business operations in India”. The Commission will frame regulations to prescribe the requirements for assessing whether an enterprise has ‘substantial business operations in India’. When business entities are willing to execute a combination, they must inform CCI. The Commission may approve or disapprove the combination, keeping in mind <u>the appreciable adverse effect on competition that is likely to be caused.</u>

Impact -This change will strengthen the Commission's review mechanism, particularly in the digital and infrastructure space, a majority of which were not

reported earlier, as the asset or turnover values did not meet the jurisdictional thresholds.

2. Reduced Time Period for Clearance

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
Under Section 6, CCI had 210 days to approve the combination after a notice was given.	The new Bill seeks to accelerate the timeline from 210 working days to only 150 working days with a conservatory period of 30 days for extensions.

Impact

- **Positive** - It will speed up the clearance process subject to analysis whether such combination affects free competition in the market. It will also increase the importance of pre-filing consultations with the Commission.
- **Negative** -This may put CCI under lot of pressure to clear the combination cases and this may lead to delay in clearing of combination cases.

3. Penalty for Gun Jumping Increased

Parties should not go ahead with a combination prior to its approval. If the combining parties close a notified transaction before the approval or have consummated a reportable transaction without bringing it to the Commission's knowledge, it is seen as gun-jumping.

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
The penalty for gun-jumping is a total of 1% of the asset or turnover.	This is now proposed to be 1% of the deal value.

4. Making Anti-Competitive More Exhaustive

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
Under the Act, anti-competitive agreements include any agreement related to <u>production, supply, storage, or control of goods or services,</u> which can cause an appreciable adverse effect on competition in India. Any agreement between enterprises or persons, engaged in identical or	The Bill adds that <i>enterprises or persons not engaged in identical or similar businesses shall be presumed to be part of such agreements, if they actively participate in the furtherance of such agreements.</i>

similar businesses, will have such adverse effect on competition if it meets certain criteria which includes:

- (i) directly or indirectly determining purchase or sale prices
- (ii) controlling production, supply, markets, or provision of services, or
- (iii) directly or indirectly leading to collusive bidding.

specified by CCI through regulations.

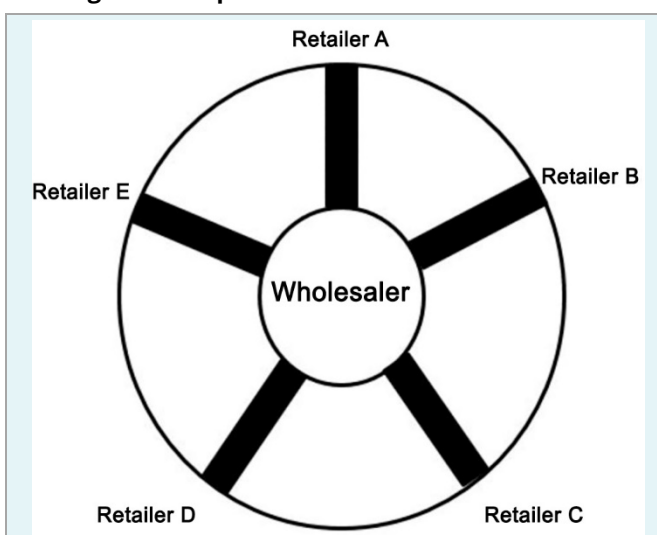
5. Settlement and Commitment in anti-competitive proceedings

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
<p>Under the Act, CCI may initiate proceedings against enterprises on grounds of:</p> <ul style="list-style-type: none"> • entering into anti-competitive agreements, or • abuse of dominant position. <p>Abuse of dominant position includes:</p> <ul style="list-style-type: none"> • discriminatory conditions in the purchase or sale of goods or services, • restricting production of goods or services, or • indulging in practices leading to the denial of market access. 	<p>The Bill proposes a framework for settlements and commitments for cases relating to vertical agreements and abuse of dominance.</p> <p>The Bill permits CCI to close inquiry proceedings if the enterprise offers:</p> <ul style="list-style-type: none"> (i) settlement (may involve payment), or (ii) commitments (may be structural or behavioural in nature). <p>In the case of vertical agreements and abuse of dominance, the parties may apply for a 'commitment' before the Director General (DG) submits the report. 'Settlement' will be considered after the report is submitted and before the Commission decides the matter.</p> <p>The manner and implementation of settlement and commitment may be</p>

6. Exemption from Notifying the CCI

- Like the European Union merger regulations, the present amendment Bill also proposes to exempt open market purchases and stock market transactions from the requirement to notify them to the Commission in advance.
- However, this is subject to the condition that the acquirer does not exercise voting or ownership rights until the transaction is approved and the same is notified to the Commission subsequently.

7. Empowers CCI to regulate Cartelisation done through Hub & Spoke Model



Hub & Spoke Model is one where market players at the horizontal level (spokes) enter into an agreement, tacit or explicit, to share sensitive information through a vertical common player, referred to as 'hub'. Although not directly involved in its activities, the hub acts as a medium to facilitate the cartel. There are transfers of information from the spokes to the hub, which is then used by the other spokes and an information exchange mechanism is formed which facilitates cartel formation.

- Currently, the prohibition on anti-competitive agreements only covers entities with similar trades that engage in anti-competitive practices.
- This ignores hub-and-spoke cartels operated at different levels of the vertical chain by distributors and suppliers.
- To combat this, the amendment broadens the scope of 'anti-competitive agreements' to catch entities that facilitate cartelisation even if they are not engaged in identical trade practices.

8. Adding a New Provision - Leniency Plus

- In the amendment Bill, a provision called '**Leniency Plus**' allows the commission to give an additional waiver of penalties to an applicant who discloses the existence of another cartel in an unrelated market.
- However, the waiver will be provided only if the information enables the Commission to form a prima facie opinion about the existence of the cartel.
- **Impact** - This may further impact competition as competitors may misuse this provision against their rivals in case of conglomerates.

9. Appointment of Director General

Competition Commission Act, 2002	The Competition (Amendment) Bill, 2022
<ul style="list-style-type: none"> • The Act presently empowers the central government to appoint a Director General to CCI. • The Director General assists in conducting inquiries into contraventions of any provisions of the Act. 	<ul style="list-style-type: none"> • The Bill amends this to empower the CCI to appoint the Director General, with prior approval of the government. • This gives CCI more control to conduct investigations.

10. Qualification of members of CCI

- As per the Act, the chairperson and members of CCI should have professional experience of at least 15 years in fields such as: (i) economics, (ii) competition matters, (iii) law, (iv) management, or (v) business.
- **The Bill** expands this to include experience in the field of technology.

11. Decriminalisation of certain offences

- The Bill changes the nature of punishment for certain offences from imposition of fine to penalty.
- These offences include failure to comply with orders of CCI and directions of Director General about anti-competitive agreements and abuse of dominant position.

12. Penalties

- For any false information filed, a penalty of five crore will be imposed, and for failure to comply with the Commission directions, a penalty of ₹10 crore will be imposed.
- Additionally, the Commission will develop guidelines regarding the number of penalties for various competition violations.

13. Appeal to be heard by NCLAT

- For an appeal to be heard by the National Company Law Tribunal (NCLT) against the Commission's order, the party will have to deposit 25% of the penalty amount.

► THE MULTI-STATE COOPERATIVE SOCIETIES (AMENDMENT) BILL, 2022

The Multi-State Cooperative Societies (Amendment) Bill, 2022, incorporates the provisions of the 97th Constitution Amendment which gave constitutional status and protection to cooperative societies and made the right to form cooperative societies a fundamental right (Article 19). The amendment bill seeks to amend the Multi-State Cooperative Societies Act, 2002 by plugging the loopholes. The government also intends to bring a new National Cooperative Policy. Cooperative Societies are organisations formed by group of people to promote economic interests of its members and also distribute certain part of profit among its members. Multi-State Cooperative Societies means a society registered under the Act and having functions in more than one state.

PURPOSE- THE MULTI-STATE COOPERATIVE SOCIETIES (AMENDMENT) BILL, 2022

- Enhance transparency and accountability.
- Improve ease of doing business
- It aims to incorporate provisions of the 97th Constitutional Amendment.
- Reform electoral processes
- Strengthen monitoring mechanisms.
- Improve composition of the Board
- increase financial discipline and enable raising of funds.

SALIENT FEATURES - THE MULTI-STATE COOPERATIVE SOCIETIES (AMENDMENT) BILL, 2022

- **The Bill has proposed setting up**
 - cooperative election authority
 - cooperative information officer
 - cooperative ombudsman to make governance of multi-state cooperative societies more democratic, transparent and accountable.
- **The election authority will ensure that elections are held in a fair, free and timely manner**, which in turn will help reduce complaints and malpractices.
- **Provision to debar offenders for three years** and will bring in more "electoral discipline".
- **Ombudsman to redress grievance in a structured fashion.**

- **Appoint a Cooperative Information Officer**, who will “enhance” transparency by providing members timely access to information.
- **Promote Equity and Facilitate Inclusiveness**, provisions relating to representation of women and Scheduled Caste/Scheduled Tribe members on the board of multi-state cooperative societies have been included.
- **Promote Professional Management** -provisions have been made to bring in co-opted directors with experience in the field of banking, management, cooperative management and finance or having specialization in any field relating to the objects and activities undertaken by such multi-state cooperative society.

Steps Taken by the Government to Strengthen India's cooperative architecture

- **Government has provided relief to cooperative sugar mills** by clarifying that they shall not be subjected to additional income tax for paying higher sugarcane prices to farmers up to the Fair and Remunerative Price (FRP) or State Advised Price (SAP).
- **Government reduced the surcharge for cooperative societies from 12% to 7%** for those having a total income of more than Rs. 1 crore and up to Rs. 10 crores. Further, to provide a level playing field between co- operative societies and companies, Minimum Alternate Tax (MAT) rate for cooperative societies was reduced from 18.5% to 15%.
- **As per the notification by the Credit Guarantee Fund Trust for Micro and Small Enterprises (CGTMSE)**, non-scheduled Urban Co-operative Banks, State Co-operative Banks and District Central Co-operative Banks as Member Lending Institutions of the scheme with specified eligibility criteria. This will help in providing adequate, affordable and timely credit to the co-operative institutions to give a boost to the co-operative based economic development model.
- **Mandate of Government e-Marketplace - Special Purpose Vehicle (GeM - SPV) has been expanded to allow cooperative societies** to register as buyers on the GeM platform.
- **Centrally sponsored project for digitalization of 63,000 functional Primary Agriculture Credit Societies (PACS)** has been sanctioned to revitalize the cooperative sector.

- **Model Bye-laws** -In order to diversify the business activities of Primary Agriculture Credit Societies and make them vibrant multipurpose economic entities, draft model Byelaws are being prepared in consultation with State Governments, National Cooperative Federations and other stakeholders.
- **A new scheme titled “Cooperation to Prosperity”** is being formulated in consultation with all the stakeholders for all-round development of cooperatives at all levels.
- **National Co-operative Database** -In order to facilitate the Government to make appropriate policy interventions, a National Co-operative Database is being created in consultation with State/UT Governments, National Co-operative Federations and other stakeholders.
- **In order to modernize and professionalize the education and training in the cooperative sector**, steps are being taken to reorient the training and educational Cooperative Institutions in consultation with all the stakeholders.

► 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 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:

- an individual who is a national of, or habitually resides in, any country other than India.
- a body corporate including a Limited Liability Partnership of any nature, with its place of business outside India.
- an association or body of individuals whose place of business is outside India.
- 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.

► CONCERNS RAISED ON TELECOMMUNICATION BILL

Department of Telecommunications (DoT) has issued the draft Indian Telecommunication Bill, 2022 in a bid to do away with British-era laws governing the telecom sector. The Ministry of Communications has initiated a public consultative process to develop a modern and future-ready legal framework in telecommunications.

PURPOSE OF THE BILL

- Bill seeks to replace the existing framework comprising the Indian Telegraph Act, 1885, the

Wireless Telegraphy Act, 1933, and the Telegraph Wires (Unlawful Possession) Act, 1950, that govern the sector.

- Centre aims to consolidate and amend the existing laws governing the provision, development, expansion and operation of telecommunication services, telecom networks and infrastructure, in addition to assignment of spectrum.

SALIENT FEATURES OF TELECOMMUNICATION BILL, 2022

- **Inclusion of new-age over-the-top communication services** like WhatsApp, Signal and Telegram in the definition of telecommunication services. This will be subjected to licensing for providing services.

Licensing, Registration, Authorization and Assignment

- The Bill recognises the principle of exclusive privilege of the Central Government in relation to telecommunication services, telecommunication network, telecommunication infrastructure and spectrum.
- The structure for the Government to exercise this privilege through the grant of:
 - (a) licenses for telecommunication services or telecommunication networks
 - (b) registrations for establishing telecommunication infrastructure.
 - (c) authorization for the possession of wireless equipment; and
 - (d) assignment of spectrum

Spectrum Management

- The Bill provides for an enabling framework for optimal utilization of spectrum which includes:
 - (a) **Technology agnostic use:** To enable the utilization of the spectrum in a liberalized and technologically neutral manner, a spectrum assignee may deploy new technologies within its spectrum.
 - (b) **Re-farming and re-purposing:** To enable repurposing of any frequency range for a different use, re-arrangement of the frequency range is often required. Therefore, the Bill provides for re-farming and harmonization of frequency range.
 - (c) **Sharing, trading, leasing, and surrender:** To enable effective utilization of spectrum, the bill enables sharing, trading, leasing and surrender of spectrum assigned, subject to prescribed terms and conditions.

- (d) **Returning unused spectrum:** To ensure efficient utilization of spectrum, the Bill provide a process of return of unutilized spectrum.

Right of Way (RoW) for Telecommunication Infrastructure

- **Right of Way (RoW) is a pre-requisite for establishing telecommunication networks and improvement of telecommunication services.** The existing regulatory framework, based on Right of Way Rules, 2016.
- The Bill provides for a robust regulatory framework within the federal structure, to obtain RoW in a uniform, non-discriminatory manner, for establishment of telecommunication infrastructure.
- The Bill seeks to remove the limitations by providing an enabling framework that facilitates RoW for laying or building telecommunication infrastructure by any facility provider.

Restructuring, Defaults in Payment and Insolvency

- **In case of mergers, demergers and acquisitions**, or other forms of restructuring, the Department of Telecommunications, as required.
- **A licensee or assignee of spectrum undergoing insolvency proceedings can continue to operate if:**
 - (a) it continues to provide the telecommunication service,
 - (b) does not default on the payment of any dues under the license or assignment, and
 - (c) complies with any additional or modified terms and conditions of license.
- If such licensee or assignee is unable to comply with these requirements, then the assigned spectrum will revert to the control of the Central Government.
- The Bill provides an enabling framework for the Central Government to address defaults in payment by a licensee, registered entity, or assignee.
- If Central Government determines that there exist extraordinary circumstances, it may take the following measures:
 - (a) Deferment of the payment of such amounts or a part thereof.
 - (b) Conversion of a part or all of the amounts into shares in the licensee, registered entity or assignee.
 - (c) Write-off of such amounts or a part; or
 - (d) Relief from payment of such amounts or a part.

Replace USOF with TDF

- Proposes to replace the Universal Service Obligation Fund (USOF) with the Telecommunication Development Fund (TDF).
- USOF is the pool of funds generated by the 5 per cent Universal Service Levy that is charged upon all telecom fund operators on their Adjusted Gross Revenue.
- The USOF has largely been used to aid rural connectivity. However, the objective regarding TDF is also to boost connectivity in underserved urban areas, R&D, skill development, etc.

Regulatory Sandbox

- The Central Government may, for the purpose of encouraging and facilitating innovation and technological development in telecommunication, create a Regulatory Sandbox.

► JAN VISHWAS BILL

The Jan Vishwas Bill (Amendment of Provisions) Bill, 2022 was tabled in the Parliament with the objective of “decriminalising” 183 offences across 42 legislations to further enhance trust-based governance for ease of living and doing business. Decriminalisation of large number of minor offences by replacing them with monetary penalties has been identified. The endeavour is not only to make lives and businesses easier but also to reduce judicial burden.

What is the meaning of decriminalisation of laws?

- According to Black’s Law Dictionary, decriminalisation can be said to be an official act generally accomplished by legislation in which a criminal act or omission is made non-criminal and without punitive sanctions.
- The repeal or amendment of statutes which made certain acts criminal, so that those acts no longer are crimes or subject to prosecution.

DECRIMINALISATION UNDER THE VISHWAS BILL

Fine is referred to as a sum of money ordered by the court to pay for an offence, after the complete prosecution in a matter. On the other hand, **penalties** do not involve court proceedings and they are imposed when a person does not comply with the provision of a specified act.

- **In certain Acts, offences have been decriminalised by imposing a penalty** instead of a fine. For instance, under the Patents Act, 1970, a person selling a falsely represented article as patented in India is subject to a fine of up to one lakh rupees.

- **The Bill replaces the fine with a penalty**, which may be up to ten lakh rupees. In case of a continuing claim, there shall be an additional penalty of one thousand rupees per day.
- **Revision of fines and penalties:** The Bill increases the fines and penalties for various offences in the specified Acts. Further, these fines and penalties will be increased by 10% of the minimum amount every three years.
- **Appointing adjudicating officers:** As per the Bill, the central government may appoint one or more adjudicating officers for the purpose of determining penalties. The adjudicating officers may: (i) summon individuals for evidence, and (ii) conduct inquiries into violations of the respected Acts. These Acts include: the Agricultural Produce (Grading and Marking) Act, 1937, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, and the Public Liability Insurance Act, 1991.

► THE FAMILY COURTS (AMENDMENT) ACT, 2022

- The Family Courts (Amendment) Act 2022 intends to amend the Family Courts Act, 1984 and extend it to the state of Himachal Pradesh and Nagaland.
- The governments of Himachal Pradesh and Nagaland have set up Family Courts in their states under the Act and the central government had not extended the application of 1984 Act to both states.
- The Family Courts Act, 1984 allows state governments to establish Family Courts.
- The Amendment seeks to extend the application of the Family Courts Act, 1984 to the state of Himachal Pradesh, with effect from February 15, 2019, and to the state of Nagaland, with effect from September 12, 2008.
- The establishment of Family Courts in both the states will be retrospectively valid from these dates.

► THE DELHI MUNICIPAL CORPORATION (AMENDMENT) ACT, 2022

The Delhi Municipal Corporation (Amendment) Act, 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 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) ACT, 2022

- **Unifies three corporations of Delhi.**
- **Transfers powers of Delhi Government to Central government - to decide:**
 - *Total number of seats of councilors 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.**

► 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.

► **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** 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 helping 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

Union Cabinet approved the proposal of 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, 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 (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 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. • 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 	<ul style="list-style-type: none"> • The amendment provides that the appointment will be “for such term as may be prescribed by the Central Government.” • The amendment provides that the 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

those of an Information Commissioner "shall be the same as that of an Election Commissioner ".	same manner as that of Judge of Supreme Court.
<ul style="list-style-type: none"> • 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 <ul style="list-style-type: none"> (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, 	<ul style="list-style-type: none"> • 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.
<ul style="list-style-type: none"> • Section 27 provides for power of central and state government to make rules for smooth functioning of RTI Act, 2005. 	<ul style="list-style-type: none"> • By amending Section 27, the Central Government controls the terms and conditions of appointment of Commissioners in the States.

► **FCRA AMENDMENT ACT, 2020**

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.

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 on foreign funds 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

- 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 calls 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.*

► **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 National Investigation Agency the **only truly federal agency** in the country, along the lines of FBI in 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.

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.

► **WITNESS PROTECTION SCHEME 2018**

Ministry of Home Affairs prepared “Witness Protection Scheme, 2018” in consultation with the National Legal Service Authority, Bureau of Police Research & Development and the State Governments.

PURPOSE OF WITNESS PROTECTION SCHEME

Witness Protection Scheme provides for protection of witnesses based on the threat assessment and protection measures inter alia includes protection/change of identity of witnesses, their relocation, installation of security devices at the residence of witnesses, usage of specially designed Court rooms, etc.

WHO IS A WITNESS?

A witness may be defined as a person who gives evidence or deposes before a judicial tribunal. The term “witness” has not been defined anywhere in the Criminal Procedure Code. Any court, however, at any stage of inquiry, trial or other proceeding under the Criminal Procedure Code, can summon any person as a witness, or examine any person in attendance, though not summoned as a witness, or recall and re-examine such person if his evidence appears to be essential to the just decision of the case.

HIGHLIGHTS OF THE DRAFT SCHEME

- Types of protection measures envisaged under the scheme are to be **applied in proportion to 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.
- **Three categories of witnesses** based on threat perception:
 - **Category 'A':** Where the threat extends to life of a witness or his family members, during investigation/trial or thereafter.
 - **Category 'B':** Where the threat extends to safety, reputation, property of witness or his family members, during investigation/trial or thereafter.
 - **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 investigation/trial or thereafter.
- **Scheme provides for a State Witness Protection Fund for meeting 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 Annual Budget by State Government.
 - **Receipt of amount of costs imposed/ ordered to be deposited by the courts/tribunals in the Witness Protection Fund.**
 - **Donations/ contributions from Philanthropist/ Charitable Institutions/ Organizations** and individuals permitted by the Government.
 - 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 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:** Recognize 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

Aims to protect rights of married Muslim women and prohibits 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 are 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.

► 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.

► ERADICATION OF MANUAL SCAVENGING

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.

SAFEGUARDS PROVIDED FOR MANUAL SCAVENGERS AND SAFAI KARAMCHARIS

1. Protection of Civil Rights Act, 1955

- Based on **Article 17** to abolish the practice of untouchability against Scheduled Castes/Dalits, government.
- It punishes preaching and practice of Untouchability and enforcement of any disability against any member of the society.

2. Scheduled Castes & Scheduled Tribes (Prevention of Atrocities) Act, 1989

- PCR Act covered offences of untouchability, but not of atrocities against members of Scheduled Castes (SCs) and Scheduled Tribes (STs).
- Parliament enacted **Prevention of Atrocities Act** to prevent commission of offences against members of SCs/STs and 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 are responsible for surveying insanitary latrines within its jurisdiction.
- They shall construct several 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.

► **MENTAL HEALTHCARE ACT 2017**

- Provides for '**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 anaesthesia
- 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**.

► **NDPS ACT**

- **National Policy on Narcotic Drugs & Psychotropic Substances** is based on **Directive Principles, contained in Article 47** of 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

- 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 consisting of a single Judge who shall be appointed by the Government with the concurrence of the Chief Justice of the High Court.

► **TENURE OF CBI & ED CHIEFS**

Central Vigilance Commission (Amendment) Act, 2021 and Delhi Special Police Establishment (Amendment) Act, 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 Amendment replaces the ordinance issued by the central government in November 2021.

Central Vigilance Act, 2003	Central Vigilance Commission (Amendment) Act, 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 Commissioners</u>, ◦ <u>Secretaries from the Ministries of Home Affairs, Personnel, and the Revenue Department</u>. • Director of ED shall hold office for a period <u>of not less than 2 years</u> from the date of appointment. 	<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 the period mentioned in the initial appointment. • 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.

Delhi Police Establishment Act, 1946	Delhi Special Police Establishment (Amendment) Act, 2021
<ul style="list-style-type: none"> • Under section 4A, the <i>Director of CBI is appointed by a selection committee chaired by the Prime Minister.</i> • 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.

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