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PREFACE

Dear Aspirants,

Polity & Governance is the most important section from the point of view of UPSC exams. Civil Servants take oath of the constitution and take pledge to implement constitution and promotes its values in public life. Day to day life of a civil servant is often engaged in issues of polity. Thus, understanding and appreciating these issues is central.

Keeping this in mind, UPSC has been given due weight to issues of Polity & Governance in UPSC Mains Examination. Over the years, about 150 marks of questions have been asked by UPSC in each year. Thus, it is anybody's case that a well-prepared student in Polity & Governance will certainly be better placed at harnessing a better result.

We have tried to design this book, according to syllabus of the UPSC exam. Attempt has been made to cover all the topics in syllabus of UPSC exam along with relevant current affairs for the coming mains exam.

For the best use of this book, the topics covered in this book should be extensively used in answer writing practice in RAU's IAS MAINS QIP Program is a right supplementary program to arm student to excel in the Mains exam.

Hopefully students will like our efforts and achieve great success.

All the best!!!

Rau's IAS Team

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Syllabus Polity & Governance

INDIAN POLITY, CONSTITUTION & GOVERNANCE

- Indian Constitution—historical underpinnings, evolution, features, amendments, significant provisions and basic structure.
- Functions and responsibilities of the Union and the States, issues and challenges pertaining to the federal structure, devolution of powers and finances up to local levels and challenges therein.
- Separation of powers between various organs dispute redressal mechanisms and institutions.
- Comparison of the Indian constitutional scheme with that of other countries.
- Parliament and State legislatures—structure, functioning, conduct of business, powers & privileges and issues arising out of these.
- Structure, organization and functioning of the Executive and the Judiciary—Ministries and Departments of the Government; pressure groups and formal/informal associations and their role in the Polity.
- Salient features of the Representation of People's Act.
- Appointment to various Constitutional posts, powers, functions and responsibilities of various Constitutional Bodies.
- Statutory, regulatory and various quasi-judicial bodies.

Previous Year Questions and Theme Map

THEME 1: LOCAL GOVERNANCE	
YEAR	**UPSC QUESTIONS**
2021	To what extent, in your view, the Parliament is able to ensure accountability of the executive in India?
2020	The strength and sustenance of local institutions in India has shifted from their formative phase of 'Functions, Functionaries and Funds' to the contemporary stage of 'Functionality'. Highlight the critical challenges faced by local institutions in terms of their functionality in recent times.
2019	"The reservation of seats for women in the institution of local self-government has had a limited impact on the patriarchal character of the Indian political process". Comment.
2018	Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the panchayats can look out for financing developmental projects?
2017	"The local self-government system in India has not proved to be an effective instrument of governance". Critically examine the statement and give your views to improve the situation.
2015	Khap Panchayats have been in the news for functioning as extra-constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard.

THEME 2: GOVERNANCE	
YEAR	**UPSC QUESTIONS**
2020	"Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the Information Commission". Discuss.
2020	"Institutional quality is a crucial driver of economic performance". In this context suggest reforms in Civil Service for strengthening democracy.
2020	The emergence of Fourth Industrial Revolution (Digital Revolution) has initiated e-governance as an integral part of government". Discuss
2019	Implementation of Information and Communication Technology (ICT) based projects/programs usually suffers in terms of certain vital factors. Identify these factors and suggest measures for their effective implementation.
2019	There is a view that the Official Secrets Act is an obstacle to the implementation of Right to Information Act. Do you agree with the view? Discuss. (GS IV)
2018	Data security has assumed significant importance in the digitized world due to rising cybercrimes. The Justice B. N. Srikrishna Committee Report addresses issues related to data security. What, in your view, are the strengths and weaknesses of the Report relating to protection of personal data in cyber space? (GS III)
2018	"The Right to Information Act is not all about citizens' empowerment alone, it essentially redefines the concept of accountability. Discuss. (GS IV)
2016	Use of internet and social media by non-state actors for subversive activities is a major security concern. How have these been misused in the recent past? Suggest effective guidelines to curb the above threat. (GS III)
2015	Considering the threats cyberspace poses for the country, India needs a "Digital Armed Force" to prevent crimes. Critically evaluate the National Cyber Security Policy, 2013 outlining the challenges perceived in its effective implementation. (GS III)
2014	Two parallel run schemes of the Government, viz the Aadhar card and NPR, one of voluntary and the other

	as compulsory, have led to debates at national levels and also litigations. On merits, discuss whether or not both schemes need run concurrently. Analyse the potential of the schemes to achieve development benefits and equitable growth.
2014	What does 'accountability' mean in the context of public service? What measures can be adopted to ensure individual and collective accountability of public servants? (GS IV)

THEME 3: FEDERAL ISSUES – CENTRE-STATE RELATIONS

YEAR	UPSC QUESTIONS
2021	How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position?
2020	How far do you think cooperation, competition and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer.
2020	Indian Constitution exhibits centralising tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Dis-eases Act, 1897; The Dis-aster Management Act, 2005 and recently passed Farm Acts.'
2019	From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain.
2018	Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.
2016	Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics?
2016	To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.
2013	Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.

THEME 4: LEGISLATURE & EXECUTIVE

YEAR	UPSC QUESTIONS
2021	To what extent, in your view, the Parliament is able to ensure accountability of the executive in India?
2021	Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations.
2021	Do Department -related Parliamentary Standing Committees keep the administration on its toes and inspire reverence for parliamentary control? Evaluate the working of such committees with suitable examples.
2020	"Once a Speaker, Always a Speaker"! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India?
2020	Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in past few decades. Highlight the factors as well as the areas in which this transformation could be visible.
2019	Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss.
2018	Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the r ole or the Estimates Committee.
2017	The Indian Constitution has provisions for holding joint session of the two houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof.
2017	Discuss the role of Public Accounts Committee in establishing accountability of the government to the

	people.
2014	The 'Powers, Privileges and Immunities of Parliament and its Members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and un-enumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed?
2013	The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-defection law, which was legislated but with a different intention?

THEME 5: JUDICIARY RELATED ISSUES

YEAR	UPSC QUESTIONS
2021	Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness.
2020	Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this con-text justify the filing of large number of public interest petitions praying for issuing guide-lines to executive authorities.
2019	"The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain.
2018	Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.
2018	How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India.
2017	Critically examine the Supreme Court's judgment on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.
2017	Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.
2016	What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?
2015	What are the major changes brought in the Arbitration and Conciliation Act, 1990 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.

THEME 6: ELECTION ISSUES

YEAR	UPSC QUESTIONS
2020	"There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act" Comment.
2019	On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification.
2018	In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?
2017	Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people' Discuss.
2017	To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?
2016	The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss.

THEME 7: RIGHTS ISSUES	
YEAR	**UPSC QUESTIONS**
2017	Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.
2017	Discuss each adjective attached to the word 'Republic' in the preamble. Are they defendable in the present circumstances stances?
2014	What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss.
2013	Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution

THEME 8: IMPORTANT ORGANISATIONS	
YEAR	**UPSC QUESTIONS**
2021	The jurisdiction of the Central Bureau of Investigation(CBI) regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India.
2021	Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures.
2020	Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.
2019	"The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss
2018	Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Schedules Castes in the religious minority institutions? Examine.
2018	"The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise.
2018	How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss.
2018	How are the principles followed by NITI Aayog different from those followed by the erstwhile Planning Commission in India? (GS III)
2018	Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Schedules Castes in the religious minority institutions? Examine.
2016	Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction

THEME 9: CONSTITUTIONAL BASICS	
YEAR	**UPSC QUESTIONS**
2021	'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions.
2021	Analyze the distinguishing features of the notion of Equality in the Constitutions of the USA and India.
2020	The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.
2017	Explain the salient features of the Constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough 'to remove cascading effect of taxes and provide for common national market for goods and services'?

LOCAL GOVERNANCE

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	To what extent, in your view, the Parliament is able to ensure accountability of the executive in India?
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2019	"The reservation of seats for women in the institution of local self-government has had a limited impact on the patriarchal character of the Indian political process". Comment.
2018	Assess the importance of the Panchayat system in India as a part of local government. Apart from government grants, what sources the panchayats can look out for financing developmental projects?
2017	"The local self-government system in India has not proved to be an effective instrument of governance". Critically examine the statement and give your views to improve the situation.
2015	Khap Panchayats have been in the news for functioning as extra-constitutional authorities, often delivering pronouncements amounting to human rights violations. Discuss critically the actions taken by the legislative, executive and the judiciary to set the things right in this regard.

►ISSUES OF LOCAL GOVERNMENT

Decentralization means transfer of planning, decision-making or administrative authority from the central government to its field organizations, local administrative units, semi-autonomous organizations, local governments or non-governmental organizations. Different forms of decentralization can be distinguished primarily by the extent to which the authority to plan, decide and manage is transferred and autonomy is achieved in their tasks. Under decentralization, authority is not concentrated at the center, it is distributed to smaller administrative units.

UNDERSTANDING KEY TERMS

- Decentralisation is referred to as constitutional transfer of powers from central government to lower levels in a political-administrative and territorial hierarchy.
- Delegation: Delegation means grant of authority from a superior to a subordinate, to be enjoyed not as a right but as a derived concession and that also to be exercised at the pleasure of the superior.
- Democratic decentralization: The term 'democratic decentralization' on the other hand means grant of authority by a superior to a subordinate as a right to be enjoyed by the subordinate and not as a concession.
- Thus, 'democratic decentralization' is an extension of the democratic principle aims at widening the area of the people's participation, authority and autonomy through devolution of powers to people's representative organizations from the top levels to the lowest levels in all the three dimensions of political decision-making, financial control and

administrative management with least interference and control from higher levels.

- Democratic v Administrative Decentralisation - Democratic decentralization is wider than administrative decentralization. Democratic decentralization envisages association of more and more people with government at all levels, national, regional and local. Democratic decentralization stands for people's right to initiate their own projects for local well-being and the power to execute and operate them in an autonomous manner. Administrative decentralization originated in the need for efficiency in terms of initiative, performance and speed of administrative personnel, particularly at the lower levels. Administrative decentralization means the right to freedom of implementing projects. It involves the right of the administrative personnel to do associated planning.
- Administrative decentralization seeks to redistribute authority, responsibility and financial resources for providing public services among different levels of government. It is the transfer of responsibility for the planning, financing and management of certain public functions from the central government and its agencies to field units of government agencies, subordinate units or local levels of government.
- Devolution is a type of administrative decentralisation. When governments devolve functions, they transfer authority for decision-making, finance, and management to quasi-autonomous units of local government with corporate status.
- Devolution usually transfers responsibilities for services to municipalities that elect their own mayors and councils, raise their own revenues, and have independent authority to make investment decisions.
- In a devolved system, local governments have clear and legally recognized geographical boundaries over which they exercise authority and within which they perform public functions.
- Delegation is the process of giving permission by the head of a department to the subordinates to do work or to make decisions. As per law, even administrative agencies can delegate their functions to subordinate offices. However, an administrative agency cannot delegate those powers or functions which they themselves are not authorised to perform.

KEY CONSTRAINTS IN WORKING OF LOCAL BODIES

- Overlap of functioning of Panchayats & Municipalities with state government w.r.t. implementing various developmental schemes. Only minor civic functions are exclusively assigned to the local government.
- Lack of dedicated human resource for PRIs has prohibited actual devolution of functions as most resources' functions under the control of the State Government.
- To make devolution functional, the matters listed in the Eleventh Schedule of Constitution needs to be clearly bifurcated from state government's jurisdiction.
- FUNDS - In general, Panchayats in our country receive funds in the following ways:
  - Grants from the Union Government based on the recommendations of the Central Finance Commission as per Article 280 of the Constitution.
  - Devolution from the State Government based on the recommendations of the State Finance Commission as per Article 243-I.
  - Loans/grants from the State Government.
  - Program specific allocation under Centrally Sponsored Schemes and Additional Central Assistance.
  - Internal Resource Generation - tax and non-tax revenue.

REASON FOR POOR FINANCIAL POSITION OF PRI

- Weak internal resource generation at Panchayat level partly due to a thin tax domain and partly due to Panchayats' own reluctance in collecting revenue.
- Constraints in the structure adopted by states to transfer money to the local bodies.
- Amount of money set aside for such transfers are too less to meet the basic functions of local bodies.
- Money provided for expenditure at local level is tied with several conditions which makes the money inflexible for use.
- Panchayats are heavily dependent on grants from Union and State Governments and most portion of the grants are scheme specific.
- Panchayats have limited discretion and flexibility in incurring expenditure.
- Considering tight fiscal positions, devolution of funds becomes difficult.

ISSUES WITH FUNCTIONARIES

- Under various State Panchayati Raj Acts, State Government or their nominated functionaries command considerable power regarding review and revision of actions taken by PRIs. They control the functioning of Local Bodies by -

- Suspending a resolution of the Panchayat
- Making Inquiry into the affairs of the Panchayat
- Removing elected Panchayat representatives under certain specified conditions,
- Inspecting and issuing directives at will
- Provision for withdrawal of powers and functions from the Panchayat
- Provision regarding approval of budget of a Panchayat by the higher tier or a state authority, etc.

- These provisions in varied from across states hinder autonomy at all levels of local governments and restrict their functioning as an institution of self-government.
- Other Constraints
  - Staff Shortage at ground level
  - Postponement of local elections
  - Centralisation of scheme – goes against the principle of subsidiarity
  - Corruption
  - Making gram Sabha irrelevant

PRINCIPLES OF DECENTRALIZATION RECOMMENDED BY 2ND ARC

- Application of principle of subsidiarity in decentralization: Principle of subsidiarity means that what can be done at lower levels of government, should not be centralised at higher levels.
- Clear delineation of functions of local governments vis-à-vis State Governments and among different tiers of local governments.
- Effective devolution of functions and resources accompanied by capacity building and accountability.
- Integrated view of local services and development through convergence of programs and agencies and above all, 'citizen-centricity'.
- Effective devolution in financial terms and convergence of services for the citizens as well as citizens' centric governance structures.

RECOMMENDATIONS OF 2ND ARC ON IMPROVING URBAN GOVERNANCE

- Local Bodies must have stake in law making in state assembly. Legislative Council can be recast as Council for Local Bodies.
- The tiers of local government should be left for the State Legislature to decide.
- Members of Parliament and State Legislatures should not become members of local bodies. This would endow the local bodies with decision-making capabilities.
- Chairpersons or the members at all levels should be directly elected.
- There must be a single directly elected District Council which will function as a true local government for the entire district. This will make District Planning Committee Redundant.
- Delimitation Commission must be constituted for urban local bodies.
- There should be clear delineation of functions for each level of local government in the case of each subject matter law.
- Training of elected representatives and personnel should be regarded as a continuing activity.

►URBAN LOCAL BODIES (ULB)

RBI in its on state of State Finances, dealt with state of finances of urban local bodies in which RBI has highlighted about frontline role played by third-tier government to combat COVID pandemic by implementing containment strategies, healthcare, quarantining and testing facilities, organising vaccination camps and maintaining the supply of essential goods and services. However, in the process, local institutions' finances were severely strained forcing them to cut down expenditures and mobilise funding from various sources.

FISCAL IMPACT OF COVID-19 ON THIRD-TIER GOVERNMENT

- In line with the global experience, the pandemic has worsened the finances of local governments in India substantially in 2020-21 and 2021-22.
- It is estimated that local authorities would lose around 15-25 per cent of their revenues in 2021, which may make the maintenance of the current level of service delivery difficult to sustain.
- In rural India, village panchayats struggled for funds during the pandemic and similar challenges were encountered by the Urban Local Bodies (ULBs).

VARIOUS FINANCIAL CHALLENGES FACED BY MUNICIPAL BODIES

- Increase in expenditure
- Decline in revenue collection
- Lack (or delayed release) of funds from State governments during second wave of pandemic.
- Several MCs had to cut down expenditure on other areas to make available funds for COVID response.

IMPACT ON REVENUE OF MUNICIPAL CORPORATIONS

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

Revenue Receipt	Capital Receipt
MCs' revenue receipts largely comprise • own tax revenue • non-tax revenue • and transfers from the Central and the State governments. • Property tax is the dominant component of own tax revenue, whereas fees and user charges constitute the largest sub-component of non-tax revenue. • The share of transfers, predominantly State government transfers, in revenue receipts is significant.	The capital receipts of MCs mainly comprise • Grants • contributions and subsidies from central and State governments and • transfers from funds maintained by municipal bodies.

STEPS TAKEN BY MUNICIPAL CORPORATIONS TO FILL THE RESOURCE GAPS

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

STEPS SUGGESTED BY RBI TO STRENGTHEN LOCAL INSTITUTIONS

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

OTHER CONCERNS – URBAN LOCAL BODIES

- Irregular elections.
- Lack of decentralization to the local level as major work of ULBs done by parastatal authorities.
- Persistent scarcity of finances due lack of power to collect taxes leads to crippling administrative capacities.
- Issue of parallel governance due to multiplicity of authorities for special purpose vehicles in smart city projects.
- Lack of coordination among various departments (under central & state government) and local bodies leads to haphazard and delayed execution of plans.
- Lack of infrastructure & specialized human resources which affects matters of urban governance.
- Various states have remained ignorant about timely elections of local bodies which defeats the aim of decentralization of power.
- Corruption adversely affects functioning of local bodies.
- Unplanned urbanization impacts basic services like sanitation, waste-management, land management

RECOMMENDATIONS OF 2ND ARC ON IMPROVING URBAN GOVERNANCE

- Urban Local Bodies must have a stake in state assembly.

- Legislative Council can be recast as Council for Local Bodies.
- The tiers of local government should be left for the State Legislature to decide.
- Chairpersons or members at all levels should be directly elected.
- There should be clear delineation of functions for each level of urban local bodies.

RECOMMENDATIONS OF 15TH FINANCE COMMISSION

Grants recommended by Fifteenth Finance Commission are in two parts: 1. Basic Grant (unconditional) & 2. Performance Grant (conditional) in proportion of 90:10 for duly constituted gram panchayats and of 80:20 for municipalities.

- Distribution of grants between rural and urban local bodies in ratio of 67.5:32.5 to all tiers in Panchayat - village, block and district to create durable community assets, improve overall functioning and provide employment opportunities.
- Recommend grants to all tiers of Panchayati Raj enable pooling of resources across villages thereby creating durable community assets and improve their functional viability.
- Grants to 5th and 6th Schedule areas & Cantonment Boards.
- Special focus on districts having higher concentration of SC/ST population.
- Tied grants to rural local bodies: improve sanitation, ensure open-defecation free status, supply of drinking water, rainwater harvesting & water recycling
- Tied grants have been allocated to ULBs (over and above central sponsored schemes) for drinking water including rainwater harvesting and recycling and solid waste management. (*In tied grants, states must spend on areas or schemes specified by Centre. Hence, no financial and operational autonomy in spending the amount granted as tied grants by Centre)*
- Differentiated need of larger cities by categorising Fifty Million-Plus cities which needs differentiated treatment, with special emphasis on meeting challenges of bad ambient air quality, ground water depletion and sanitation.
- 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.
- States to draw a detailed project report for capacity development and address the infrastructural issues.

CHALLENGES WHICH STILL REMAINS

- Limited number of taxes devolved to ULBs by state.
- Lacunas in maintenance of accounts and budget preparation. (Highlighted by CAG).
- Property Tax potential still unrealised due to incomplete land record.
- ULB staff ill-trained and ill-equipped to effectively collect the taxes levied.
- Legal boundaries of municipal bodies not been expanded to include urban sprawl, as a result, many properties fall outside their jurisdiction.

WAY FORWARD

Thus, implementing recommendations of 2nd ARC, Fifteenth Finance Commission, RBI Report and implementing Article 243W by states will help to address the challenges of urban governance.

►ACTIVITY MAPPING

Activity Mapping as suggested by 2nd ARC refers to mapping of activities provided through the entries of Schedule 11 and providing financial allocation for each of such mapped activity. It helps in bringing out enhanced accountability in functioning and finances of local government.

ABOUT ACTIVITY MAPPING

- Each Ministry of Union Government should undertake activity mapping regarding its CSSs and identify levels where activities need to be located.
- States to undertake comprehensive activity mapping regarding all matters mentioned in 11th Schedule. This process should cover all aspects of the subject viz, planning, budgeting and finances.

CHALLENGES TO ACTIVITY MAPPING

- No clear delineation of functions between different layers of panchayats.
- State governments have parastatal bodies (wholly or partially owned and managed by state government) which exercise the same functions vis-à-vis panchayats.
- There is a mismatch between activity mapping and corresponding funding in the various budget heads.
- Centrally Sponsored schemes do not clearly state which level of panchayats will have what role.
- This leads to confusion, duplication, inefficiency, wastage of funds, poor outputs and outcomes because of organizational jungle.

RECOMMENDATIONS OF 2ND ARC ON ACTIVITY MAPPING

- Provide clear delineation of functions for each level of local government in case of each subject matter law.
- States must undertake comprehensive activity mapping about all the matters mentioned in the 11th Schedule based on subsidiarity principle.
- A process of activity mapping like the one taken up for PRIs should be conducted for all ULBs.
- A model law for local governments to be circulated.
- Funds to be devolved for all levels of panchayats.

Thus, Activity mapping holds key to coordinated and effective functioning of panchayats.

►NITI AAYOG'S REPORT ON URBAN PLANNING

NITI Aayog in its Report on Reforms in Urban Planning Capacity in India has focussed on challenges of growing urbanisation. NITI Aayog has suggested important reforms to strengthen urban planning capacity in India by focusing on three pillars of Public Sector, Education or Research sector and Private Sector.

RECOMMENDATIONS OF COMMITTEE OF NITI AAYOG ON URBAN DEVELOPMENT

- Programmatic intervention for planning healthy cities:
  - Cities must aspire for 'Healthy city for all' by 2030
  - Need for convergence of multi-sectoral efforts at intersections of spatial planning, public health, and socio-economic development
  - Focus on Planning and Urban development not only for million-plus cities but also for hundreds of small- and medium-sized towns
  - Proposed central sector scheme '500 Healthy Cities Program', for a period of 5 years - priority cities and towns to be selected jointly by States & local bodies.
- Programmatic intervention for optimum utilization of Urban Land: Cities & Towns under 'Healthy Cities Program' should strengthen development control regulations based on scientific evidence to maximize urban land's efficiency. For this, sub-scheme 'Preparation/Revision of Development Control Regulations' has been proposed.
- Ramping up of human resources: States and UTs must
  - Expedite filling up of vacant positions of town planners.
  - Sanction town planners' posts as lateral entry positions for a minimum period of 3 years and a maximum of 5 years to close the gaps.
- Ensuring qualified professionals for undertaking urban planning
  - The discipline of urban planning or town planning has dedicated course curriculum where graduates acquire a multi-sectoral overview and skillset to address challenges of urban planning.
  - States should undertake requisite amendments in their recruitment rules to ensure entry of qualified candidates into town planning positions.
- Mainstreaming capacity-building activities and rejuvenation of capacity building centres
  - States/UTs to ensure regular capacity building of their town planning staff.
  - Existing centres of excellence established by Ministry of Housing and Urban Affairs and State-level training institutions need to be strengthened to regularly build skills and expertise of urban functionaries.
- Re-engineering of urban governance: Constitute high powered committee to re-engineer present urban-planning governance structure by following efforts:
  - Clear division of roles and responsibilities among various authorities, revision of rules and regulations.
  - Creation of dynamic organizational structure, standardisation of job descriptions of town planners and other experts.
  - Extensive adoption of technology for enabling public participation and inter-agency coordination.
- Revision of Town & Country Planning Acts: Committee must be constituted at State level to undertake a regular review of planning legislations including town and country planning or urban and regional development acts or other relevant acts.
- Enable citizens' participation in urban planning at relevant stages through citizens' outreach campaign.
- Building local leadership through short-term training program for city level elected officials on economic and social benefits of urban planning.
- Strengthen role of private sector to improve overall planning capacity through:
  - Adoption of fair processes for procuring technical consultancy services
  - Strengthening project structuring and management skills in the public sector.

- Empanelment of private sector consultancies.

- Steps for strengthening urban planning education system
  - History of human settlements in Indian subcontinent must be taught to all young planners in a more exhaustive and analytical manner.
  - Applications in urbanisation, urban development and policy should be taught as part of economics.
  - Central and technical universities of states and UTs should establish a 'Department of Planning and Public Policy' and offer postgraduate degree programs with specializations in 'hill area planning', 'environmental planning', 'regional planning', and 'rural area planning'.
  - Professional Institutions in Planning should synergize with Ministry of Rural Development, Ministry of Panchayati Raj and respective state rural development departments and develop demand-driven short-term programs on rural area planning.
  - 'Planning' as an umbrella term, including all its specializations such as environment, housing, transportation, infrastructure, logistics, rural area, regional, etc., or should be included as a discipline under NIRF rankings of Ministry of Education to encourage healthy competition among institutions.
  - Names of degrees should be limited to only two: Bachelor of Technology in Planning and Master of Technology in Planning, with their specializations.
  - Institutions in domain of planning education may identify prominent international and national institutes, sign MoUs for mentoring.
  - Faculty shortage in educational institutions conducting degree and PhD programs in planning needs to be resolved in a time-bound manner.
  - Measures for strengthening human resource & match demand–supply of urban planners
  - The profession needs more structuring, skill-mapping, and data-basing of workforce to bridge the gap between demand and supply.
  - National Council of Town and Country Planners as a statutory body should be constituted.

National Digital Platform of Town and Country Planners' to be created within National Urban Innovation Stack of MoHUA to enable self-registration of all planners and evolve as a marketplace for employers and urban planners.

►OBC RESERVATION IN LOCAL BODIES

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

REASONS FOR SC TO CHANGE 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 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 *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 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 total seats reserved for SC/ST/OBC taken together.

K. KRISHNAMURTHY (DR.) V. UNION OF INDIA

Petitioner Arguments

- The petitioner challenged Articles 243D(6), 243D(4), 243T(6) and 243D(4) of Constitution on the ground that reservation provided under the provisions is discriminatory in nature on the basis of caste and gender.
- The petitioner also challenged Karnataka Panchayati Raj Act, 1993 which provided reservation to Scheduled Caste, Scheduled Tribe, Women and Backward classes of about 15%, 3%, 33% and 33% respectively.

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 243D and 243T 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 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 social and economic parameter can act as a barrier for the backward people to have effective political participation.
- Reservation in 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 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 not to be breached in local self-government. *Exceptions can only be made to safeguard the* interests *of Scheduled Tribes in the matter of their representation in panchayats located in the Scheduled Areas.*
- Article 243-D(6) & 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.

►LAND ACQUISITION OF TRIBALS

Assam & Meghalaya governments had finalised the pact to divide 36.79 sq. km of disputed areas in attempt to resolve a 50-year-old boundary dispute. However, Khasi Hills Autonomous District Council (KHADC) has objected to the settlement as consent of Council was not taken by both state governments. The residents of two border villages Malchapara and Salbari fear they will lose the tribal rights if they are separated from Meghalaya.

CLAIM OF KHADC

- Khasi Hills Autonomous District Council has claimed that disputed areas belong to private parties and Meghalaya government has neither authority nor right to hand them over to Assam.
- According to KHADC, its consent is needed according to Section 41 of Right to Fair Compensation and Land Acquisition and Rehabilitation and Resettlement Act, 2013 which deals with Special provisions for Scheduled Castes and Scheduled Tribes.
- Section 41 of Land Acquisition Act Makes Prior Consent Mandatory: No acquisition of land shall be made in the Scheduled Areas unless prior consent of
  - Gram Sabha or
  - the Panchayats or
  - the Autonomous District Councils,

  in Scheduled Areas under the Fifth Schedule is obtained, in all cases of land acquisition in such areas.
- KHADC is one of the three Councils constituted under Sixth Schedule of Constitution. The other district councils are Jaintia Hills Autonomous District Council and Garo Hills Autonomous District Council.

CONSTITUTIONAL & LEGAL PROVISIONS AGAINST LAND ACQUISITION OF TRIBALS

The Scheduled Tribes (STs) have been the most marginalised, isolated and deprived population. To protect and safeguarding the land rights of STs and to address the issue of Land Acquisition and displacement of tribals, following Constitutional and legal provisions have been put in place:

Constitution of India - Under Fifth Schedule

- The Governor of the State which has scheduled Areas is empowered to prohibit or restrict transfer of land from tribals and regulate he allotment of land to members of the Scheduled.
- Land being a State subject, various provisions of rehabilitation and resettlement as per the RFCTLARR

Act, 2013 are implemented by the concerned State Governments.

Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006

- Member of forest dwelling Scheduled Tribes or Other Traditional Forest Dweller shall not be evicted or removed from the Forest Land under his occupation till the recognition and verification procedure is complete.
- Gram Sabha is empowered to regulate access to community forest resources and stop any activity which adversely affects the wild animals, forest and the biodiversity.

Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 - RFCTLARR Act

- Section 48 - National Level Monitoring Committee for Rehabilitation and Resettlement has been constituted to review and monitor implementation of rehabilitation and resettlement schemes and plans related to land acquisition under the RFCTLARR, 2013 and National Rehabilitation and Resettlement Policy, 2007.
- Section 41 (1) - As far as possible, no acquisition of land shall be made in the Scheduled Areas.
- Section 41(2) - Any land acquisition shall be done only as a demonstrable last resort.
- Section 41(3) - in case of acquisition or alternation of any land in Scheduled Areas, the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils in Scheduled Areas under the Fifth Schedule to the Constitution be obtained, in all cases of land acquisition in such areas, including acquisition in case of urgency.

Panchayats (Extension to Scheduled Area) Act, 1996

- Gram Sabha or Panchayats at the appropriate level shall be consulted before making the acquisition of land in the Scheduled Areas or development projects and before resettling or rehabilitating persons affected by such projects in the Scheduled Areas.

Scheduled castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989

- It prevents commission of atrocities against members of the Scheduled Castes and the Scheduled Tribes, to provide for the trial of such offences and for the relief of rehabilitation of the victims of such offences.
- Wrongfully dispossessing members of Scheduled Castes or Scheduled Tribes from their land or premises or interfering with the enjoyment of their rights, including forest rights, over any land or premises or water or irrigation facilities or destroying the crops or taking away the produce there from amount to offence of atrocities and are subject to punishment.

Orissa Mining Corporation v Ministry of Environment and Forest

- SC held that forest approval cannot be granted for a development project without the informed consent of the Gram Sabhas, given after proper consideration in a duly convened Gram Sabha and passed by resolution.
- SC stated that the Gram Sabha is also free to consider all the community, individual as well as cultural and religious claim.

►CAMPAIGN FOR DELISTING TRIBALS FROM ST LIST

A silent movement refereed as "Tribal Renaissance" is demanding delisting of such tribals who have converted to other religion (mainly Christianity & Islam) from Presidential List of Scheduled Tribes under Article 342 as despite conversion, they are reaping benefits provided for ST under Indian Laws. Let us understand about the issues at hand and about administration of Scheduled Areas under Fifth Schedule of the Indian Constitution.

ISSUE OF DELISTING OF NAMES OF TRIBALS FROM ST LIST

- Tribals converting to Christianity should not be given the benefit of reservation in jobs, education, local institutions etc.
- Social Groups in Tribal dominated areas have asked the Union Govt. to amend the Constitution to delist members of such Schedule Tribes who have converted to other religion.
- De-listing of tribals from Presidential List may result in removal of the area from the list of Scheduled Areas under Fifth Schedule.

CRITERIA TO DESIGNATE AS ST

Criteria 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 must 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.
- The Presidential notifications under Clause 1 of Article 342 of the Constitution are issued as the Constitution Orders.

ARTICLE 342 (1)	ARTICLE 342 (2)
• 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	• 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.

►INCLUSION OF COMMUNITIES IN SCHEDULE TRIBE LIST

Parliament has passed Constitution (Scheduled Tribes) Order (Amendment) Bill-2022 for inclusion of Darlong community as a sub-tribe of Kuki in the list of Scheduled Tribes of Tripura.

INCLUSION OF DARLONG COMMUNITY

- Darlongs is a community of 11,000 people in Tripura.
- Inclusion of Darlong community as a sub-tribe of Kuki will give it an identity in the list of Scheduled Tribes of Tripura.
- Kuki is one of the main tribal communities in Northeast India and the Darlong community in Tripura will become its 18th sub-tribe.

DEMAND FOR SEPARATE ST STATUS

- Darlongs, despite being Scheduled Tribes, were never given ST certificates. Since they were considered a generic tribe under the Kuki community, they were handed their tribal certificates as members of 'Kuki' community.
- The subsequent identity crisis among them, especially Darlong youths, who were equipped with modern education, culminated in the demand for a separate statutory identity of their own in 1995.

Suggestions:

1. Communities which are scheduled in state and non-scheduled in a neighbouring state need to be given priority so that members are not denied benefits.
2. Suggestions of the Hrushikesh Panda Committee on reforming the processing of Scheduling a community needs to be followed.
3. Timelines for giving comments by Registrar General of India and NCST needs to be fixed.

►SCHEDULED AREAS UNDER FIFTH SCHEDULE

- Article 244 (1) states that provisions of Fifth Schedule shall apply to the administration and control of the Scheduled Area and Scheduled Tribes in any State other than the States of Assam, Meghalaya, Tripura and Mizoram.
- Purpose of Scheduled Areas is to preserve tribal autonomy, their culture and economic empowerment, to ensure social, economic and political justice, and preservation of peace and good governance.
- Fifth Schedule has been called "A Constitution within a Constitution" by late Dr. B.D. Sharma, former Commissioner for Scheduled Castes and Scheduled Tribes.

Samatha v State of Andhra Pradesh

- Constitution itself requires that land in Scheduled Areas should remain with the Adivasis to preserve their autonomy, culture and society - Hence, government lands, forest lands and tribal lands in the scheduled area cannot be leased out to non-tribals or to private industries.
- Government cannot lease out lands in scheduled areas for mining operations to non-tribals as it is in contravention of the Fifth Schedule.
- Court asked state to immediately issue title deeds to tribals in occupation of their lands.
- 73rd Constitution Amendment *and* Andhra Pradesh Panchayati Raj (Extension to Scheduled Areas) Act designates Gram Sabhas to safeguard and preserve community resources and thereby reiterated the need to give the right of self-governance to tribals.
- Mining activity in scheduled area can be taken up only by Andhra Pradesh State Mineral Development Corporation or cooperative of tribals, and then only if they comply with Forest Conservation Act, 1980 and Environment Protection Act, 1986.

- Fifth Schedule has been designed, in furtherance of Article 15(4) and Article 46, to protect tribals from social injustice and exploitation. Thus, it is state's constitutional duty to take positive and stern measures for the survival and preservation of the integrity and dignity of tribals.
- To further the objectives of fifth schedule, Tribes Advisory Council (TAC) have been constituted in 10(Ten) states having Scheduled Areas therein namely Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan. Even states like West Bengal, Tamil Nadu and Uttarakhand which does not have any notified Scheduled Area also have constituted Tribes Advisory Council.
- Tribes Advisory Council shall consist of not more than 20 members of whom, as nearly as may be, three-fourths shall be representatives of Scheduled Tribes in State Legislative Assembly provided that if number of representatives of STs in State Assembly is less than number of seats in TAC to be filled by such representatives, remaining seats shall be filled by other members of those tribes.

CRITERIA FOR DECLARING AN AREA AS A SCHEDULED AREA

- First Scheduled Areas & Scheduled Tribes Commission (Dhebar Commission, 1960) laid down following criteria for declaring any area as a 'Scheduled Area' under Fifth Schedule:
  - Preponderance of tribal population, which should not be less than 50 percent
  - Compactness and reasonable size of the area
  - Underdeveloped nature of the area and
  - Marked disparity in the economic standard of the people, as compared to the neighbouring areas.
  - More recently, a viable administrative entity such as a district, block or taluk, has been also identified as an important additional criterion.
- According to the Ministry of Tribal Affairs, 'these criteria are not spelt out in the Constitution of India but have become well established.
- They embody principles followed in declaring Excluded and Partially Excluded Areas under Government of India Act, 1935, as well as those contained in Schedule B of recommendations of Excluded and Partially Excluded Areas Sub Committee of Constituent Assembly and those outlined by the Scheduled Areas and Scheduled Tribes Commission 1961.

ROLE OF GOVERNOR – FIFTH SCHEDULE

- Governor of each state having Scheduled Area furnish a report to President annually, or whenever needed regarding administration of Scheduled Areas. The executive power of Union shall extend to the giving of directions to the State as to the administration of such areas.
- Governor has rule-making powers regarding number of members, mode of appointment, and functioning of Tribes Advisory Council (TAC).
- TAC renders advice to Governor regarding welfare and advancement of Scheduled Tribes in State when asked.
- Governor can restrict application of any Central or State legislation to Scheduled Area, either completely or partially subject to such exceptions and modifications as notified.
- Governor may make regulations for the peace and good government of Scheduled Area which includes regulations to
  - Prohibit or restrict transfer of land by or among members of Scheduled Tribes in such area.
  - Regulate allotment of land to members of Scheduled Tribes in such area.

  - Regulate carrying on of business as moneylender by persons who lend money to members of Scheduled Tribes in such area.
- To carry out above regulations for peace and good government of Scheduled Area:
  - Governor may repeal or amend any central or state law or any existing law applicable to Scheduled Area
  - Governor requires prior consultation with TAC, and assent of President is necessary for regulations to be brought into force.

ROLE AND FUNCTION OF TRIBES ADVISORY COUNCIL

- Paragraph 4 of Fifth Schedule requires constitution of a Tribes Advisory Council in each State which has a Scheduled Area. Such TAC can also be constituted in other States which have large tribal populations, if the President so directs.
- Function of TAC is to provide advice to Governor, when he seeks it, on matters relating to welfare and advancement of Scheduled Tribes in the State. Such advice is not binding upon Governor.
- It is compulsory for Governor to consult TAC before making any Regulations relating to governance in Scheduled Areas, including land alienation, land transfer, and control of moneylending. Again, the provision requires a 'consultation' rather than consent, but as has been held in several Court judgments that any such consultation must be meaningful and must inform decision-making process in a substantial way.

CONCERNS – GOVERNOR'S POWER UNDER FIFTH SCHEDULE – SC JUDGMENT

- Governors are often unaware about state of tribal people. Even mandatory annual Reports by Governors to President regarding administration of Scheduled Areas under Para 3 of Fifth Schedule are irregular.
- They comprise largely stale narrative of departmental programs without even a passing reference to crucial issues in administration of Scheduled Areas.
- Lack-luster performance of TAC in many states such as irregular meetings having insufficient quorum.

OVERALL CONCERNS ON TRIBAL DEVELOPMENT

Despite some protective measures and developmental efforts, emerging tribal scenario characteristically continues to manifest:

- Increasing tribal alienation on account of slipping economic resources like land, forest, common property resources.
- Displacement and dispossession of life-support systems.
- General apathy of official machinery.
- Escalating atrocities, at times related to assertion of rights.
- Growing clout of market forces; and,
- Meagre advancement through planned development efforts.

MUNGEKAR COMMITTEE REPORT

- Mungekar Committee Report on Standards of Administration and Governance in the Scheduled Areas suggested including reviving institutions of self-governance, effective delivery mechanism, creation of critical infrastructure, Tribal Sub-plan, implementation of the Scheduled Tribes and the Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 and Governors Report.

WAY FORWARD: The scenario calls for a major shift towards entrusting, enabling and empowering the tribal people to look after their own welfare and address issues of development through their own initiative. The extant constitutional-cum-legal-cum-policy framework has been enormously strengthened by the enactment of the Provisions of the Panchayats (Extension to the Scheduled Areas) Act, 1996, a charter of autonomous tribal governance, embodying rights in favour of tribal communities coupled with respect for their ethos.

►PANCHAYATS (EXTENSION TO SCHEDULED AREAS) ACT, 1996

PESA Act was enacted to extend Panchayati raj system to Fifth Schedule areas. PESA lays down the exceptions and modifications necessary in the law, both the constitutional provisions as well as the State Panchayati raj legislations, while extending the Panchayati raj institutions to Scheduled Areas. The States having Scheduled Areas were required to enact state legislation within a year of the passage of PESA in the Parliament.

IMPORTANT HIGHLIGHTS

- Article 243M of Constitution, while exempting Fifth Schedule areas from Part IX of Constitution (Panchayats), provides that Parliament through law can extend its provisions to Scheduled and Tribal Areas.
- Based on Bhuria Committee report of 1995, Parliament enacted Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA) to extend Part IX of the Constitution with certain modifications and exceptions to the Scheduled V areas.

- At present Scheduled V areas exist in 10 States viz. Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana.
- Ministry of Panchayati Raj is the nodal Ministry for implementation of the provisions of PESA in the States.
- Election to PRI - All posts of Chairpersons of Panchayati Raj Institutions (PRIs) in the areas covered under PESA are reserved for tribal community and only persons belonging to tribal community can contest for these posts.

WHY STATE SPECIFIC LEGISLATIONS ARE NEEDED TO IMPLEMENT PESA?

- Entry 5 of State List under VIIth Schedule - Local government, constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for the purpose of local self-government or village administration.
- Thus, necessary changes in accordance with the provisions of PESA needs to be carried out in the State level Panchayati Raj Legislations.
- However, since PESA defines the substantive content of the law, in terms of Article 243-M of the Constitution, the amendments/ laws enacted at the State level must necessarily conform to the spirit and the letter of PESA.

SPIRIT OF PESA LIES IN CONSULTATION WITH GRAM SABHA

- Supremacy of Customary Law & Local Traditions - State legislation on the Panchayats shall be in consonance with the customary law, social and religious practices and traditional management practices of community resources.
- Every Gram Sabha competent to safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
- Gram Sabha to give primacy to the community in the management of its community resources.
- Prior Consultation with Gram Sabha or Panchayat at appropriate level necessary before:
    - *Acquisition of land in the Scheduled Area for development projects*
    - *Re-settling or rehabilitating persons affected by such projects in the Scheduled Areas.*
    - *Grant of prospecting license or mining lease for minor minerals in the Scheduled Areas*
    - *Auction of minor minerals for exploitation in the Scheduled Areas*

FOLLOWING THREE TYPES OF POWERS HAVE BEEN GIVEN TO A GRAM SABHA UNDER PESA:

1. Developmental: consultation before land acquisition, prevent land alienation, power to enforce prohibition, prior approval of all developmental projects and control over tribal sub-plan, power to issue utilization certificate for developmental expenditure, selection of beneficiaries of poverty alleviation and other schemes of individual benefits, control over institutions and functionaries of social sectors.
2. Dispute resolution as per traditional laws and customs: collective resolution of disputes based on customs, traditional laws and religious beliefs of tribal areas.
3. Ownership and management of natural resources: maintaining ownership of local tribal community over water resources, common lands, minor forest produce, minor minerals, etc. as well as effective implementation and monitoring of related laws.

OTHER IMPORTANT POWERS GIVEN TO GRAM SABHA/PRIS UNDER PESA ACT

1. Safeguard and preserve the traditions and customs of the people, their cultural identity, community resources and the customary mode of dispute resolution.
2. Approve plans, programs and projects for social and economic development before such plans, programs and projects are taken up for implementation by the Panchayat at the village level.
3. Identification or selection of beneficiaries under the poverty alleviation and other programs.
4. Certification of utilisation of funds by the Panchayat for the plans, programs and projects.
5. Right to be consulted before acquisition of land in the Scheduled Areas for development projects and before re-settling or rehabilitating persons affected by such projects in the Scheduled Areas.
6. Right to plan and manage minor water bodies in the Scheduled Areas.
7. Prior Recommendations to grant prospecting licence for mining minor minerals including auction of minor minerals in the Scheduled Areas.
8. Enforce prohibition or Regulate or Restrict the sale and consumption of any intoxicant.
9. Grant ownership of minor forest produce.

10. Prevent alienation of land in the Scheduled Areas and restore any unlawfully alienated land of a Scheduled Tribe.
11. Manage village markets.
12. Exercise control over money lending to the Scheduled Tribes, institutions and functionaries in all social sectors and plans for sub-tribes.

IMPORTANCE/BENEFIT OF PESA

- Effective implementation of PESA will bring development & deepen democracy in Fifth Schedule Areas.
- Enhance people's participation in decision making.
- Better control over the utilisation of public resources for tribals and forest dwellers.
- Reduce alienation of land in tribal areas.
- Reduce poverty and out-migration among tribal population as they will have control and management of natural resources which will help in improving their livelihoods and incomes.
- Minimise exploitation of tribal population as they will be able to control and manage money lending, consumption & sale of liquor and sell their produce in village markets.
- Promote cultural heritage through preservation of traditions, customs and cultural identity of tribal population.

VIRGINIUS XAXA COMMITTEE'S RECOMMENDATIONS FOR EFFECTIVE IMPLEMENTATION OF PESA ACT

- Promote small sized water-harvesting structures instead for large dams.
- Impose penalties on officials if delayed implementation of Forest Rights Act or PESA.
- Prevent all kinds of tribal land alienation by making Gram Sabha's consent compulsory for any type of land acquisition, even if the government wants land for its own use.
- Earlier Vijay Kelkar Committee suggested that unused Government land should be sold off/leased off to get more money and reduce fiscal deficit. Xaxa Committee asked Government to use such land for tribal resettlement.
- After mines are exhausted, return the land back to original owner.
- In Scheduled Areas, permit only tribals to exploit mineral resources. Policy makers should learn lessons from Niyamagiri episode.
- Appoint a judicial commission to investigate such "naxal cases" registered against tribals and their (non-tribal) supporters.
- Avoid making Salwa Judum like policies to combat left wing extremism.

►TRIBAL SUB-PLAN

The tribal outfits in Rajasthan have demanded inclusion of over 165 village panchayats of seven districts in the scheduled areas under the Tribal Sub-Plan (TSP) to facilitate the control of local communities over minor minerals and minor forest produce along with developmental activities.

TRIBAL SUB-PLAN

- Committee - Tribal Sub Plan (TSP) strategy was initially developed by an Expert Committee under the Chairmanship of Prof. S.C. Dube and was adopted in the Fifth Five Year Plan.
- Purpose - Tribal Sub-Plan came into existence in 1974-75 as a strategy for the socio-economic development of areas having tribal concentration.
- TSP Renamed - After merger of Plan and Non-Plan, the TSP was renamed as Scheduled Tribe Component (STC) by Ministry of Finance. 41 Central Ministries/Departments have been identified for earmarking of STC.
- Financial Grant under Article 275(1) by Ministry of Tribal Affairs
- TSP Scheme not for states/UT having more than 60% tribal population - as the Annual Plan in these States/UTs is itself a Tribal Plan.
- Role of State Government - State Governments earmarks Tribal Sub-Plan funds in proportion to ST population based on Census 2011 with respect to total State Plan.
- Monitoring of TSP – Was earlier done by Planning Commission till 2017-18; From FY 2018-19, monitoring of TSP done by Ministry of Tribal Affairs.
- Basic Objective of Schedule Tribe Component - channelize/monitor the flow of outlays and benefits from the general sectors in the Central Ministries/Departments for the development of Schedules Tribes at least in proportion to their population.
- 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

CONCERNS ON TRIBAL SUB-PLAN

- Public Accounts Committee submitted its report on 'Tribal Sub-Plan' in December 2017.
- The Committee noted several discrepancies in the implementation of the TSP, including:
  (i) non-adoption of specific norms for release of funds,
  (ii) weak program management,
  (iii) deficient monitoring system, and
  (iv) non-implementation of information programs.

SUGGESTIONS MADE BY THE COMMITTEE

- Categorising Funds under Separate Head for Clear Demarcation – at the level of districts, block, and panchayats should be made mandatory for release of funds.
- Tracking of Funds necessary – A more proactive approach needs be taken to keep track of monitoring, fund utilisation, and implementation of schemes for tribal development.
- Need to create non-lapsable pool for TSP fund - utilise unused funds from previous year.
- Need for Central Nodal Unit for Review - to be set up under Ministry of Tribal Affairs to
  - oversee the implementation of flow of fund under TSP
  - facilitate better co-ordination and
  - efficient implementation of TSP through an online monitoring system.
- Constitute Nodal Units at state/district level – as suggested by NITI Aayog for program monitoring, to indicate state-specific allocation and release of funds for Scheduled Tribes separately under
  - centrally sponsored schemes and
  - central sector schemes.
- Dedicated Nodal Units by all TSP ministries or departments - for effective monitoring of TSP at the implementation stage.
- Involvement of Local Tribal Community - take suggestions or inputs from local tribal community before finalising the plan for implementation under TSP.

►J&K IMPLEMENTS FOREST RIGHTS ACT, 2006

J&K government has finally decided to implement Forest Rights Act, 2006. Forest dwellers like Gujjars or Bakarwals have been demanding extension of this Act to J&K against threat of eviction from forests along with livelihood issues.

HOW WILL THE MOVE BENEFIT THE TRIBALS OF J&K?

- Elevate the socio-economic status of a sizeable section of the 14-lakh population of tribals and nomadic communities, including Gujjar-Bakarwals and Gaddi-Sippis in J&K.
- Empower the tribal community by restoring to them the rights for a better life, while fulfilling the primary needs of water, food, home and livelihood.
- It will allow government to prevent illegal encroachment upon tribal's land and resources thereby reclaiming rights on forestland.
- Right to minor forest produce can be legally claimed.

RIGHTS GRANTED UNDER FRA, 2006

- Title rights – i.e., ownership to land that is being farmed by tribals or forest dwellers subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by concerned family, meaning that no new lands are granted.
- Use rights – to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc.
- Relief and development rights – to rehabilitation in case of illegal eviction or forced displacement by authorities.
- Forest management rights – to protect forests and wildlife by ensuring Sustainable Use, Conservation of Biodiversity and Maintenance of ecological balance.

Livelihood and Food Security through Minor Forest Produce - MFP is an important source of livelihood and provides both subsistence and cash income for tribals and forest dwellers and has significant economic and social value.

SECTION 6 OF FRA - AUTHORITIES TO VEST FOREST RIGHTS IN FOREST DWELLING SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS

AUTHORITIES TO VEST FOREST RIGHTS UNDER FRA, 2006

- Gram Sabha - Vesting of individual or community forest rights to forest dwelling Scheduled Tribes and other traditional forest dwellers shall be initiated by Gram Sabha.
- Gram Sabha shall pass such resolution to the Sub-Divisional Level Committee constituted by State Government.
- The Sub-Divisional Level Committee shall examine the resolution passed by the Gram Sabha and prepare the record of forest rights and forward it through the Sub-Divisional Officer to the District Level Committee for their decision.
- Procedure for Appeal:
  - Any person aggrieved by the resolution of the *Gram Sabha* may prefer a petition to the *Sub-Divisional Level Committee*.
  - Any person aggrieved by the decision of the *Sub-Divisional Level Committee* may prefer a petition to the *District Level Committee* within 60 days from the date of decision of the Sub-Divisional Level Committee
- District Level Committee considers and finally approves the record of forest rights prepared by the Sub-Divisional Level Committee. Section 6(6) of FRA says that the decision of the District Level Committee on the record of forest rights shall be final and binding.
- Note* - The above aspect has been amended by the Maharashtra Governor. So, the Governor of Maharashtra by using his power under sub-paragraph (1) of paragraph 5 of the Fifth Schedule to the Constitution of India has proposed to add sub section 6A to Section 6 of FRA, 2006.

POWER OF GOVERNOR UNDER FIFTH SCHEDULE OF THE INDIAN CONSTITUTION

- Para 5 of Schedule V aims to establish and egalitarian society and to ensure socio-economic empowerment of Scheduled Tribes and accordingly has empowered the Governor.
- Para 5 of Schedule V - Governor by public notification can direct the following:
  - Any Act of Parliament or of State Legislature shall not apply to a Scheduled Area or any part of Scheduled Area in the State; or
  - Any Act of Parliament or of State Legislature shall apply to a Scheduled Area or any part of Scheduled Area in the State.
  - Governor can specify any modification or exception regarding implementation of any law made by Parliament or State Legislature.
  - Governor is empowered to issue notification giving it retrospective effect.
- The Fifth Schedule finds reference in Article 244 of the Constitution which deals with Administration of Scheduled Areas and Tribal Areas.

SUPREME COURT IN NYAMGIRI CASE

SC upheld the provisions of the Forest Rights Act and various government circulars issued under it which require prior decision of the Gram Sabha before their traditional habitats in forest areas are diverted for non-forest purposes. The Court was of the view that: "Of late, we have realised that forests have the best chance to survive if communities participate in their conservation and regeneration measures. The Legislature also has addressed the long standing and genuine felt need of granting a secure and inalienable right to those communities whose right to life depends on right to forests and thereby strengthening the entire conservation regime by giving a permanent stake to the STs dwelling in the forests for generations in symbiotic relationship with the entire ecosystem."

►MINOR FOREST PRODUCE & TRIFED

Minor Forest Produce (MFP) is an important source of livelihood and provides both subsistence and cash income for tribals and forest dwellers and has significant economic and social value. Most forest dwellers depend on minor forest produces for food, shelter, medicines and cash income. It is important for them for food, shelter medicines and case income beside providing critical subsistence during the lean seasons, particularly for primitive tribal groups such as hunter gatherers, and the landless.

MFP UNDER FRA, 2006

- MFP is defined under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006.
- Minor forest produce *includes all non-timber forest produce of plant origin including bamboo, brush wood, stumps, cane, tussar, cocoons, honey, wax, lac, tendu or kendu leaves, medicinal plants and herbs, roots, tubers and the like.*
- The Act allows traditional forest dwellers and forest dwelling Scheduled Tribes right of ownership, access to collect, use, and dispose of minor forest produce which has been traditionally collected within or outside village boundaries.
- The Tribal Cooperative Marketing Development Federation of India (TRIFED) helps in selling the minor forest produce of traditional forest dwellers and STs living nearby forest land.

THE TRIBAL COOPERATIVE MARKETING DEVELOPMENT FEDERATION OF INDIA (TRIFED)

- TRIFED came into existence in 1987 and is a national-level apex organization functioning under the administrative control of Ministry of Tribal Affairs.
- The objective of TRIFED is socio-economic development of tribal people in the country by way of marketing development of the tribal products.
- The activity of TRIFED is divided into two categories –
  1. Minor Forest Produce Development &
  2. Retail Marketing Development
- The approach of marketing development of tribal products envisages TRIFED's role as a facilitator and service provider.
- TRIFED empowers tribal people with knowledge, tools and pool of information so that they can undertake their operations in a more systematic and scientific manner.
- TRIFED involves capacity building of the tribal people through sensitization, formation of Self-Help Groups (SHGs) and imparting training to them for undertaking a particular activity, exploring marketing possibilities in national as well as international markets, creating opportunities for marketing tribal products on a sustainable basis, creating a brand and providing other services.

TECH FOR TRIBALS – AN INITIATIVE OF TRIFED

- TRIFED has recently launched *"Tech for Tribals"* program to develop Tribal entrepreneurship and capacity building for tribal forest produce gatherers enrolled under the Pradhan Mantri Van Dhan Yojana (PMVDY).
- Tech for Tribals has been launched in partnership with Institutes of National Importance (INIs).
- The trainees will undergo a 30 day program over six weeks comprising 120 sessions.
- *Tech for Tribals* is an initiative of TRIFED supported by *Ministry of Micro Small and Medium Enterprises.*

PRADHAN MANTRI VAN DHAN YOJANA

- Pradhan Mantri Van Dhan Yojana (PMVDY) is a *Market Linked Tribal Entrepreneurship Development Program* for forming *clusters of tribal SHGs* and strengthening them into *Tribal Producer Companies.*
- PMVDY is an initiative targeting livelihood generation for tribals by harnessing the wealth of forest i.e., Van Dhan.
- The program aims to *tap into traditional knowledge & skill sets of tribals by adding technology & IT to upgrade it at each stage and to convert the tribal wisdom into a viable economic activity.*

The idea is to set-up tribal community owned Minor Forest Produce (MFP)-centric *Multi-purpose Van Dhan Vikas Kendras (Kendra)* in predominantly tribal districts.

►DEMAND BY STATES FOR INCLUSION IN SIXTH SCHEDULE

There has been a growing demand in Ladakh and Arunachal Pradesh for their inclusion in the sixth schedule.

- Demand arising in Ladakh is on account of fear of loss of land, jobs and demographic change after in 2019 special status of J&K was revoked and Ladakh was carved out as a separate Union Territory. Thus, to ensure protection of identity, land, jobs and culture of the UT, demands have arisen for granting constitutional safeguards in terms of statehood alongside implementation of the sixth schedule.
- Demand arising in Arunachal Pradesh is on account of absence of any protective provisions for its tribal communities under the Indian constitution which faces the danger of being alienated from their culture and land. Considerable autonomy under schedule 6 to the tribal community will empowers it to enact laws for land protection.

SIXTH SCHEDULE UNDER THE INDIAN CONSTITUTION

- Sixth Schedule currently includes 10 autonomous district councils in four north-eastern States: Assam, Meghalaya, Mizoram & Tripura (Article 244).

- Passed by the Constituent Assembly in 1949, it seeks to safeguard the rights of tribal population through the formation of Autonomous District Councils (ADC).

	States		Tribal Areas
1.	Assam	1.	The North Cachar Hills District. 2. The Karbi Anglong District. 3. The Bodoland Territorial Areas District.
2.	Meghalaya	1.	Khasi Hills District. 2. Jaintia Hills District. 3. The Garo Hills District.
3.	Tripura	Tripura Tribal Areas District	
4.	Mizoram	1.	The Chakma District. 2. The Mara District. 3. The Lai District.

VARIOUS FEATURES OF ADMINISTRATION CONTAINED IN THE SIXTH SCHEDULE ARE AS FOLLOWS:

- Autonomous districts: Tribal areas in states of Assam, Meghalaya, Tripura and 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.
- Each autonomous district has a District council and a separate Regional Council
  - District council consists of 30 members, of whom 26 are elected based on adult franchise for a term of five years and four are nominated by the governor and hold office during the pleasure of the governor.
- District and regional councils administer the areas under their jurisdiction
  - They can make laws on matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. But all such laws require the assent of the governor.
  - They can constitute village councils or courts for trial of suits and cases between the tribes. They hear appeals from them.
  - Empowered to assess and collect land revenue and to impose certain specified taxes.
- Acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.
- ADC do not fall outside the executive authority of the state concerned
  - Governor is empowered to re-organise the autonomous districts.
  - Governor can appoint a commission to examine the autonomous districts or regions. He may dissolve a district or regional council on the recommendation of the commission.

POWERS OF DISTRICT COUNCIL/REGIONAL COUNCIL – SIXTH SCHEDULE

Powers to make laws

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

Administration of justice in autonomous districts and regions

- Constitute Village Court/Council - District Council or Regional Council may constitute Village Councils or Courts for the trial of suits and cases between the parties all of whom belong to Scheduled Tribes within such areas.
- Power of Appeal - District Council or Regional Council shall exercise the 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 the Governor may - Regulate the Procedure of functioning of village Council.

Other Powers of District Councils and Regional Councils

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

Power of District Council to make regulations for the control of moneylending and trading within the district by persons other than Scheduled Tribes resident

- No one except the holder of licence issued in that behalf shall carry on the business of money lending.
- Prescribe the maximum rate of interest which may be charged or be recovered by a moneylender
- Inspection of Accounts maintained by moneylenders
- No Trade without Licence: a person who is not a member of the Scheduled Tribes resident in the district, shall not carry-on wholesale or retail business in any commodity except under a licence issued by District Council.

Regulations to be made on above grounds by District Council must be passed by a majority of not less than three-fourths of the total membership of the District Council.

►CONSTITUTION 125TH AMENDMENT BILL

Constitution (One Hundred and Twenty Fifth Amendment) Bill, 2019 seeks to amend Article 280 of Constitution of India to enable Finance Commission to recommend measures needed to augment Consolidated Fund of States of Assam, Meghalaya, Mizoram and Tripura. This will supplement resources of Sixth Schedule Autonomous Councils, Village Councils and Municipal Councils.

PURPOSE OF CONSTITUTION AMENDMENT

- Empowering Finance Commission: At present, there is no provision for recommendations of Finance Commission to provide separate funds for Autonomous District Councils in Sixth Schedule areas which results in inadequate socio-economic infrastructure in Autonomous District Council areas.
- Enhancing Autonomy of Various Autonomous Councils: Various Memoranda of Settlement signed between Government of India, State Government of Assam and Meghalaya with United People's Democratic Solidarity (2011), Dima Halam Daogah (2012), Achik National Volunteers' Council (2014) aim at enhancing autonomy of the existing Autonomous Councils, renaming Councils and increasing number of seats in Councils.

AIMS OF 125TH CONSTITUTION AMENDMENT BILL

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

REASONS FOR SUGGESTED AMENDMENT

- Cabinet Committee on Political Affairs (CCPA) had approved signing of Memorandum of Settlements (MoSs) with United People"s Democratic Solidarity (UPDS) and factions of Dima Halam Daogah (DHD) on 25th November 2011 and 8th October, 2012 respectively.
- It was aimed at enhancing autonomy of existing Autonomous Councils set up under Sixth Schedule to the Constitution and to provide special package for speedier socio-economic development of the Council areas.
- The Government of India has initiated action for the implementation of various clauses of the MoSs signed with UPDS and factions of DHD.

TWO MEMORANDUM OF SETTLEMENTS PROVIDES FOR THE FOLLOWING:

(a) Renaming of existing Karbi Anglong Autonomous Council as Karbi Anglong Autonomous Territorial Council. Similarly, renaming of North Cachar Hills Autonomous Council as Dima Hasao Autonomous Territorial Council.

(b) KAATC shall have 50 members (44 to be elected and 6 nominated by the Governor of Assam) against existing 30 members in the Council.

(c) Increasing the members of the DHATC is agreed in principle.

(d) Effect of the increase of members in the Council will be given prospectively and will have no effect on the term of existing District Councils.

(e) Conducting elections to the Autonomous Councils by State Election Commission and setting up of State Finance Commission.

(f) Transfer of additional 30 subjects from State Government of Assam to the Autonomous Councils under paragraph 3A of the Sixth Schedule to the Constitution as agreed in the MoS devolving legislative and executive powers

(g) Article 280 will provide for augmenting the Consolidated Fund of respective States to supplement resources of the Sixth Schedule Autonomous Councils.

GOVERNANCE

Previous Year Questions

YEAR	UPSC QUESTIONS
2020	"Recent amendments to the Right to Information Act will have profound impact on the autonomy and independence of the Information Commission". Discuss.
2020	"Institutional quality is a crucial driver of economic performance". In this context suggest reforms in Civil Service for strengthening democracy.
2020	The emergence of Fourth Industrial Revolution (Digital Revolution) has initiated e-governance as an integral part of government". Discuss
2019	Implementation of Information and Communication Technology (ICT) based projects/programs usually suffers in terms of certain vital factors. Identify these factors and suggest measures for their effective implementation.
2019	There is a view that the Official Secrets Act is an obstacle to the implementation of Right to Information Act. Do you agree with the view? Discuss. (GS IV)
2018	Data security has assumed significant importance in the digitized world due to rising cybercrimes. The Justice B. N. Srikrishna Committee Report addresses issues related to data security. What, in your view, are the strengths and weaknesses of the Report relating to protection of personal data in cyber space? (GS III)
2018	"The Right to Information Act is not all about citizens' empowerment alone, it essentially redefines the concept of accountability. Discuss. (GS IV)
2016	Use of internet and social media by non-state actors for subversive activities is a major security concern. How have these been misused in the recent past? Suggest effective guidelines to curb the above threat. (GS III)
2015	Considering the threats cyberspace poses for the country, India needs a "Digital Armed Force" to prevent crimes. Critically evaluate the National Cyber Security Policy, 2013 outlining the challenges perceived in its effective implementation. (GS III)
2014	Two parallel run schemes of the Government, viz the Aadhar card and NPR, one of voluntary and the other as compulsory, have led to debates at national levels and also litigations. On merits, discuss whether or not both schemes need run concurrently. Analyse the potential of the schemes to achieve development benefits and equitable growth.
2014	What does 'accountability' mean in the context of public service? What measures can be adopted to ensure individual and collective accountability of public servants? (GS IV)

►COOLING OFF PERIOD FOR RETIRED BUREAUCRATS

All India Services Death-cum-Benefits Rules and Central Civil Services (Pension) Rules provides for cooling off period of 1 year after retirement.

CENTRAL CIVIL SERVICES (PENSION) RULES

- Applies to Central Service Group 'A' officers.
- Prohibits commercial employment of such officers for 1 year after retirement. Referred as cooling-off period for such bureaucrats.
- If 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

- Applies to three All India Service officers ie IAS, IPS & IFS (Forest) and provides for a cooling off period of 1 year after retirement.
- If the pensioner accepts private employment within 1 year and without government's sanction, then 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

- 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.
- EC had written to DoPT & Ministry of Law, suggesting a cooling-off period for bureaucrats joining politics after retirement. However, the plea was rejected.

SHOULD THERE BE A COOLING OFF PERIOD FOR BUREAUCRATS BEFORE JOINING POLITICS OR STANDING FOR ELECTIONS?

- In Vivek Krishna Case, petitioner contended that bureaucrats deviate from observing strict political neutrality to get tickets from political party.
- SC dismissed writ petition and refused to issue writ of mandamus (command) to government to legislate on the matter of cooling off period for joining politics.
- *On issue of ethics, Court held* that civil servants should maintain the highest ethical standards of integrity and honesty, political neutrality, fairness and impartiality in the discharge of duties, courtesy, accountability and transparency - Integrity, impartiality, neutrality, transparency and honesty are non-negotiable.
- *Ethical standards necessarily must be enforced,* and stringent action taken against the concerned officer whenever there is any breach of ethical standards as laid down in the All-India Services (Conduct) Rules, 1968.

►CHANGES IN IAS CADRE RULES

Central government has proposed amendment in IAS Cadre Rules, 1954 for deputation of officers at centre.

CHANGES MADE IN DEPUTATION RULES

- States should make available officers for central deputation.
- In case of disagreement between centre and states, State shall give effect to the decision of the Centre "within a specified time."
- In case of delay in deputation by state government, the officer shall be relieved from the date specified by central government.
- In certain specific situations where services of cadre officers are required by the Central government in "public interest", the State shall give effect to its decisions, within a specified time.

CONCERNS OF CENTRE

- Most states are not meeting the Central Deputation Reserve (CDR) requirement
- Minimum number of officers is not available to the Centre from All India Services for deputation.
- Lack of officer's impacts routine work.

STATES HAVE OPPOSED THE CHANGES IN IAS CADRE RULES ON THE FOLLOWING GROUNDS

- Impacts State's Autonomy as earlier the deputation was based on consensus between centre and centre. Now it is a forced decision on the states.
- Misuse by Centre The provision of releasing All India Service (AIS) officers by states in "specific situations" and in public interests may be misused for political gains. Ex. centre can unilaterally depute Chief Secretaries or Principal Secretaries of States either to centre or to other states especially prior to state elections.
- No Consultation with States – The Amendment unilaterally mandates the State government to make such several officers available for deputation as prescribed under Central Deputation Reserve.
- Confrontational Federalism - Taking unilateral decisions might impact the healthy atmosphere which promotes cooperative federalism and increasing friction between centre and states (ruled by opposition parties) and this may further fuel confrontational federalism.
- Dampen the morale of AIS Officers – contemplated changes have grave implications for the independence, security and morale of IAS officers.
- Deputation to Centre Against the Officer's Wish – Instances of the past confirms that IAS Officers can be deputed to centre as punishment postings as the officers themselves may not wish to go on central deputation due to poor working conditions in junior-level posts, an opaque and arbitrary system of empanelment for senior-level posts, and lack of security of tenure at all levels.
- State's may decrease intake of IAS Officers – reduce the number of IAS cadre posts and their annual intake of IAS officers. Further states prefer officers of the State Civil Services to handle as many posts as possible. Thus, increasing political slugfest with AIS Officers may impact their morale and in future bright students may not want to become part of Indian bureaucracy.

WAY FORWARD

Speaking to the Constituent Assembly on October 10, 1949, Sardar Patel said, "The Union will go, you will not have a united India if you have not a good All India Service which has the independence to speak out its mind, which has a sense of security." Thus, the center must heed the advice of India's first Home Minister and ensure that the spirit of cooperative federalism is not disturbed through the proposed changes in IAS Cadre Rules of 1954.

►CIVIL SERVICE REFORMS

The Prime Minister's recent remarks in Parliament criticising the pervasive influence of IAS officers on our system of governance merits reflection on the functioning of bureaucracy. In this backdrop, let us go through the challenges faced by bureaucracy and the need for bureaucratic reforms based on contemporary realities.

STRENGTHS OF THE CIVIL SERVICE IN INDIA

- Hierarchy
- Division of work
- Decisions based on rules & regulations
- Absence of political bias in service delivery
- Field experience,
- Extensive networking,
- Awareness of the formal and informal socio-economic networks in the field
- Role in national integration
- Uniform standards of administration.
- Political neutrality and objectivity
- Secular and sectarian outlook

- Competence and professionalism

RECENT REFORMS IN CIVIL SERVICES

- Changes in cadre allocation policy to preserve national character of civil services.
- Mission Karmayogi to improve human resource development and structured training of civil services.
- Lateral entry of professionals in bureaucracy.
- Two months attachment as assistant secretary in central government departments before new officers joins their cadres.
- Compulsory retirement of tainted officers.
- Constitution of National Recruitment Agency for hiring on Group B and other lower civil services.

CHALLENGES IN CIVIL SERVICES

1. Asymmetry of power: Due to systemic rigidities, needless complexities and over-centralisation make public servants ineffective and helpless in achieving positive outcomes.
2. Corruption is a matter of concern particularly at the cutting-edge levels of the bureaucracy.
3. Perceptible lack of commitment in public servants towards redressal of citizens' grievances.
4. Red-tapism and unnecessary complex procedures add to the hardship of citizens.
5. Government servants are rarely held to account and complaints to higher authorities usually go unheeded.
6. General attitude of many public functionaries is one of arrogance and indifference.
7. Frequent transfers of officers reduce their effectiveness and dilute their accountability.
8. Unholy nexus between unscrupulous politicians and officers leading to poor governance.

ATTRIBUTES OF AN IDEAL BUREAUCRACY

1. It is valued by ministers and is a superb source of expert, objective policy advice.
2. It delivers world class, customer focused services, day-in and day-out, frequently in partnership.
3. It attracts best talents from every area of society.
4. Civil servants are honest, objective, impartial and act with integrity.
5. Civil servants are accountable, result-oriented and transparent in its dealings.
6. Civil servants are proud of and passionate about their work, committed to doing what they have to do with the pace that India needs and expects in 21st century, with professional skills.
7. Every part of which commands the confidence and respect of the public it serves.

ATTRIBUTES OF A GOOD ADMINISTRATOR

1. Willingness to assume responsibility.
2. A steadily enlarging ability to deal with more problems.
3. A strong bent toward action.
4. A good listener.
5. Effective with people.
6. Capacity to build his own strength by building the competence of his organisation.
7. Capacity to use his institutional resources
8. Avoiding using power or authority for their own sake.
9. Welcoming reports of troublesome things.
10. A good team-worker.
11. A good initiator.

IMPORTANT STEPS TO REFORM BUREAUCRACY

However, the civil services are still not adequately equipped to function efficiently and competitively in a dynamic economy. There is a need for reorientation on the following grounds:

- Ensure stability of officers by constituting Autonomous Civil services Board to address politicisation of bureaucracy. (2nd ARC & Hota Committee)
- Set up an Ombudsman to investigate grievances of pre-mature transfers of civil servants. (2nd ARC & Hota Committee)
- Need for simplification of Rules, Regulations and Procedures, Single Window Mechanism, Time bound delivery of services, Citizen Charters, E-Governance Initiatives.
- Adequate focus on training at all levels of civil servants. Special focus should be inclusion of soft skills at those functioning at cutting edge levels.
- Strengthen Accountability to outcomes rather than procedures.
- Reduce citizens' interface through Single Window Mechanism. Ensuring time bound delivery of services.
- Recognising the outstanding work of serving civil servants including through National awards; Remove cause of dissatisfaction such as Poor working conditions, Unfair personnel policies, Political Interference etc.

- Focus on "Minimum Government, Maximum Governance" by merging departments or Ministries with overlapping functions.
- Promote specialisation of work and domain competency for civil servants.
- Promote lateral entry to encourage private sector participation for transfer of knowledge and best practices.
- Need to strengthen external accountability of the officers through governance tools - Citizens Charters, RTI, Service Delivery Surveys, Citizen Report Cards, CPGRAMS etc.
- Need for demarcation between Error of Judgement and Corruption to infuse risk taking behaviour among the Civil servants.
- Need for enacting a comprehensive civil service law. (2nd ARC).
- The administrative machinery needs to respond to the changing times thereby enabling the government to discharge its responsibility efficiently and effectively. The Civil Service system needs to keep pace with the changing expectations of citizens propelled through socio-economic and growth in technology.

►MISSION KARMAYOGI

National Program for Civil Services Capacity Building ('NPCSCB') – Mission Karmayogi aims to improve government's human resource management practices and augment capacity of civil servants by using the state-of-the-art infrastructure.

- 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.

MISSION KARMAYOGI WILL HAVE THE FOLLOWING SIX PILLARS

(i) Policy Framework

(ii) Institutional Framework

(iii) Competency Framework

(iv) Digital Learning Framework (Integrated Government Online Training Karmayogi Platform (iGOT-Karmayogi)

(v) electronic Human Resource Management System (e-HRMS), and

(vi) Monitoring and Evaluation Framework

INSTITUTIONAL FRAMEWORK APPROVED TO IMPLEMENT & MONITOR THE PROGRAM

- Prime Minister's Public Human Resource Council (PMHRC): chaired by PM to drive and provide strategic direction to civil service reforms and capacity building.
- Cabinet Secretariat Coordination Unit: to monitor implementation, align stakeholders and provide mechanism for overseeing capacity building plans.
- Capacity Building Commission:
  - *Exercise functional supervision over central training institutions for capacity building*
  - *Assist Human Resource Council to prepare and approve Annual Capacity Building Plans*
  - *Create shared learning resources -internal and external faculty and resource centres.*
  - *Coordinate and supervise the implementation of the Capacity Building Plans with the stakeholder Departments.*
  - *Recommend on standardization of training and capacity building, pedagogy and methodology*
  - Set norms for common mid-career training programs across all civil services.
  - *Suggest policy interventions - HR Management and Capacity Building for government.*
- Special Purpose Vehicle (SPV, an autonomous company) under Companies Act, 2013: It will own and operate all the digital assets created for the capacity building.
- Program Management Unit (PMU) - provide program management and support services to the department.

iGOT-KARMAYOGI PLATFORM

- Will provide effective digital e-learning material.
- Training of Civil Servants at various Academies will be restructured to include optimum use of the digital learning platform of iGOT.

HOW WILL MISSION KARMAYOGI BENEFIT CIVIL SERVANTS?

1. Transition from 'Rules based' to 'Roles based HR Management – help in aligning work based on competencies and requirements
2. Calibrate all civil service positions to a Framework of Roles, Activities and Competencies (FRACs) approach and ensure delivery of services accordingly.

3. Provide opportunity to civil servants to continuously build and strengthen their Behavioral, Functional and Domain Competencies.

►PRINCIPLES FOR EFFECTIVE GOVERNANCE FOR SDG

United Nations Committee of Experts on Public Administration has come out with the following principles which countries need to embrace in their development for achievement of SDG. Governance is defined by World Bank as the traditions and institutions by which authority is exercised in a country. This includes:

1. The process by which governments are selected, monitored and replaced.
2. The capacity of the government to effectively formulate and implement sound policies.
3. The respect of citizens and the State for the institutions that govern economic and social communications among them.

1. Effectiveness: The capacity to realise organizational or individual objectives. Effectiveness requires competence, sensitivity and responsiveness to specific, concrete, human concerns and the ability to articulate these concerns, formulate goals to address them and develop and implement strategies to realise these goals.		
a. Competence	To perform their functions effectively, institutions need to have sufficient expertise, resources and tools to deal adequately with the mandates under their authority	• Promotion of a professional public sector workforce. • Strategic human resources management. • Leadership development and training of civil servants. • Performance management. • Results based management. • Financial management and control. • Efficient and fair revenue administration. • Investment in e-government.
b. Sound policymaking	To achieve their intended results, public policies are to be coherent with one another and founded on true or well-established grounds, in full accordance with fact, reason and good sense	• Strategic planning and foresight. • Regulatory impact analysis. • Promotion of coherent policymaking. • Strengthening national statistical systems. • Monitoring and evaluation systems. • Science-policy interface.
c. Collaboration	To address problems of common interest, institutions at all levels of government and in all sectors should work together and jointly with non-State actors towards the same end, purpose and effect	• Risk management frameworks. • Data sharing • Centre of government coordination under the Head of State or government. • Collaboration, coordination, integration and dialogue across levels of government and functional areas. • Raising awareness of the SDGs. • Network based governance. • Multi-stakeholder partnerships.
2. Accountability: Refers to requirement that officials answer to stakeholders on the disposal of their powers and duties, act on criticisms or requirements made of them and accept responsibility for failure, incompetence or deceit.		

a. Integrity	To serve in the public interest, civil servants are to discharge their official duties honestly, fairly and in a manner consistent with soundness of moral principle.	• Promotion of anti-corruption policies, practices and bodies. • Codes of conduct for public officials. • Competitive public procurement. • Elimination of bribery and trading in influence. • Conflict of interest policies. • Whistle blower protection. • Provision of adequate remuneration and equitable pay scales for public servants.
b. Transparency	To ensure accountability and enable public scrutiny, institutions are to be open and candid in the execution of their functions and promote access to information, subject only to the specific and limited exceptions as are provided by law.	• Proactive disclosure of information. • Budgetary transparency. • Open government data. • Registries of beneficial ownership. • Lobby registries.
c. Independent Oversight	To retain trust in government, oversight agencies are to act according to strictly professional considerations and apart from and unaffected by others	Promotion of independence of regulatory agencies. Arrangement for review of administrative decisions by courts or other bodies. Independent audit. Respect for legality.
3. Inclusiveness		
a. Leaving no one behind	To ensure that all human beings can fulfil their potential in dignity and equality, public policies are to consider the needs and aspirations of all segments of society, including the poorest and most vulnerable and those subject to discrimination.	• Promotion of equitable fiscal and monetary policy. • Promotion of social equity • Data disaggregation. • Systematic follow-up and review.
b. Non-discrimination	To respect and promote human rights and fundamental freedoms for all, access to public service is to be provided on general terms of equality, without distinction of any kind.	• Promotion of public sector workforce diversity. • Prohibition of discrimination in public service delivery. • Multilingual service delivery. • Accessibility standards. • Cultural audit of institutions. • Universal birth registration. • Gender responsive budgeting.
c. Participation	To have an effective State, all significant political groups should be	• Free and fair elections.

	actively involved in matters that directly affect them and have a chance to influence policy.	• Regulatory process of public consultations. • Multi-stakeholder forums • Participatory budgeting • Community driven development.
d. Subsidiarity	To promote government that is responsive to the needs and aspirations of all people, central authorities should perform only those tasks which cannot be performed effectively at a more intermediate or local level	• Fiscal federalism. • Strengthening rural and urban governance. • Strengthening municipal finance and local finance systems. • Enhancement of local capacity for prevention, adaptation and mitigation of external shocks. • Multilevel governance
e. Intergenerational equity	To promote prosperity and quality of life for all, institutions should construct administrative acts that balance the short-term needs of today's generation with the longer term needs of future generations.	• Sustainable development impact assessment. • Long term public debt management. • Long term territorial planning and spatial development. • Ecosystem management.

►COHERENT POLICYMAKING

Coherent policymaking is a key aspect of effective governance for sustainable development. This has received significant interest with adoption of 2030 SDGs.

BENEFITS OF COHERENT

1. Helps in pursuit of multiple policy goals in a coordinated way.
2. Minimises trade-offs and contradictions
3. Maximises synergies.
4. Leads to increased levels of efficiency and effectiveness when taking a broader view of government.
5. Absence of coherence may result in many governance problems such as compartmentalisation, fragmentation, competing and incoherent objectives and inconsistent policy mix.

DIMENSIONS OF COHERENT POLICYMAKING

1. Horizontal coherence: between sectors or cross-cutting issues in multiple sectors.
2. Vertical coherence: between local plans, national policy and international agreements.
3. International coherence: between policy domains in different countries addressing trans-boundary spillover effects.

BARRIERS TO COHERENCE

1. Insufficient communication
2. Lack of adequate funding.
3. Barriers to exchange of knowledge or information.
4. Lack of spaces to meet and coordinate.
5. Conflict of interests and mandates.
6. Blurred lines of accountability
7. More time-consuming processes
8. Uprooting of existing routines and practices.
9. Difficulty measuring impact and/or effectiveness.
10. Loss of control/influence/autonomy
11. Dilution of priorities.

►VOLUNTARY ORGANISATIONS

NGOs are non-profit organization that operates independently of any government support. NGOs are also referred as civil societies and are organized on community lines, national and international levels to serve social or other goals including humanitarian or environment causes.

IMPORTANT ROLE PLAYED BY NGOS AND CIVIL SOCIETY ORGANISATIONS IN DEVELOPMENT PROCESS

- Key Drivers of inter-governmental negotiations – ranges from regulation of hazardous wastes to a global ban on land mines and the elimination of slavery.

- Promotes legal reforms – pushes government to undertake important reforms through legislations affecting rights and services for vulnerable sections of the society.
- Helps in Capacity Building and filling development deficit in diverse sectors - health, education, environment awareness, social inclusion, skill enhancement etc.
- Helps alleviation of Poverty & Hunger
- Supplements electoral democracy - by updating governments regularly of public opinion in favour of certain issues or concerns on certain welfare schemes.
- Ensures Community Participation by raising awareness on important national, Regional or Local Issues – helps to strengthen participatory democracy in India.
- Helps government to understand challenges of industry – e.g.: Finance Ministry organise sessions with FICCI, IFCI to understand concerns and challenges of different industrial sector
- Competition among civil societies is beneficial and productive for citizens & government.
- Provides platform for vulnerable sections to raise their voice – e.g., concerns of prostitutes, LGBT, HIV victims, victims of custodial torture, manual scavenging, Dalit violence
- Ensures Women Empowerment by providing livelihood measures
- Voluntary sector can bring a fresh perspective and ability to develop alternative solutions.

CRITICISM OF NGOs

- Unnecessary PIL filed in Courts without sufficient evidence. This has led to an increase of PIL culture in the High Courts & Supreme Court.
- Promote Vested Interests of groups whom they wish to support.
- Elite capture of NGOs: They often function as agencies for the glorification of individuals.
- Some NGOs involved in misuse of foreign funding received under FCRA.
- Create additional pressure on the government by providing misleading arguments.
- Cannot be said to be truly democratic as they represent very small section of the society including those who fund their functioning.

WAY FORWARD

- Strengthen voluntary sector and facilitate an enabling framework for voluntary sector and rebuild faith and appreciation towards it.
- A nodal ministry for voluntary sector should be created to ensure uniform reporting guidelines and to open one single registration window for all development organisations. It would also focus on formulating laws and legislations that are in line with the policy. It will also ensure a platform for a continuous dialogue between government and voluntary sector.
- Capacity building must be carried out to ensure working standards and adaptability. Sense of volunteerism and feeling of doing good must be restored among youth.
- Behavioral change of government officials and corporate sector towards the voluntary sector is also necessary to maintain a mutual respect between the sectors.
- Government should encourage Voluntary sector participation in national programs and ensure mutual trust.
- A National Accreditation Council should be established that will assure quality standards adherence, accountability, transparency and trust in the Voluntary sector.
- A clear definition for Voluntary sector needs to be established. As loose inclusion of entities such as private hospitals, religious associations, schools, sports club, RWAs along with Voluntary Organisations has swelled perceived numbers and their credibility. Thus, a clear delineation of these entities is required.
- Provisions of FCRA Amendment Act, 2020 needs to be eased to enable procurement of funds from foreign agencies. This will help in sustenance of them.

►FCRA (AMENDMENT) ACT, 2020

NGOs and voluntary sector have raised many concerns against the amendments to the FCRA (Amendment) Act, 2020. They allege that the provisions will stifle the sector and make it harder for them to operate.

SALIENT FEATURES

1. Forbids a recipient of foreign contribution from transferring the same to any other entity.
2. Reduces the limit of usage of foreign contribution for administrative expenses from 50% to 20%.
3. Centre can direct an organisation to not utilise

foreign contributions pending an inquiry on suspected violations.

4. Foreign contributions must be deposited in FCRA account created in the specified branch of the Scheduled Bank, which was later notified as New Delhi Branch of SBI.
5. Centre to obtain Aadhaar numbers of key functionaries of organisation for approval.
6. Suspension of NGOs in case of non-compliance.
7. Surrender of FCRA registrations.

ARGUMENTS IN FAVOUR

1. Some foreign powers and non-state actors continue to take up activities that amount to interference in the internal polity of the country with ulterior designs.
2. Ensuring effective monitoring and for ensuring accountability of the recipient association, the transfer of foreign contribution has been prohibited.
3. NGOs are expected to grow on the strength of their own genuine work undertaken for fulfilling societal needs.
4. NGOs lack inner democracy and siphon off to pay the owners of NGOs very high salaries. Thus, reducing limit on administrative expenses is necessary.
5. Some NGOs were routing foreign contributions to other entities. Approval to receive foreign contribution is granted for a specified purpose. However, if diversion of funds is allowed, it will be difficult to monitor the ultimate purpose for which funds are utilised.
6. FCRA is sovereignty and integrity legislation, with the over-riding purpose to ensure that foreign money does not dominate public life as well as political and social discourse in India.
7. It is difficult to monitor foreign contributions when branches are receiving foreign contributions are spread across the country. To make it easy for NGOs in complying with this requirement Centre has put in a system that accounts can be opened without needing to physically visit Delhi.

CRITICISM OF THE AMENDMENT

1. Provisions are blanket in nature.
2. It is wrong to colour all foreign contributions as terror financing or for illegal activity such as money laundering.
3. Many Indian citizens want to contribute for the development of their country.
4. Against equality: Policy keeps making access to FDI easier at the same time foreign contribution regulations are being made harsher.
5. Choosing only one bank, one branch in one city for foreign contribution does not seem logical.
6. Centre cannot have a free pass in the name of national security. Centre needs to show and establish how national security is affected and how it is subserving terrorism etc.
7. The blanket ban on transfer of assets such as money and donations
8. Many NGOs are doing exceptional work across the country and they are harmless as they have never been found to be violating any legislation.

WAY FORWARD

A balance must be drawn between object sought to be achieved by legislation and rights of the voluntary organisations to have access to have foreign funds.

►PRESSURE GROUPS

Pressure groups are organisations that attempt to influence government policies but do not directly control or share political power. These organisations are formed when people with common occupation, interest, aspirations or opinions come together to achieve a common objective.

The recent withdrawal of controversial farm laws has highlighted the role of pressure groups in our polity and democratic functioning.

THERE ARE TWO TYPES OF PRESSURE GROUPS (PG):

Sectional Pressure Groups

- Promoting the interests of a particular section or group of society such as trade unions, business associations or professional bodies.
- Their principal concern is the betterment and well-being of their members.
- E.g.: Women's Rights Organisation, India against Corruption, FICCI, All India Kisan Sabha etc.

Promotional Pressure Groups

- They promote collective rather than selective good and aim to help groups other than their own members.
- Example: a group fighting against bonded labour fights for those who are suffering under such bondage.
- E.g.: Backward and Minority Communities Employees Federation is largely made up of government

employees that campaigns against caste discrimination and addresses the problems of its members who suffer discrimination. But its principal concern is with social justice and social equality for the entire society.

PRESSURE GROUPS EXERT THEIR INFLUENCE BY

- Gaining public support and sympathy by carrying out information campaign and meetings
- Organising protest activities or strikes (at times with the support of industrialists) – forcing government to take note of the demands
- Lobbying state members and the Parliament via petitions, letters and deputations.
- Consulting with ministers or senior public servants.
- Hiring professional lobbyists by business groups to advance their corporate agenda.
- Taking legal action through injunctions or appeals to higher courts.
- Campaigning for, or opposing, certain candidates at elections.

PRESSURE GROUPS STRENGTHEN POLITY BY

- Provide platform to vulnerable sections in channelizing their grievances.
- Refine and shape the demands of various sectors of polity, society and economy.
- Acts as a channel of communication between government and sections of society.
- Pressure groups offer an alternative source of advice to the government.
- Promote debate and deliberations on important issues India's national interest.
- Holding government accountable and responsive to the needs of the citizens.
- Governments are better informed of the electorate's sensitivities to their specific policies.
- Overall strengthens Indian democracy by playing participatory role.

CONCERNS

- Forces the government to take measures which may be detrimental to national interests.
- The use of direct action by pressure groups such as strikes by unions, demonstrations, blockades, pickets can cause hardship to the community in general.

►SOCIAL AUDIT

The Ministry of Social Justice and Empowerment has formulated a scheme, namely Information-Monitoring, Evaluation and Social Audit (I-MESA) in FY 2021-22. Under this scheme, 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.

WHAT IS 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 Aawas 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.

NEED & BENEFIT OF SOCIAL AUDIT

The main reason for the push for social audit is the huge disconnect between what people want and what people get. As soon as social audit kicks in, it exercises its control over the policy developers and implementers in the following manner:

- A check on corruption: SA's uncovers irregularities and malpractices in the public sector and maintains oversight on government functioning, thus reducing leakages and corruption.
- Timely Monitoring, feedback and Course-correction measures on performance at local level.
- Accountability and transparency: Ensures accountability and transparency in working of local government bodies and reduces trust gap between people and local governments.
- Participative and democratic process: SA promotes participation of people in implementation of programs and makes people more forthcoming for social development activities.
- Identifies Gaps in Implementation - allows the civil society to identify the gap between the desired and actual impact of any project/program/service implemented.
- Strengthens functioning of Gram Sabha: SA gives voice and influencing power to the Gram Sabha, the lynchpin of rural governance structure.
- Generates demand for rural economy by highlighting governance gaps: Serves as the basis for framing the management's policies by raising demands in a socially responsible and accountable manner by highlighting the real problems.
- Strengthens Disadvantaged and Vulnerable Groups and helps in facilitating Good Governance.
- Encourages grass-root democracy by enhancing local participation.
- Improves and institutionalises professionalism: SA boosts professionalism in public bodies by forcing Panchayats to keep proper records and accounts of the spending made against the grants received from the government and other sources.
- Collective platform for Social Cohesion: SA provides a collective platform such as a social audit Gram Sabha, for people to express their common needs, resulting into social cohesion.

CHALLENGES OF SOCIAL AUDIT

- Lack of Infrastructure at ground level to address grievances made by public during scrutiny.
- Lack of administrative and political will in institutionalising social audit mechanisms.
- Lack of stringent penal action against those creating hurdles in the process.
- Lack of educated and well-informed citizenry to undertake regular audits.
- Lack of technical and managerial capacity such as book-keeping, accounting.
- Unwillingness of public officials at ground level to share the reality of developmental process.
- Lack of uniform process of social audit across states due to language and cultural barriers.
- No Benchmarking of Social Audit Mechanism for comparison purpose across districts.
- Difficult to gauge social impact assessment of government programs without any uniform or fixed criteria.
- For state officials, it is a time-consuming exercise – hence need for special officers at village level only for the purpose of Social Audit.

WAY FORWARD

Social audit as a transparent, participatory and active evaluation process has the potential to encounter the corruption that plagues anti-poverty programs. Thus, as a step towards good governance, social audit's concepts, approaches, strategies and adaptable methodologies need to be propagated and percolated.

CAG should develop mechanisms to conduct social audit of public welfare schemes.

►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.

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.
- 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 - Savings led microfinance model has now become the largest coordinated financial inclusion program in the world.
- Strengthening women empowerment as 90% of SHG's consist of women exclusively – Ex. 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.

IMPORTANT STEPS TAKEN BY NABARD TO PROMOTE SHGs

- Financing of Joint Liability Groups (JLGs) - JLGs basically are Credit groups of small/marginal/tenant farmers/ asset less poor who do not have proper title of their farmland. Regular savings by the JLG members is purely voluntary and their credit needs are met through loans from financial institutions and such loans could be individual loans or group loans against mutual guarantee. Apart from extending refinance support of 100% to the financing Banks, NABARD also extends financial support for awareness creation and capacity building of all stakeholders under the Scheme.
- NABARD Financial Services Ltd. (NABFINS) – NABARD aims to promote NABFINS as Model Microfinance Institution to set standards of governance among the MFIs.
- Micro Enterprise Development Program (MEDPs) - NABARD has been supporting need-based skill development programs (MEDPs) for matured SHGs which already have access to finance from Banks. MEDPs are on-location skill development training programs which attempt to bridge the skill deficits or facilitate optimization of production activities already pursued by the SHG members. Grant is provided to eligible training institutions and SHPIs to provide skill development training in farm/off-farm/service sector activities leading to establishment of micro enterprises either on individual basis or on group basis.
- Livelihood and Enterprise Development Programs (LEDPs) – Considering the limited impact of skill upgradation trainings, LEDPs was launched to conduct livelihood promotion programs in clusters through intensive training for skill building, refresher training, backward-forward linkages and handholding & escort supports. It also encompasses the complete value chain and offers end-to-end solution to the SHG members. Implemented on a project basis covering 15 to 30 SHGs in a cluster of contiguous villages where from SHG members may be selected.
- Scheme for promotion of Women SHGs (WSHGs) in backward & LWE districts of India - implemented across 150 backward and Left-Wing Extremism (LWE) affected districts of the country since March-April 2012. The scheme aims at saturating the districts with viable and self-sustainable WSHGs by involving anchor agencies who shall promote & facilitate credit linkage of these groups with Banks, provide continuous handholding support, enable their journey to livelihoods and take the responsibility for loan repayments. Under the Scheme, in addition to

working as an SHPI, the anchor agencies are also expected to serve as a banking / business facilitator for the nodal implementing banks. 'Women SHG Development Fund' has been set up to facilitate implementation of the scheme and to support cost of publicity, training & other capacity building initiatives.

- Collaboration with NRLM is being regularly maintained and enhanced for the support of SHG BLP. Coordinated efforts like conduct of National level seminars and workshops, mutual dialogues and capacity building of stakeholders on SHG BLP have now become very regular. Coordinated efforts in following areas have particularly proved immensely fruitful.

CHALLENGES FOR SHGs

- Information asymmetry results in SHG members unable to enter profitable ventures.
- Women members find it difficult to break the shackles of patriarchy and rise above their social obligations.
- Non-co-operative Attitude of the Financial Institutions towards SHGs in availing finance.
- Sustainability and the quality of operations of the SHGs have been a matter of considerable debate.
- Exploitation by Strong Members within SHG: In many SHGs, strong members try to earn a lion's share of the profit of the group, by exploiting the ignorance and illiterate members.

CHALLENGES DURING COVID

- During COVID, SHGs faced challenges in their regular functioning – regular meeting to evolve measures for savings.
- Lack of earnings during COVID has dented economic sustainability of SHG-BLP has resulted in defaults and increased bad debts.

WAY FORWARD

- Despite the challenges, Women Self Help Groups in India have risen to the extraordinary challenge of COVID-19 pandemic by meeting shortfalls in masks, sanitizers and protective equipment, running community kitchens, fighting misinformation and even providing banking and financial solutions to far-flung communities.
- Women SHGs should now avail the opportunity of digital banking and expand their revenues by undertaking digital marketing of products through Amazon, Flipkart, etc.
- Thus, steps should be taken to promote digital and financial literacy for SHGs and banks and financial institutions should extend facility in repayment of bank loans.

►COOPERATIVES

Supreme Court using 'Doctrine of Severability' has struck down parts of Constitution 97th Amendment which deals with co-operative societies as it did not follow the process laid down in Article 368(2) of the Indian Constitution.

CONSTITUTION NINETY SEVENTH AMENDMENT

- Article 19(1)(c): Freedom to form cooperatives
- Article 43B in DPSC (PART IV) cast duty on state promotion of voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies.
- PART IXB – was added in the constitution which provided for Article 243ZH to Article 243ZT for professional management of co-operative societies by state legislature, determining the functioning and tenure of members of Board along with their regular election, audit and accounts, maximum number of directors in each society, reservation for seats for SCs, or STs, and women, multi-state co-operatives and application of Part IX-B to Union Territories.
- Did not define cooperatives.

REASON TO ENACT CONSTITUTION 97TH AMENDMENT

In the Constitution, cooperatives are expressly provided in State List and kept expressly outside the realm of Union List. It was expected that cooperatives will function under the State Laws.

Cooperatives were seen as an alternative model of economic growth as a middle path between the private sector and public sector. Its growth was envisaged for securing social and economic justice and equitable distribution of the fruits of development. Some of the challenges facing the cooperative sector are:

- Regional disparity in cooperative development: Cooperative structure has managed to flourish only in a handful of States like Maharashtra, Gujarat, Karnataka etc. Currently, central government provides equity and credit support to cooperative societies. This benefit thus gets concentrated in few states where cooperatives have developed. Regions where cooperatives are developed are already relatively well-off states; there is a need to focus on development of cooperatives in poorer parts of the country.
- Issues of membership: Inability to ensure active membership, speedy exit of non-user members, lack

of member communication and awareness building measures

- Governance challenges: Serious inadequacies in governance including that related to Boards' roles and responsibilities
- Cooperatives not seen as economic institutions: A general lack of recognition of cooperatives as economic institutions both amongst the policy makers and public at large
- Inability to attract and retain competent professionals leading to poor services and low productivity.
- Lack of efforts for capital formation particularly that concerning with enhancing member equity and thus member stake
- Lack of cost competitiveness arising out of issues such as overstaffing, a general top-down approach in forming cooperatives including the tiered structures
- Politicization and excessive role of the government chiefly arising out of the loopholes and restrictive provisions in the Cooperative Acts
- Irregular elections make office bearers remaining in office indefinitely, reducing their accountability and increase corruption.

Thus, need was felt for fundamental reforms in the functioning of co-operatives to:

- Revitalize the institutions to ensure their contribution in the economic development of the country.
- Serve the interests of members and public at large.
- Ensure their autonomy, democratic functioning and professional management.

SC JUDGEMENT IN RAJENDRA N SHAH CASE

- Earlier Gujarat High Court had ruled that, "co-operative societies" are placed under Entry 32 of the State List and hence was within state's jurisdiction to legislate. So, any change in that status by the Centre would require the ratification by at least one-half of the state legislatures as per Article 368(2) of the Constitution. It also affected federal principles and was against the basic structure of the Constitution. Thus, 97th Constitutional Amendment was invalidated.
- Supreme Court upheld the Gujarat High Court judgment but did not strike down Part IXB in its entirety. The Court by applying Doctrine of Severability held Article 243ZI to 243ZQ as unconstitutional leaving aside Article *243ZR and 243ZS.*
- Supreme Court struck down part IX B of the Constitution related to cooperative societies but declared the part related to multi-State cooperative societies both within the various States and in the Union territories of India as valid.
- The Court also referred Kihoto Hollohan judgment where Doctrine of Severability was applied on Tenth Schedule to render Paragraph 7 of Tenth Schedule of the Indian Constitution as invalid.
- However, the minority judgment questioned the independent workability of Article 243ZR & 243ZS without other provisions of PART IXB and declared the entire PART IXB as constitutionally invalid.

SUGGESTIONS FOR STRENTHENING COOPERATIVES

1. States should amend their cooperative legislations in the spirit of Model Cooperatives Act proposed by Brahm Prakash committee. Such a law should be member centric and based on cooperative principles.
2. For enhancing member participation: Definition of 'Active members' should be introduced in cooperative legislations, right to vote and contest should be given only to active members and enabling provision for speedy exit of non-user members.
3. Effectiveness of Boards: Cooperative legislations should clearly define role and responsibilities of cooperative's board vis-à-vis that of paid executives/managers.
4. Enhancing Professionalism: Cooperatives should be enabled for co-option of experts, subject matter experts. Also, any person elected as a Director on the Board should undergo a set of prescribed training programs.
5. Checking Politicisation: Cooperatives law should provide for rotational retirement of Board members and restriction on contribution to political and religious organisations.
6. Enhancing competitiveness: Cooperatives should have freedom to decide their organizational structure and staffing policies, they should be enabled to form joint ventures, partnerships etc. with cooperatives and other corporates and have flexibility in business decisions, mobilizing funds etc.
7. State Governments should put in place a policy framework for facilitating the functioning of cooperatives with free and fair means. States should refrain from deputing officers to occupy key positions in cooperatives.
8. Full income tax exemption is therefore recommended for all cooperative societies. This will be a major incentive for the cooperatives to strengthen their capital base.

9. The office of registrar of cooperatives should be restructured as a developmental office which handholds and guides cooperatives.

   A well-functioning cooperative sector can work wonders especially in agricultural and rural development sector. The example of Amul needs to be kept in mind. Steps need to be taken to empower cooperatives further.

►CITIZENS' CHARTER

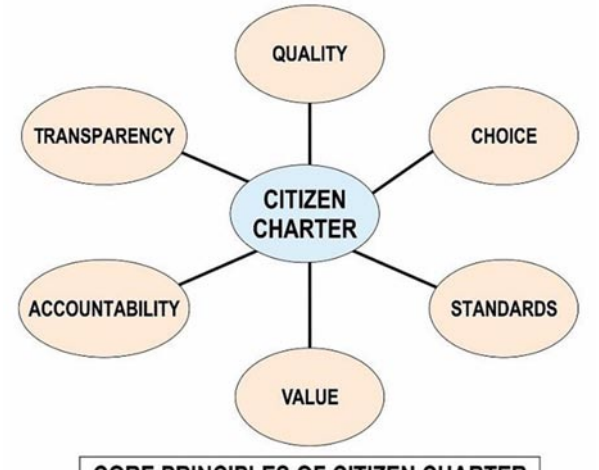
A Model Panchayat Citizens Charter/ framework for delivery of the services across the 29 sectors, aligning actions with localised Sustainable Development Goals (SDGs) has been prepared by Ministry of Panchayati Raj (MoPR) in collaboration with National Institute of Rural Development &Panchayati Raj (NIRDPR). 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



CORE PRINCIPLES OF CITIZEN CHARTER

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
   - Opening channel to receive citizens' inputs to improve service delivery
   - Charter to publicly declare information on citizens' entitlements
   - making citizens better informed and
   - Empowering them to demand better services.
2. Service Delivery Preparedness and achievement of Results
   - Learning to manage key inputs for good service delivery
   - Building capacity to continuously improve service delivery
   - An organization can have an excellent performance in service delivery only if it is
   - Identify services rendered, the service delivery process, its control and delivery requirements.
3. Sound Public Grievance Redress Mechanism
   - Increased satisfaction of citizens through improved grievance redressal mechanism

- Determination of organisations' response to citizens' grievance should also improve continuously.

ROLE OF CITIZEN CHARTER IN PUBLIC ADMINISTRATION

- Provides for standards of Service Delivery to citizens
- Empowers citizens by creating a professional and customer-oriented environment for the delivery of services.
- Boosts accountability and transparency in the delivery of public services.
- Provides for Grievance Redressal mechanism for public institutions and offices.
- Enhance good governance by improving the effectiveness of organizations by having measurable standards.
- Augment quality of services delivered by incorporating an internal and external monitoring entity.
- Facilitates participatory democracy by making administration citizen centric.
- Promotes collaboration of all sections of community without any prejudice.
- Develops yardsticks for monitoring and evaluation of service delivery.

PROBLEMS WHICH STILL PERSISTS

- Considered as mere formality without any periodic evaluation of its implementation.
- It has become a routine activity of government department without any accountability.
- Workforce unaware about the content and spirit of the Charter for which it is envisaged.
- Lack of awareness campaigns to propagate the usage of citizens' charter.
- Unrealistic and impractical standards set by the government for delivery of services.
- Absence of periodic evaluation.
- Inadequate training to frontline functionaries.
- In majority of cases charters were not formulated through a consultative process.

WAY FORWARD

- Citizens and staff need to be consulted at every stage of formulation of charter.
- Orientation of staff about the salient features

Mandatory implementation of SEVOTTAM Model as recommended by Second ARC will help to improve Citizen Charters in India along with continuous evaluation of unaddressed citizens' grievances.

►UNINTENDED CONSEQUENCES OF ANTI-CORRUPTION LAWS

"Bribe-switching", a paper by American researchers Jamie Bologna Pavlik and Desiree Desier to describes about the unintended consequences of a strong anti-corruption law in United States. This can be applicable even for India.

WHAT IS GENERALLY PERCEIVED?

- When a strong anti-corruption law is implemented by the government, then corrupt activities including taking bribes by public servant decreases.
- It is also a general perception that decrease in corruption by public servants improves the economy and this is also reflected in improving GDP.

ON THE CONTRARY, THERE ARE UNINTENDED CONSEQUENCES OF STRICT IMPLEMENTATION OF ANTI-CORRUPTION LAWS

- No Decline in Corruption - There was no real decrease in the level of corruption among public officials as bribe taking activities shifts to illegal market due to strict implementation of such laws.
- Cost of Receiving Bribe - Receiving of bribes by the public servant either through legal market or illegal markets depends on the relative cost of receiving bribes through either route (legal or illegal).
- Resorting to Illegal Market - When the cost of extracting bribes in the legal market increases due to strict anti-corruption laws, this makes public officials to resort to the illegal market for obtaining bribes.
- Impact – Pendency in getting approval for projects due to lack of payment of bribe. This makes officials to focus their efforts on approving projects in the illegal market that bring them bribe revenue at a lower risk of getting caught red-handed.
- Thriving Illegal Economy – Due to strict implementation of anti-corruption laws, public officials resorts to illegal market to maximise bribery revenue. This has significantly increased the size of black economies in United States.

►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 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 wellbeing 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 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.

WHAT NEEDS TO BE DONE?

- Implement Law Commission's 277th Report - Wrongful Prosecution (Miscarriage of Justice): Legal Remedies – By Enacting Specific Legal Provision - for redressal of cases of wrongful prosecution to provide relief to the victims of wrongful prosecution in terms of monetary and non-monetary compensation (such as counselling, mental health services, vocational / employment skills development etc.) within a statutory framework.
- Enact Law to Compensate in cases of Miscarriage of Justice - Internationally, the issue of wrongful prosecution, incarceration, and conviction of innocent persons is identified as 'miscarriage of justice' that takes place after a person has been wrongfully convicted but is later found to be factually innocent basis a new fact/proof coming to light. The International Covenant on Civil and Political Rights ('ICCPR', ratified by India) also creates an obligation on the State parties to enact a law to compensate the victims of such miscarriage of justice.
- Wrongful Prosecution' to be the standards of Miscarriage of Justice – Law Commission's report looks at the issue from the context of Indian Criminal Justice system and recommends 'wrongful prosecution' to be the standards of miscarriage of justice, as against 'wrongful conviction' and 'wrongful incarceration'.
- 'Wrongful prosecution' would include cases where the accused is not guilty of the offence, and the police or the prosecution engaged in some form of misconduct in investigating or prosecuting the person. It would include both the cases where
  - the person spent time in prison as well as where he did not; and
  - cases where the accused was found not guilty by the trial court or where the accused was convicted by one or more courts but was ultimately acquitted by the Higher Courts.
- Need to establish a Special Court in each district to adjudicate upon the claims for compensation for wrongful conviction. The Cause of Action for such compensation shall be malicious prosecution or prosecution done in bad faith i.e., malafide.
- Compensation provided must be in the form of monetary value and non-monetary value (pecuniary and non-pecuniary) to rehabilitate the victims back in the society. Non-Pecuniary assistance includes

services such as counselling, mental health services, vocational or employment skill development and similar activities.

CHALLENGES IN IMPLEMENTING SUCH A LAW

- Determining Compensation for different types of cases and for number of years spent in jail for wrongful prosecution.
- Inclusion of Under-trials in the compensation mechanism.
- Determining a uniform compensation across rich and poor states in India.
- Delay in providing compensation as it will also be subject to litigation and appeal.
- Providing the money for compensation – will it provided by the centre or respective state governments.

WAY FORWARD

- Recommendations of Law Commission must be considered and a law must be enacted to provide for compensation in case of miscarriage of justice.
- Compensation mechanism needs to be discussed with state governments for sound implementation.

►STANDING COMMITTEE CRITICISES PROGRAMS FOR DENOTIFIED TRIBES

Department Related Parliamentary Standing Committee on Social Justice and Empowerment has criticised the functioning of the development program for de-notified, nomadic and semi-nomadic tribes.

DENOTIFIED TRIBES

- 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.
- These Acts were repealed based on the recommendation of *Ananthasayanam Ayyangar Committee*, 1949 by the Indian Government in 1952, and these communities were accordingly "De-Notified".
- In India, roughly 10% of the population is Denotified and Nomadic. *Renke commission* estimated their population to be around 10.74 crore based on 2001 Census.
- While the number of Denotified Tribes is about 150, the population of Nomadic Tribes consists of about 500 different communities. A few of these communities which were listed as de-notified were also nomadic.
- Nomadic and semi-nomadic communities are defined as those who move from one place to another rather than living in one place all the time.
- Most Denotified Tribes (DNTs) are spread across the Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) categories. However, some DNTs are not covered in any of the SC, ST or OBC categories.
- Ministry of Social Justice and Empowerment had notified in March 2019 to constitute *Development and Welfare Board for Denotified, Nomadic and Semi-Nomadic Communities* chaired by Sh. Bhiku Ramji Idate.

HIGHLIGHTS OF THE REPORT OF PARLIAMENTARY COMMITTEE ON SOCIAL JUSTICE & EMPOWERMENT

- Budgetary Allocation Remains Unutilised - Scheme for economic empowerment of DNT communities formulated to provide coaching, health insurance, facilitate livelihood and financial assistance for construction of homes for the members of DNT, with total outlays of Rs 200 crore for the period of five years from 2021-22 to 2025-26 were unutilised. However, due to non-spending of even a single rupee in 2021-22 has resulted in reduction of budgetary allocation to Rs 28 crore for 2022-23 against the budgetary allocation of Rs 50 crore for 2021-22.
- Delay in Scheme Formulation for welfare of Denotified, Nomadic and Semi Nomadic communities.
- No Decision Taken by Department to place DNTs under SC/ST/OBC Categories.

►NATIONAL COMMISSION FOR DE-NOTIFIED, NOMADIC AND SEMI-NOMADIC TRIBES

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.

MAIN RECOMMENDATIONS OF (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 and local bodies so that DNT/NT/SNT do not get differential treatment and benefits of mainstream schemes reach to DNT/NT/SNT communities.
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 & CONCERNS OF DE-NOTIFIED, NOMADIC AND SEMI-NOMADIC TRIBES

- No Permanent Commission for DNTs: The government felt that setting up a permanent commission would be against the mandate of existing commissions for SCs (National Commission for Scheduled Castes), STs (National Commission for Scheduled Tribes) and OBCs (National Commission for Backward Classes). The government therefore set up the DWBDNCs under the Societies Registration Act, 1860 under the aegis of Ministry of Social Justice and Empowerment for the purpose of implementing welfare programs.
- Lack of Constitutional Support: These tribes somehow escaped the attention of our Constitution makers and thus got deprived of the Constitutional support unlike Scheduled Castes and Scheduled Tribes.
- No categorisation: A number of these tribes are categorised under SC, ST and OBC, many are not. However, 269 DNT communities are not covered under any reserved categories.
- No money spent in 2021-22 under the Scheme for economic empowerment of DNT communities. Budgetary allocation has been reduced to Rs 28 crore for 2022-23 against the budgetary allocation of Rs 50 crore for 2021-22.
- 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.
- There are issues with the functioning of the Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities (DWBDNC).

MEASURES FOR THEIR WELFARE

1. The National Commission for De-notified, Nomadic and Semi-Nomadic Tribes (NCDNT) was constituted in 2006 - Renke Commission.
2. Scheme for economic empowerment of DNT communities: It has been formulated to provide coaching, health insurance, facilitate livelihood and financial assistance for construction of homes for the members of DNT.
3. National Commission for Denotified Nomadic and Semi-Nomadic Tribes, chaired by Bhiku Ramji Idate has submitted its report in May 2018. The commission has identified these communities state-wise, assessing their development status and has recommended ways to uplift them. The commission recommended the setting up of a permanent commission for these communities.
4. The Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities (DWBDNC) has been set up in 2019 under the Societies Registration Act, 1860 of Ministry of Social Justice and Empowerment. A committee has been set up by the NITI Aayog to complete the process of identification.
5. Ethnographic studies of DNCs are being conducted by the Anthropological Survey of India, with a budget of Rs 2.26 crore sanctioned.
6. Schemes for DNT: The Ministry of Social Justice and Empowerment is implementing the following schemes for the welfare of the DNTs:
   (i) Dr. Ambedkar Pre-Matric and Post-Matric Scholarship for DNTs. This Centrally Sponsored Scheme was launched w.e.f. 2014-15 for the welfare of those DNT students who are not covered under SC, ST or OBC.
   (ii) Nanaji Deshmukh Scheme of Construction of Hostels for DNT Boys and Girls

►RIGHT TO INFORMATION ACT

(A) LEGISLATIVE INTENT OF RTI ACT

- 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.
  - Fulfils 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

(B) 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
  - 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

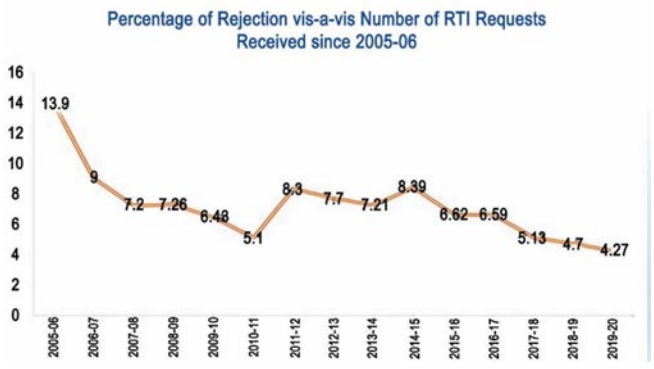
- Central Information Commission has come up with Annual Report for 2019-20.
- The Central and State Information Commissions shall prepare and forward yearly report to respective central and state governments about implementations of RTI Act.
- Information related to public authorities (Reply to RTI 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.

Increase in Rejection Rates

- The CIC's annual report covers more than 2,000 public authorities across the Central government as well as the union territories.
- An analysis of CIC macro-data from Central ministries shows that the Home Ministry had the highest rate of rejections, as it rejected 20% of all RTIs received.
- The Agriculture Ministry's rejection rate doubled from 2% in 2018-19 to 4% in 2019-20. The Delhi Police and the Army also saw increases in rejection rates.



Section 8	Exemption from disclosure of information affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence.
Section 9	Information can be denied if it involves an infringement of copyright subsisting in a person other than the State.
Section 11	Third Party Information
Section 24	RTI Act not to apply on intelligence and security organisations specified in the Second Schedule of the RTI Act.

(D) UNDERSTANDING 'STATE' & 'PUBLIC AUTHORITY'

STATE – ARTICLE 12	PUBLIC AUTHORITY – RTI ACT
• Definition of State under Article 12 is part of PART III – FUNDAMENTAL RIGHTS. • In the case of *Ajay Hasia v. Khalid Mujib Sehravardi*, the Supreme Court laid down the relevant tests to determine the existence of State agency or instrumentality: ○ If the entire share capital of the corporation is held by Government, it indicates that the corporation is an instrumentality or agency of Government. ○ Where the financial assistance of the State is so much as to meet almost entire expenditure of the corporation – reflects governmental character. ○ Whether the corporation enjoys a monopoly status which is State conferred or State protected. ○ Whether the State has a 'deep and pervasive' control over it. ○ If the functions of the entity are of public importance and closely related to governmental functions. ○ If a department of Government itself is transferred to a corporation. 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.	• RTI Act, 2005 gives citizens the right to secure access to information under the control of public authorities, to promote transparency and accountability in the working of every public authority. • RTI Act explains "Public Authority" as any authority or body or institution of self-government established or constituted— ○ by or under the Constitution ○ by any other law made by Parliament ○ by any other law made by State Legislature ○ by notification issued or order made by the appropriate Government, and includes any i. Body owned, controlled or substantially financed. ii. Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government. • *M.P. Varghese v. Mahatma Gandhi University* - Kerala High Court observed that the definition of 'public authority' has a much wider meaning than that of the term 'State' under Article 12 of the Constitution. • The Court further observed that the definition of 'State' under Article 12 is primarily in relation to enforcement of fundamental rights through courts. • *Whereas the RTI Act, 2005 is for providing an effective legislative framework for "effectuating the right to information" as recognised under Article 19 of the Constitution.* • Thus, to fall within the concept of **public authority**, there must be certain nexus ***regarding control and***

	finance of public authority over the activity of *private body or an institution or an organisation.*

PUBLIC AUTHORITIES UNDER RTI

- Private University Receiving Significant Government Funding - The State Information Commission (SIC) in Odisha has declared Kalinga Institute of Industrial Training (KIIT), a deemed to be university as a "public authority" under the Right to Information Act, 2005 as it receives significant funds from state government as per CAG's Report.
- NGOs Substantially Financed by Govt. - Supreme Court has held that non-governmental organisations (NGOs) "substantially" financed by the government fall within the preview of Right to Information Act, 2005. The court defined "substantial" as a "large portion" of amount. SC held that NGOs which receive considerable finances from the government or are essentially dependent on the government fall under the category of "public authority" defined in Section 2(h) of the Right to Information (RTI) Act of 2005.
- Office of CJI under RTI - Five Judge Bench of Supreme Court of India in a unanimous decision held that the office of Chief Justice of India is a public authority. The Court held that judicial independence and accountability goes hand in hand and transparency of office of CJI does not undermine judicial independence. The Court however held that RTI cannot be used as a tool of surveillance and information sought must not violate CJI's Right to privacy.
- Political Parties - CIC in its 3rd June 2013 decision has ascertained that Political Parties are also Public Authorities because they fulfil the criteria defined in the RTI Act for a body to be declared as public authority. However, political parties have refrained from providing information under RTI Act.

WHY POLITICAL PARTIES SHOULD COME UNDER RTI?

- Substantially funded by taxpayer's money
- Political parties are provided free airtime on state owned television, Doordarshan, and radio, Akashwani during elections.
- Election Commission provides free of cost Electoral Rolls to Political Parties.
- Income Tax Exemptions to Political Parties under Section 13A of Income Tax Act.
- Spending by state on various facilities and activities of political parties including security of candidates during elections.
- Disclosure of information by political parties will serve larger public interest as parties fights election and hold power in the government.
- According to NCRWC - Political parties are indispensable to any democratic system and play the most crucial role in the electoral process in setting up candidates and conducting election campaigns.
- Are Public Authorities under CIC's control? - If an organisation comes under RTI it does not mean that the organisation in under the control of the Information Commission. The Commission's mandate is merely to ascertain fulfilment of RTI's objectives and ensure provision of information sought by citizens unless such information is prohibited from being disclosed under RTI Act. Even the President's Secretariats, Prime Minister's Office and Secretariats of both the houses of Parliament are currently under the RTI. Therefore, being under the RTI does not imply that these highest institutions of our democracy are under the control of CIC.

BENEFITS OF RTI ACT

- Accountability - Empowers Citizens to hold government accountable for non-performance of their duties by providing citizens access to government files and records.
- Exposes acts of corruption and scandals - egg: Adarsh Housing Society Case, 2G case, Commonwealth Games Case etc.
- Allows citizens to participate in decision making process and shape public opinion through access to important information.
- Helps marginalised and vulnerable sections in demanding their basic rights and access to important government services and welfare schemes.
- Discloses steps taken by governments in times of crisis – e.g.: food, medicines, healthcare facilities provided during pandemic or disasters, steps taken during COVID, natural disasters.
- Filing of writ petitions in Courts against instances of misgovernance, non-implementation of various rules or laws or even schemes, lack of access to government services etc.
- Expose extent of criminalisation of politics and helped in de-criminalising Indian politics through important SC judgments
- Transfer of Funds through Electoral Bonds

- RTI Act has ensured application of Article 19 of Universal Declaration of Human Right.

CONCERNS WITH RTI ACT

- RTI Amendment 2019:
  - Removed security of tenure of Central and State Chief Information Commissioner and other Information Commissioners – which earlier was fixed under RTI Act.
  - Salary, allowance and terms of service to be prescribed by central government. Earlier it was at par with Chief Election Commissioner and Election Commissioner.
- Low Awareness Levels particularly among marginalised sections about rules and process of RTI Applications and where to file them.
- Non-uniform RTI Rules & procedures across States, inconvenient mode and non-uniform fee across the States.
- Unsupportive attitudes of Public Information Officers (PIOs) are leading to unsatisfactory and poor-quality replies.
- Ritualistic approach' by First Appellate authority (FAA), huge pendency and leniency towards PIOs at Information Commission level.
- Intimidation and threat by the person in power and by political parties
- Ineffective record management system particularly in state field offices/ departments.
- Inadequate training to PIO & FAAs particularly on key order/judgments of Information commissions and courts.
- Increased workloads on PIOs due to understaffed positions of PIOs.
- Increasing RTI Appeals - Many State Information Commissions do not have sufficient Information Commissioners lead to piling of RTI Appeals.

RIGHT TO INFORMATION V. OFFICIAL SECRETS ACT

Union government prohibited retired officials of security and intelligence organisations from publishing anything about their work or organisation without prior clearance from the head of the organisation. Even serving civil servants are barred from expressing their opinion on policy matters and criticising government.

IMPORTANT PROVISIONS OF OFFICIAL SECRETS ACT

- The OSA, 1923 broadly deals with two aspects:
  - Penalty for Spying or espionage, dealt with in Section 3 of the Act.
  - Disclosure of other secret information of the government, which is dealt with in Section 5.

    Under Section 5, both the person communicating the secret information, and the person receiving the information, can be punished by the prosecuting agency.
- OSA targets officials and civilians who have documents/code/materials etc. which can be classified as "secret information."
- Secret Information - The secret information can be any official code, password, sketch, plan, model, article, note, document or information.
- Since the classification of secret information is so broad, it is argued that the colonial law is in direct conflict with the Right to Information Act.
- Spying or leaking information from prohibited place is also punishable under OSA, 1923. Prohibited Place as per OSA can include the following:
  - Any establishment of military, defence, naval or air force.
  - Military Telegraph, Wireless Communication or any channel of communication declared as prohibited place by the government.
  - A place storing munitions of war, sketch, model, plan etc. Against enemies or otherwise.
  - Any channel of communication through land, water, sea declared as prohibited place.
  - Any place used for gas, water or electricity work declared as prohibited place
  - Such other place declared by the government.

OBSERVATION OF SUPREME COURT - RTI V OSA

- The issue was raised in the matter of Rafael Jets. The Court held that RTI Act confers on ordinary citizens the 'priceless right' to demand information even in matters affecting national security and relations with a foreign state.
- Referring to Section 8(2) of the RTI Act, Court held that the government cannot refuse information if disclosure in public interest overshadows certain 'protected interests.
- SC pointed out three provisions of RTI Act, 2005 which clearly overrides the OSA in certain situations:
  - Section 22 of the RTI Act declares that the RTI will have an "overriding effect" over OSA, 1923.
  - Section 24 mandates even security and intelligence organisations to disclose information on corruption and human rights violations.

- Section 8(2) compels the government to disclose information "if public interest in disclosure outweighs the harm to protected interests.

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.

►POLICE REFORMS IN INDIA

All social, human and economic development depends on the rule of law and maintenance of law and order is a critical function of the government. In this backdrop, the need for police reform is ever more imperative because of the pace with which our society is moving. Our police still functions on feudal style and is still governed by the Police Act 1861 of British times which was authoritarian in nature as it was made in the aftermath of the 1857 Sepoy Mutiny.

IMPORTANCE OF FUNCTIONING OF POLICE

- Police is under State List under the Seventh Schedule of the Indian Constitution and accordingly state government enjoys jurisdiction over the functioning of police and overall law and order in the society. The transfer and posting also lies in the hand of Home Ministry of the state government.

State List

Entry 1 - Public order (but not including the use of any naval, military or air force or any other armed force of the Union or of any other force subject to the control of the Union or of any contingent or unit thereof in aid of the civil power).

Entry 2 - Police (including railway and village police) subject to the provisions of entry 2A of List I.

Union List

Entry 2A - Deployment of any armed force of the Union or any other force subject to the control of the Union or any contingent or unit thereof in any State in aid of the civil power; powers, jurisdiction, privileges and liabilities of the members of such forces while on such deployment. *[Entry 2A is inserted by Constitution (Forty-second Amendment) Act, 1976]*

IMPORTANT STEPS TAKEN IN INDIA ON POLICE REFORMS

- Gore committee on police training (1971-73) - recommended enlarging the content of police training from law and order and crime prevention to a greater sensitivity and understanding of human behaviour.
- National police commission 1977 - recommended insulating the police from illegitimate political and bureaucratic interference.
- Padmanabhaiah Committee 2000 - recommended that constables, and the police force in general, should receive greater training in soft skills (such as communication, counselling and leadership) given they need to deal with the public regularly.
- The Police Act Drafting Committee (or Soli Sorabjee Committee) - drafted a new Model Police Act to replace the colonial 1861 Police Act.

PRAKASH SINGH JUDGEMENT – 2006

Prakash Singh, former Director General of Police filed a petition in Supreme Court in the year 1996 and sought major changes to the police structure. Supreme Court gave the final verdict in 2006 where it directed states and UTs to comply with seven binding directives on police reforms.

These directives result in institutional and structural reforms in police in India. They are:

1. Constitution of a State Security Commission - as a watchdog body to oversee the functioning of the police, with its recommendations being binding on the State Government.
2. Selection of State DGP from out of a panel prepared by UPSC, and provision for a minimum tenure of two years for the DGP so selected, irrespective of his date of superannuation.
3. A minimum two-year tenure for other police officer, except under specified circumstances.
4. Separation of investigation from law and order, duly ensuring full coordination between the two wings.
5. Creation of Police Establishment Boards to deal with transfers, postings and other service-related matters of police officers, including disposal of their appeals on being subjected to illegal or irregular orders.
6. Constitution of Police Complaints Authorities at the State and District levels to look into complaints against police officers.
7. Constitution of a National Security Commission at the Union level to prepare panels for selection of Chiefs of Central Police Organisations and to review measures to upgrade their effectiveness, etc.

IMPORTANCE OF SEPARATION OF INVESTIGATION & LAW AND ORDER FUNCTIONS OF POLICE

- Investigations are poorly mounted, slow, done by inadequately trained and unspecialized staff and frequently subject to manpower deflection into other pressing law and order duties. Both investigation and law and order are vital and specific police functions.
- To encourage specialization and upgrade overall performance, the Court has ordered a gradual separation of investigative and law and order wings, starting with towns and urban areas with a population of one million or more.
- It is felt that this will streamline police functioning, ensure speedier and more expert investigation and improve rapport with the people.

EFFORTS MADE AFTER FILING OF PIL BY PRAKASH SINGH ON POLICE REFORM

- New committee under the chairmanship of Julio Ribeiro in 1998 was constituted. This was followed by further committees like Padmanabhaiah, Malimath committee, Soli Sorabjee committee.
- Soli Sorabjee Committee submitted Model Police Act in 2006, which was circulated to all states in 2006. Many states have passed new laws or amended their existing acts considering this new model law.
- Model Police Act, 2006 differentiates between core and non-core functions of police.
    - Core functions mean duties related to sovereign functions of the State including arrests, search, seizure, crime investigation, crowd control and allied functions that can only be performed by the police as the agency of the State.
    - Non-Core Functions: Any other functions apart from core functions performed by the police shall be considered as non-core functions of police.

SC ALSO SET UP THREE MEMBER K.T. THOMAS (2008)

- To implement decisions of Prakash Singh, Supreme Court in 2008 set up a three-member Monitoring Committee chaired by former SC Judge K.T. Thomas with a two-year mandate to examine compliance state by state and report back to it periodically.
- The committee submitted in 2010 that no state fully complied with the SC and expressed dismay over the total indifference of police towards reforms in its functioning.

RECENT DEVELOPMENTS

- Government has reviewed Model Police Act, 2006 and accordingly has drafted Draft Model Police Bill, 2015. The drafting committee has tried to incorporate the essence for making police more responsive, efficient and citizen friendly.
- Most of the states passed new laws or amended their existing laws considering Model Police Act, 2006 drafted by Soli Sorabjee Committee.
- In 2018, Supreme Court restrained state governments from appointing Director-General of Police (DGP) without first consulting the Union Public Service Commission (UPSC).
- The State government concerned has to send to UPSC the names of the probable officers to be appointed as DGP three months before the incumbent DGP is to retire. This judgment was in line with the recommendations given in Prakash Singh Judgment.
- In 2020 - A five-member Committee for Reforms in Criminal Law has been set up by the Union Ministry of Home Affairs *chaired by the vice-chancellor of National Law University, Delhi - Balraj Chauhan.* The mandate of the committee is to *recommend reforms in the criminal laws of the country i*n a principled, effective and efficient manner, which ensures the safety and security of the individual, the community and the

nation and which prioritizes the constitutional values of justice, dignity and inherent worth of the individual.

►RECOMMENDATIONS OF MALIMATH COMMITTEE

DUTY OF STATE – PROTECT LIFE AND LIBERTY

- State's duty to ensure rights, liberty and peace of citizens including freedom from crime - The State has to give protection to persons against lawlessness, disorderly behaviour, violent acts and fraudulent deeds of others. Liberty cannot exist without protection of the basic rights of the citizens by the Government.
- Successful guarantee of basic rights reflects in people's confidence in the criminal justice system.
- Criminal Law a Relation between Citizen and State - Hence, the purpose of such reform must be to transform the approach towards criminal justice by re-classification of offence to recognise and classify crimes done in the present with an eye on the future.
- Identification of rights of victims of crime – thrust in reform must be given to introducing victim and witness protection scheme, use of victim impact statements, advent of victim advocacy, increased victim participation in criminal trials, enhanced access of victims to compensation and increased emphasis on victims in the criminal justice system.

TERMS OF REFERENCE OF MALIMATH COMMITTEE

The Committee on Reforms of the Criminal Justice System was constituted by the Government of India, Ministry of Home Affairs in the year 2000, to consider measures for revamping the Criminal Justice System. The terms of reference for the Committee were:

- Examine Fundamental Principles of criminal jurisprudence: To examine the fundamental principles of criminal jurisprudence, including the constitutional provisions relating to criminal jurisprudence and see if any modifications or amendments are required.
- Re-writing Criminal Laws: To examine in the light of findings on fundamental principles and aspects of criminal jurisprudence as to whether there is a need to re-write the Code of Criminal Procedure, the Indian Penal Code and the Indian Evidence Act to bring them in tune with the demand of the times and in harmony with the aspirations of the people of India.
- Reforming Judicial Process: To make specific recommendations on simplifying judicial procedures and practices and making delivery of justice to the citizens closer, faster, uncomplicated and inexpensive. To suggest sound system of managing, on professional lines, the pendency of cases at investigation and trial stages and making the Police, the Prosecution and the Judiciary accountable for delays in their respective domains.
- Developing Synergy: To suggest ways and means to develop synergy between judiciary, prosecution and the police as such synergy is necessary to restore the confidence of common man in the Criminal Justice System by protecting the innocent and the victims of crime and by punishing without sparing those guilty of committing crime.
- Federal Crime: To examine feasibility of introducing the concept of "Federal Crime" which can be put on List I in the Seventh Schedule to the Constitution.

RECOMMENDATIONS BY MALIMATH COMMITTEE

- Following aspects of Inquisitorial System: Adopting some important features of Inquisitorial System into our Adversarial system such as involvement of Court in investigation process to search for truth, to assign a pro-active role to Judges, to give directions to investigating officers and prosecution agencies in matter of investigation. However, Committee on balance felt that a fair trial and fairness to the accused is better protected in the adversarial system.
- In Inquisitorial system, members of judiciary participate in investigation process whereas in Adversarial system, judiciary does not participate in investigation process as it is done solely by police or a separate agency.
- Right to remain Silent: An accused, in most cases is best source of information. So, the Committee felt that while respecting right of accused under Article 20(3), a way must be found to tap this critical source of information. As per committee, accused must file a statement to the prosecution disclosing his stand.
- Rights of Accused: As per Committee, all rights of accused flowing from laws and judicial decisions should be collected and put in a Schedule to the Code.
- Presumption of Innocence & Burden of Proof: To prove criminal cases, standard of proof has to be beyond reasonable doubt. Committee after careful assessment of standards of proof concluded that standard of proof beyond reasonable doubt presently followed in criminal cases should be done away with and recommended in its place a standard of proof lower than that of 'proof beyond reasonable doubt'

and higher than standard of 'proof on preponderance of probabilities'.

- Legal Services & Compensation to Victims of crime – Legal services to victims in select crimes may be extended to include psychiatric and medical help. Victim compensation is a State obligation in all serious crimes, whether the offender is apprehended or not, convicted or acquitted. This is to be organised in a separate legislation by Parliament. The Victim Compensation law will provide for the creation of a Victim Compensation Fund to be administered possibly by the Legal Services Authority. The law should provide for the scale of compensation in different offences for the guidance of the Court. It may specify offences in which compensation may not be granted and conditions under which it may be awarded or withdrawn.
- Investigation: Prompt and quality investigation is foundation of the effective Criminal Justice System. So, the committee has made following recommendations:
  - Investigation Wing should be separated from the Law-and-Order Wing of the police.
  - People involved in investigation must be trained in advanced technology, knowledge of changing economy, new dynamics of social engineering, efficacy and use of modern forensics etc.
  - National Security Commission and State Security Commissions at State level should be constituted, as recommended by the National Police Commission.
- Witness Protection: Witness who comes to assist the court should be treated with dignity and shown due courtesy. An official should be assigned to aid him. A law should be enacted for giving protection to the witnesses and their family members on the lines of the laws in USA and other countries.
- Making Perjury an offence: Giving false oath must be a criminal offence as it misleads courts in criminal cases.
- Re-classification of Offence: Committee feels that when reviewing Indian Penal Code, it may be examined whether it would be helpful to make a new classification into i) Social Welfare Code ii) Correctional Code, iii) Criminal Code and iv) Economic and other Offences Code.
- To remove distinction between cognizable and non-cognizable offences and making it obligatory on Police Officer to investigate all offences in respect of which a compliant is made. 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.
- Federal Crime: Following categories of crime can be declared as federal crime:
  - Terrorism and organised crime having inter-State and international ramifications.
  - Crimes in special maritime and territorial jurisdiction of India.
  - Murder of Head of State, Central Government Minister, Judge of the Supreme Court and internationally protected persons.
  - Frauds, embezzlement and cheating in nationalized banks/Central PSUs; Financial institutions.
  - Tax offences involving Union taxes like Income Tax, Customs, Central Excise, etc.
  - Counterfeit currency; money laundering.
  - Offences relating to art, treasures and antiquities
  - Offences relating to hijacking of aircraft/ships
  - Piracy on the high seas
  - Offences of Central Government employees under Prevention of Corruption Act and IPC
  - Offences by officers of All-India Services under Prevention of Corruption Act and IPC.
- Vacations for Courts: Considering large pendency of cases, Committee has suggested to reduce vacation in High Courts & Supreme Court in larger public interest.

►CUSTODIAL TORTURE

India requires a police force that is responsive and respected and not one that is feared, as is the case today. Recently Chief Justice of India highlighted threat to human rights and bodily integrity are the highest in police stations due to custodial torture and police atrocities.

CJI'S OBSERVATIONS

- The threat to human rights and bodily integrity are the highest in police stations.
- Custodial torture and other police atrocities are problems that still prevail in our society.
- Despite constitutional declarations and guarantees, the lack of effective legal representation at the police stations is a huge detriment to arrested/detained persons.

- To keep police excesses in check, dissemination of information about the constitutional right to legal aid and availability of free legal aid services is necessary.
- The installation of display boards and outdoor hoardings in every police station/prison is a step in this direction.
- If we want to remain a society governed by the rule of law, it is imperative for us to bridge the gap of accessibility to justice between the highly privileged and the most vulnerable.
- For all times to come, we must remember that the realities of socio-economic diversity which prevail in our nation cannot ever be a reason for denial of rights.

NATURE OF HUMAN RIGHT VIOLATIONS BY THE POLICE

- Non-Registration of FIR
- Misuse of Power of Arrest
- Misuse of Power to Shoot-to-kill Order
- Torture during police custody
- Custodial Deaths
- Custodial Rape and Sexual Harassment

REMEDIES NEEDED

- Generation of Human Rights Awareness among citizens – part of curriculum, media, awareness steps taken by NGOs and Civil Society.
- Need for Attitudinal Change among Police Officers – need to change colonial mindset
- Focusing more on forensic science to extract information than through torture and fear by locking up in police custody without warrants.
- Improving in service conditions for police personnel
  - appointing more police officers across the hierarchy
  - Reducing duty hours of the police personnel.
  - Need for weekly off among staffs on rotation basis.
  - Better pay scales to lower police officers.

INSTITUTIONAL ARRANGEMENTS

- Setting up human rights protection cells in each police station to register cases of human rights violations
- Establishing Monitoring Cells at Police headquarters
- Setting up District Human Right Authorities – coordinated with State Human Rights Commission.
- Installing CCTV Cameras in each police station and in cells – connected and coordinated through central control room at SP office.

IMPROVING PROFESSIONALISM

- Exposure to special education during service based on needs and professional demands.
- Qualitative Recruitment to judge professionalism apart from other key skills
- Professional recruitment with scientific methods will inculcate community driven approach. It will help improve existing police-community relations.
- Post Induction Transformation and Modification – Training plays an important role in the evolution, modification, transformation and stabilization of skills. Efforts should be made to reform the behaviour, attitude and responses of police probationers.
- Continuous Monitoring and evaluation of acquired professional standards during and after placements of police officers.
- Close and critical scrutiny of officers placed in fields and observes and note professional deficiency in handling cases as part of record.
- In service training from time to time for updating of skills, technology and professional behaviour.
- Scientific development and research outcomes in the areas of forensic science, investigation and police functioning across the world must be updated with Indian police officers.
- Replacing Old Police Act of 1861.
- Separation of Law Police from Order Police at all levels. Law police will look after detection of crime and prosecution of offenders. Order Police will look after prevention of crime and maintenance of order in society.
- Strict Observance of Code of Conduct – along with cultural revolution (suggested by retired IPS officer) – giving up corruption, third degree torture, unnecessary pride etc.
- Effective Functioning of Central Police Board – ensure professional transfer and postings (without any political or corrupt motive)
- System of reward and punishment among police officials based on professional behaviour.

►NEED FOR PRISON REFORMS

Indian prisons face three long-standing structural constraints: overcrowding, understaffing and underfunding. The inevitable outcome is subhuman living conditions, poor hygiene, and violent clashes etc. According to National Prisons Information Portal, as of now there are 6,20,001

prisoners in Indian jail. State of Uttar Pradesh and Bihar accounts for the maximum number of prisoners in jail. According to The Prison Statistics India – 2020 Report (published by NCRB), total number of prisons at national level has decreased from 1,351 in 2019 to 1,306 in 2020, having decreased by 3.3%.

WHAT IS A PRISON?

The 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***

ISSUES PLAGUING INDIAN PRISONS

1. Overcrowded Jails:

- Occupancy Rate means number of inmates staying in jails against the authorized capacity for 100 inmates.
- The overall occupancy rate of Indian prisons has decreased from 140% in 2007 to 118% in 2020. However, despite such a decline, even today the Indian prisons are overcrowded.
- Occupancy Rate for transgenders is the highest at 636.4%.
- The average occupancy rate of 118% does not reveal the true picture. Close to 21 states and UT have an occupancy rate of more than 100% out of which there are 9 states & UT whose occupancy rates hover above 120%.

2. Prisons Dominated by the Undertrials: As per Prison Statistics India 2020 Report - the number of undertrial prisoners has increased by 11.7% from 2019. Highest Number of Undertrials lodged in District Jail (50%), followed by Central Jails (36.1%) and Sub Jails (11.9%)

3. Unnatural deaths in Prison:

- Unnatural deaths include suicide, murder by inmates, death due to assault by outside elements, death due to firing, death due to negligence or excesses, accidental deaths inside prison, etc.
- Suicide under the category Unnatural deaths has been further subcategorized into the following modes: Hanging, Poisoning, Self-Inflicted Injury, Drug Overdose, Electrocution and Others.
- Prison Statistics Report 2020 - Among 189 un-natural deaths in prisons, Suicide (156) was the predominant cause followed by Accidental Deaths (8), Murder by Inmates (8), Deaths due to Firing (5), Execution (4), Deaths due to Assault by Outside Elements (3), Deaths due to Negligence / Excess (1) and Others (4)

4. Understaffing of the Prisons: As per Prison Statistics Report 2020, sanctioned strength of jail-staff was 87,961 while the actual strength was 61,296 as on 31st December 2020 due to vacancies not being filled up. So, there is a need to fill up the vacancies for prison staffs in India.

5. Judicial Backlogs

- The judicial system in India is under tremendous pressure - As of May 2022, over 4.7 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, 12.4% in High Courts, while nearly 1,82,000 cases have been pending for over 30 years.
- So, there is a need to reduce Disposal Time for Cases and better Case Clearance Rate (CCR).
- Disposal Time is measured as the time span between the date of filing and the date when the decision is passed.
- Case Clearance Rate is the ratio of the number of cases disposed of each year to the number of cases instituted in that year, expressed as a percentage. It is mainly used to understand the efficiency of the system in proportion to the inflow of cases.
- Both Disposal Time and CCR can be bettered by appointing more Judges in District & Subordinate Courts, High Courts and Supreme Court.

6. Systemic Discrimination

- There is rampant corruption in the prison system which results in discrimination based on economic situation of a prisoner.
- Socio-economically disadvantaged prisoners are deprived of basic human dignity and often subject to cruel torture.

7. Poor physical and mental Health: In prison the problem of the overcrowding, poor sanitary facilities,

lack of physical and mental activities, lack of decent health care, increase the likelihood of health problems. Further, mental health care has negligible focus in Indian prisons.

8. Lack of reformative approach: Absence of reformative approach in the Indian prison system has not only resulted in ineffective integration with society but also has failed to provide productive engagement opportunities for prisoners after their release.

STEPS FOR IMPROVE CONDITIONS OF PRISON

1. Follow New Prison Manual 2016:

- MHA has approved the New Prison Manual 2016, which aims at uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners across India.
- Approval of Prison Manual is based on Article 39A of the Constitution which calls for *free legal aid to the poor and weaker sections of society and seeks to ensure justice for all.*
- Guidelines to be followed as per Prison Manual 2016 includes:
  - Under Trial Review Committee to be set up in each district,
  - Earliest release of under trials as per the provision of law,
  - Empanelling competent lawyers for the under trials and appointment of jail visiting advocates.
  - Setting up of a legal aid clinic in every prison.
  - Improvement in the living conditions of jails specially for women,
  - Management Information System to be in place in all jails and
  - Legal literacy classes in prisons
  - Annual review of the implementation of the Model Prison Manual 2016.

2. Modernization of Prisons scheme

- The scheme for modernization of prisons was launched in 2002-03 with the objective of improving the condition of prisons, prisoners and prison personnel.
- Various components included construction of new jails, repair and renovation of existing jails, improvement in sanitation and water supply etc.

3. Implement E-Prisons Project:

- *Prison is a State subject* and modernization of prisons is undertaken by respective State Governments.
- MHA supports the States/UTs in *implementing the E-Prisons project* that aims to introduce efficiency in prison management through digitization.
- The E-prisons project supplements the Prisoner Information Management system (PIMS), developed by *National Informatics Centre*, which provides a centralized approach for recording and managing prisoner information and generating different kinds of reports.
- The PIMS records Prisoner's Basic Details, Family Details, Biometrics (fingerprint), Photograph, Medical Details, Prisoner Case History, Prisoner Movements, Punishment details etc.
- The availability of these details on an electronic platform will be useful to track the status of prisoners and smooth functioning of the prison system.
- National Legal Services Authority had launched a web application in 2017 to facilitate undertrial prisoners for providing them free legal services. The objective is to make the legal services system more transparent and useful for all authorities to monitor the provision of legal aid to prison inmates to ensure that no prisoner goes unrepresented right from the first day of his production in the Court.

4. Some Under trials should be released on Bail

- In 2017, 268th the Law Commission of India had recommended that under trials who have completed one third of their maximum sentence for offences attracting up to seven years of imprisonment be released on bail.

5. Legal Aid Facility to Undertrial Prisoners

- MHA has issued an advisory to all States and UTs informing them about the Legal aid facility available to under-trial prison inmates.
- Besides this, Model Prison Manual 2016, which has a dedicated chapter on Legal Aid, provides detailed information about the legal services available to prison inmates and free legal services available to them.

6. Special courts

- Special fast-track courts should be set up to deal exclusively with petty offences which have been pending for more than five years.
- Such fast-track Courts can hear petty offences where imprisonment for an offence does not exceed 3 years.

7. Capacity building of prison staff

- It is of paramount importance that the prison staff is trained in how to treat and deal with inmates.

- The Supreme Court, in September 2017, has directed that there should be proper training for senior staff.

8. Post-release financial security for prisoners

- Wages that are paid to prisoners who are serving sentences should be increased and should be on par with global benchmarks.
- This will encourage the prisoners to work hard and improve their savings for their life outside prison.

9. Skill development of the prisoners

- Skill Development of prisoners will ensure livelihood of prisoners once they are released. This will also allow them to integrate with the society.
- Thus, skill development will empower the prisoners financially and will encourage them to lead a social life when released. Such step helps in reforming the behaviour and mindset of prisoners to learn to lead a normal life.

11. Open prisons should be encouraged

- Open jails are special Jails that exclusively confines only convicted prisoners.
- Convict Prisoners with good behaviour, satisfying certain norms prescribed in the prison rules are lodged in open prisons.
- Minimum security is kept in such prisons and prisoners are engaged in agricultural activities.

12. Implement important recommendations of All India Jail Reforms Committee - Mulla committee.

- National Prison Commission to oversee the modernization of the prisons in India.
- Putting a ban on clubbing together juvenile offenders with the hardened criminals in prison and enacting a comprehensive and protective legislation for the security and protective care of delinquent juveniles.

13. Using Information and Communication Technology – trials through video conferencing should be encouraged especially during COVID times.

CONCLUSION

Prison administration is an important component of criminal justice system. These steps should be taken by prison administration to improve the conditions of prisons in India and to work towards behavioral change of convicts and undertrials.

►E-PRISON PROJECT

The e-Prisons Project of Ministry of Home Affairs (MHA) aims at computerization of the functioning of prisons in the country including digitization and availability of prisoner's data (convicts, under-trials, detenues 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 data has been integrated with Police and Court system under the Inter-operable Criminal Justice System.
- E-Prisons uses data maintained by the States and Union Territories on the National Prisons Information Portal as per protocols notified for e-Prisons.
- The system can be accessed through the secure National Informatics Centre (NIC) network, exclusively by the authorized officials of Law Enforcement Agencies and Prisons, through Inter-operable Criminal Justice System (ICJS).

COMPONENTS OF E-PRISON

- 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 - ICJS

- 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.
- CCTNS 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.

E-prison, ICJS & CCTNS	
Benefits	**Disadvantages**
1. National Database of convicts to track their prison records from the stage of trial. 2. Pro-active policing by sharing active information / look out alerts (SMS/email) with police and other agencies. 3. Helps to track such convicts who are released on parole, furlough or premature release. 4. It will also help to track such prisoners if they further violate any law, involve in criminal activities or violates rules of premature release. 5. Recent photographs of convict will help to alert the system in case any inmate absconds or escapes from police or judicial custody 6. System can easily monitor under trial prisoner with correct and updated information. 7. Inter-linking of Police Station through CCTNS and ICJS will further improve the data availability for e-prison records. 8. Better day to day prison management and reporting with its various prison related workflows and modules 9. Ease of access to the citizens through its national prisons portal and e-Mulakat (Video Conferencing) system. 10. Support to courts through its e-Custody and other information systems for speedy justice delivery.	Sharing of prisoner records with Law enforcement agencies is a tedious process. Misutilisation of Data – collected through e-prison. It may lead to indefinite surveillance of the convict even after his release. This may hamper his personal life and his right to privacy under Article 21. INTEGRATION OF DATA COLLECTED WITH OTHER AGENCIES INCLUDING POLICE, PRISON & COURTS – This has the potential to violate rights to privacy (K.S. Puttaswamy Judgment). INCREASED STATE SPONSORED SURVEILLANCE & PROFILING – Above mentioned activities will increase chances of surveillance by various State authorities on certain individuals.

Conclusion – Despite the concerns, e-prison project through centralised information repository has helped to address the challenges of Prison Administration in India.

►CRIMINAL IDENTIFICATION ACT

Purpose of Criminal Procedure (Identification) Act 2022 is to collect measurements to help law enforcement agencies to come to right conclusions while solving case. Criminal Procedure Code also provides for collection of specimens of the accused through examination.

SECTION 53 OF CR.PC - EXAMINATION OF ACCUSED BY MEDICAL PRACTITIONER AT THE REQUEST OF POLICE OFFICER

- *Registered Medical Practitioner at the request of police officer can examine an arrested person* to afford necessary evidence to prove the crime.
- *Examination of female* shall be made only by or under the supervision of a female registered medical practitioner.
- *"Examination" shall include* the examination of *blood, blood stains, semen, swabs in case of sexual offences, sputum and sweat, hair samples and fingernail clippings* using modern and scientific techniques including *DNA profiling* and such other tests which the registered medical practitioner thinks necessary in a particular case.

SECTION 53A OF CR.PC EXAMINATION OF PERSON ACCUSED OF RAPE BY MEDICAL PRACTITIONER

- *Registered Medical Practitioner can examine a person who is arrested on a charge of committing an offence of rape or an attempt to commit rape.*
- The registered medical practitioner shall prepare a report of his examination giving the following particulars, namely:
  - (a) name and address of the accused and of the person by whom he was brought
  - (b) age of the accused,
  - (c) marks of injury, if any, on the person of the accused,

(d) description of material taken from the person of the accused for DNA profiling, and

(e) other material particulars in reasonable detail.

- The report shall state
  - Reasons for conclusion arrived at.
  - Exact time of commencement and completion of the examination
- The registered medical practitioner shall forward the report to the investigating officer, who shall forward it to the Magistrate as part of the documents to be used as evidence.

THE CRIMINAL PROCEDURE (IDENTIFICATION) ACT, 2022 HAS RAISED EYEBROWS

- Taking Measurements - The Act authorises the police and prison authorities to take 'measurements' of convicts and others for the purpose of identification and investigation in criminal matters and to preserve records.
- The allegation is that the Act is unconstitutional and may be subject to misuse. The Act seeks to repeal the Identification of Prisoners Act (IPA) of 1920, whose scope was limited to recording measurements which include finger impressions and footprint impressions of certain convicts and non-convict persons.

ENLARGING THE SCOPE – (MEASUREMENTS + EXAMINATION)

- According to the 2022 Act Measurement - "includes finger-impressions, palm-print impressions, foot-print impressions, photographs, iris and retina scan, physical, biological samples and their analysis, behavioural attributes including signatures, handwriting or any other examination of accused by the medical practitioner at the request of police officer or examination of person accused of rape by medical practitioner.
- Identification of Prisoners Act (IPA) 1920 - The scope of the 'measurements' in the 1920 Act was limited as "measurements" included only *finger impressions and foot-print impressions.*
- The 2022 Act now includes physical measurements such as finger impressions, palm prints, footprint impressions, photographs, iris and retina scans; biological samples and their analysis; and behavioural attributes including signatures, handwriting; or any other examination referred to in Sections 53 or 53A of the Code of Criminal Procedure (Cr. PC), 1973.
- Cr. PC provides for 'examination' of the accused by a medical practitioner using modern and scientific techniques including DNA profiling and other necessary tests which could provide evidence as to the commission of an offence.
- Section 311A of Cr. PC empowers a magistrate to direct any person including an accused person to give a specimen signature or handwriting for the purpose of any investigation or proceedings.
- Merger of Scope of Examination & Measurements: The enlarged scope of 'measurements' under 2022 Act merges the scope of 'measurements' in the IPA and provisions of the Cr. PC under Section 53A and 311 with the addition of modern techniques of identification such as an iris and retina scan.
- Thus, the Act does not empower the enforcement agencies additionally but only explicitly provides for various measurements and includes the use of the latest scientific techniques.

SUPREME COURT JUDGMENTS

- State of Bombay vs Kathi Kalu - SC held that the person in custody giving his specimen handwriting or signature or impression of his thumb, finger, palm or foot, to the investigating officer, cannot be included in the expression "to be a witness" under Articles 20(3) of the Constitution.
- SC in number of cases has held that taking a blood sample for the purpose of a DNA test, taking a hair sample or voice sample will not amount to compelling an accused to become a witness against himself, as such samples by themselves are not harmful and do not convey information within personal knowledge of the accused.

WHAT IS PROHIBITED UNDER ARTICLE 20(3)?

- **Selvi vs State of Karnataka (2010) -** The only exceptions are scientific techniques, namely narcoanalysis, polygraphy and brain fingerprinting which the Supreme Court held to be testimonial compulsions if conducted without consent and thus prohibited under Article 20(3) of the Constitution.
- These tests do not fall under the scope of expression "such other tests" in Explanation of Section 53 of the Cr.PC.
- Thus, taking measurements under the Act for the purpose of investigation of a crime will not violate Article 20(3). However, validity of any new scientific technique, to be applied in future, would need to be tested on the touchstone of permissible restrictions on fundamental rights.

CONCERNS HIGHLIGHTED

- The Act does not explicitly bar taking measurements of juveniles - However, measurements if taken cannot

be used for future reference based on Section 3 of Juvenile Justice (Care and Protection of Children) Act (General principles to be followed in administration of Act.)

- Principle of fresh start: All past records of any child under the Juvenile Justice system should be erased except in special circumstances. (THE JUVENILE JUSTICE (CARE AND PROTECTION OF CHILDREN) ACT, 2015)
- Access to biometrics collected by the Unique Identification Authority of India (UIDAI) has been refused to law enforcement agencies on the pretext of 'technology issues' and strict provisions of the concerning law.

CONCLUSION

- The use of better technology will only help in minimising the probability of errors.
- The right of an individual will have to be considered in the background of the interests of society.
- The data proposed to be collected through measurements of convicts and others does not appear to be disproportionate with the stated objectives of the Act.

►DIGITAL INDIA CAMPAIGN

Digital India campaign aims to ensure that services by Government are made available electronically to all citizens.

- This objective is achieved by strengthening online infrastructure and improving internet connectivity or to make India digitally empowered in the field of technology.
- Digital India campaign was launched in 2015 to ensure that government services are made available to citizens electronically by
  - improved online infrastructure,
  - by increasing internet connectivity,
  - By making the country digitally improved in the field of technology.
- The initiative includes plans to connect rural areas with high-speed internet networks.
- Digital India consists of three Core Components –
  - Developments of secure and stable infrastructure,
  - Delivering Digitally, &
  - Ensuring Universal Digital Living

KEY INITIATIVES UNDER DIGITAL INDIA

- Aadhaar Enabled Payment System (AEPS) - It is a payment service based on an individual's Aadhaar.
- MyGov platform - promotes participatory governance by providing citizens an opportunity to voice their opinions in policy making and recommendations.
- National Mission in Education through ICT (NMEICT) - is a centrally sponsored scheme which aims to leverage the potential of ICT in education through teaching and learning processes in institutions for higher education.
- Pradhan Mantri Jan-Dhan Yojana (PMJDY): It provides access to services of financial nature at affordable rates to boost financial inclusivity and encourage savings. The services accessible under the PMJDY are savings accounts, loan services, pension, insurance, etc.
- Smart Cities Mission under Digital India umbrella promotes conceptualisation and realisation of cities that have a strong basic infrastructure and promote sustainable, safe and inclusive development for its residents.
- E-Pathshala - Under the aegis of NCERT, ePathshala is a platform to disseminate educational resources through mobile app and website.
- E-Prison –envisions digitisation and integration of all activities that are related to prison and prisoner management for jails through an application suite. It is a one-stop solution for citizens to digitally apply for visitation, note grievances, use a portal for buying goods created by prisoners, etc. For the prison management system, the project aids in surveillance and management of prisoners, administrative tasks, resource optimisation, etc.
- Farmer Portal – It is designed to be a one-stop destination to gain relevant information related to agriculture, risk management, animal husbandry, aquaculture, weather, programs& schemes etc.
- Goods and Services Tax Network (GSTN) - IT system of the GST portal and acts as the backbone of the GST system and acts as the core database for it. The network helps the government follow financial transactions and helps the taxpayers with GST registration, maintenance of tax details, etc.
- Khoya Paya - is an initiative under Digital India to engage citizens to inform and exchange information on children who are missing and found. The platform is developed by the Ministry of Women and Child Development along with the Department of Electronics and Information technology where citizens can report missing and found children with the help

of texts, photos, videos, and other means through smart phones. The Khoya Paya portal can be linked to the CCTNS project to help apprehend criminals as well as solve cases of missing minors.

- Kisan Suvidha Portal & mobile application disseminates relevant information to farmers regarding weather, market prices, plant protection, inputs, weather alerts, go-downs and storages and market-related information such as conducive markets, market rates, quantity demands, etc.
- E-court's project monitoring website has been created to aid courts with automated decision-making and decision-support system.
- UMANG - provides a single platform for all Indian Citizens to access pan India e-Gov services ranging from Central to Local Government bodies.
- Indian Computer Emergency Response Team (CERT-In) -CERT-In has three roles:
  1. *Raise awareness about cyber security and provide technical assistance to combat India's cyber security concerns.*
  2. *Provide System Administrators and users with technical advice to respond to cyber security incidents.*
  3. *Releases research, guidelines, advisories, best practices and other technical documents related to security awareness.*
- Government e-Marketplace (GeM) - The users of this marketplace are state and central government ministries and departments, public sector undertakings, local bodies and autonomous institutions.
- Crime and Criminal Tracking Network & Systems (CCTNS) aims at creating a system that is comprehensively integrated to enhance the efficiency of policing through a creation of a nation-wide networking infrastructure for the evolution of IT-enabled highly efficient tracking system around the investigation and detection of crimes and criminals.

IMPLEMENTATION CHALLENGES

- Number of Roadblocks like digital illiteracy, poor infrastructure, low internet speed, lack of coordination among various departments, data security etc.
- Lack of digital literacy & awareness There should be adequate awareness building for people living in rural areas so that they can be a part of digital India and reap the benefits of the Internet.
- Poor Readiness: India fares poorly in *UN E-Government readiness Index* due to poor Telecommunication Infrastructure and Human Capital. Focus must be on bridging the Digital Divide by enhancing the rural tele density and imparting digital literacy to the people.
- Bureaucratic Resistance: The bureaucratic resistance due the threat of job losses should be overcome by demonstrating the potential benefits of e-Governance.
- Poor Skill sets: Technical and managerial skills needs to be improved by focussing on the capacity building and sill development of the government employees.
- Lack of Business Process Reengineering: Business process re-engineering is a business management strategy and focuses on the analysis and design of workflows and business processes within an organization. As recommended by 2nd ARC, the government departments must undertake BPR to make their procedures more compliant with ICT projects.
- Technological Solutions: - All states must adopt uniform software for release of funds for schemes like MGNREGA.
- Strengthening Cyber-Security Measures –Ensuring Cyber Security of e-governance initiatives is necessary for which the government must strengthen cyber security measures.
- Role of Private Sector Neglected: The private sector expertise must be harnessed through implementation of E-governance projects through Public Private Partnership Mode.
- Local Language content: The non-availability of digital services in local languages is also a major concern. There is a need to ensure that E-governance projects are also able to support the local languages for the benefit of people.
- Lack of Monitoring and Evaluation: Regular monitoring would lead to continuous improvement in the E-Governance projects.
- Lack of Integrated Database: As recommended by Economic Survey, there is a need for a single integrated database which can provide holistic and complete information about the Indian citizens.

WAY FORWARD

- With significant strides already made in the Digital India program, it is now time for the government to transform its approach and aspire to become fully digital.

- The success of Digital India will be a major factor in enhancing the country's economic growth by improving social and financial inclusiveness, citizen engagement, as well as efficiency and accountability in governance and delivery of services.

►ASPIRATIONAL DISTRICT PROGRAM

In an independent appraisal report, United Nations Development Program (UNDP) India has lauded the 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

- The '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.
- The Aspirational Districts program, through real-time monitoring and proactive course corrections, reinforces the mechanisms of cooperative & competitive federalism between the Centre and the States, down to the districts.
- NITI Aayog has entered 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%**

►PUBLIC, LAW & ORDER AND SECURITY OF STATE

Public order implies the absence of disturbance, riot, revolt, unruliness and lawlessness. Irrespective of the nature of a polity – democratic or autocratic, federal or unitary – maintenance of public order is universally recognised as the prime function of the State. Anarchy would result if the State failed to discharge this duty. Such persistent anarchy would lead to decay and destruction and the eventual disintegration of the State.

PUBLIC ORDER PROBLEMS IN INDIA

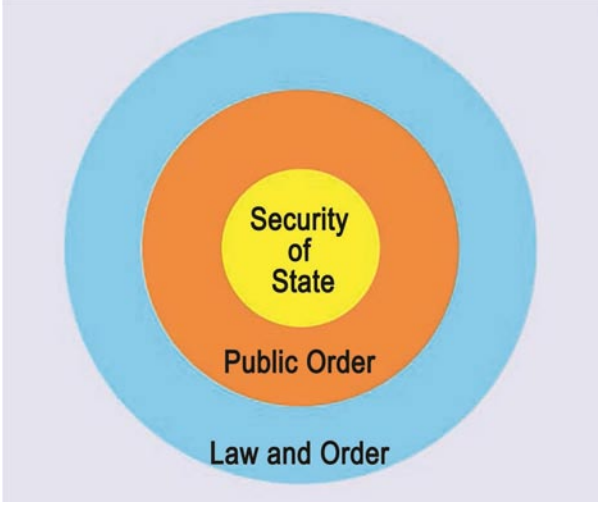
- A democratic society is necessarily characterised by public expression of dissent - Such dissent arises from a variety of socio-economic, political and cultural factors. In India, the situation is further compounded by factors such as caste, religion, poverty, illiteracy, demographic pressures, ethnic and linguistic diversity.
- In a liberal democracy, every citizen has a right to dissent and expression of such dissent need not in itself breach public order.
- Perception of Public Disorder may differ between different stakeholders – protest by marginalised section due to exploitation from the dominant section is generally perceived by police as public disorder. However, for the exploited sections, the injustice is a breach of their human rights against which they have protested.

DIFFERENCE BETWEEN LAW & ORDER, PUBLIC ORDER & SECURITY OF STATE

- If two families quarrel over irrigation water, it might breach law and order but, in a situation, where two communities fight over the irrigation water, then it might lead to public order. So, a similar approach cannot be taken to remedy both the situation.
- The law enforcement machinery often tends to concentrate on maintaining status quo, since, for them; public order means 'absence of any disturbance'.
- Laws and public policies aimed at desirable social change may sometimes lead to disturbance or even

violence and yet such laws need to be enforced firmly if the core values of the Constitution and human rights are to be protected.

- Public order is strengthened by protecting the liberty and dignity of citizens and bringing about social change.
- Clarifying the distinction between 'law and order', 'public order' and 'public disorder affecting the security of the State', Justice Hidayatullah observed: *"Just as public order apprehends disorders of less gravity than those affecting the security of state, law and order also apprehends disorders of less gravity than those affecting public order. One must imagine three concentric circles. Law and order represents the largest circle within which it is the next circle representing public order and the smallest circle represents the security of state. It is then easy to see that an act may affect law and order but not public order, just as an act may affect public order but not the security of state."*



- Thus, every situation in which the security of the State is threatened is a public order problem. Similarly, all situations which lead to public disorder are necessarily law and order problems also. But all law-and-order problems are not public order problems.
- Thus, petty clashes between groups whose impact is limited to a small area are minor in nature with no impact on public order.
- But widespread violent clashes between two or more groups, such as communal riots, would pose grave threats to public order. A major terrorist activity could be classified as a public order problem impinging on the security of the State.

►CORPORATE SOCIAL RESPONSIBILITY

Corporate social responsibility (CSR) refers to the way through which a company achieves balance of economic, environmental & social imperatives (Triple-Bottom-line-Approach) while at the same time addressing the expectations of shareholders & stakeholders. Companies Act, 2013 has elaborated on the use of CSR Funds for social welfare programs for the benefit of Indian society.

IS CSR SIMILAR TO SOCIAL PHILANTHROPY?

- Idea of CSR emanated from concept of social philanthropy and it helps in achieving the purpose set out in Part IV of 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.*

TRIPLE BOTTOM LINE APPROACH

- Triple Bottom Line approach extends corporates' responsibilities beyond profits to social and environmental concerns thereby ensuring sustainable development.
- The Approach focuses on 3 P's –
  1. People: Promote Social Impact of Business through fair wages to employees, check on child Labour, Human Rights abuses etc.
  2. Planet: Reduce Environmental impact of business by adopting green technologies.
  3. Profit: Traditional measure of corporate profit and loss.

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.

DOES THE LAW PROVIDE FOR ANY SPECIFIC AREAS FOR SPENDING 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.*

WHICH ACTIVITIES OF A COMPANY SHALL NOT BE TREATED AS AN EXPENDITURE INCURRED FOR CSR?

- Such works which the company generally undertakes in their normal course of business.
- Any welfare projects, program or activities pursued by a company beyond Indian Territory shall not be construed as expenditure incurred towards CSR.
- Such projects, programs or 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.

CHALLENGES – IMPLEMENTING CSR

- The lack of resources, including finances, human capital, knowledge, and expertise, has been reported to be a common barrier to CSR implementation.
- Budgets for implementing CSR are often inadequate and outcompeted by other projects which guarantee higher return on investments.
- Most companies have not formed CSR Committee as mandated by Companies Act to formulate and recommend CSR Policy.
- Provisions allowing CSR Funds to be transferred for government purposes such as PM-Cares defeats its very purpose due to opaqueness of PM-CARES.
- Widens regional disparity as maximum expenditure is in industrialised areas, poor states and north-eastern states receive minimal funds for social needs.
- Lack of proper utilisation of CSR Funds by corporates results in its wastage
- Non-compliance and poor enforcement of CSR Norms due to lack of clear obligations.

WAY FORWARD

Recommendations of Injeti Srinivas Committee must be implemented which suggested for introduction of penal provisions for non-implementation of CSR funds along with provision to deposit unspent CSR amount into an escrow account. Triple Bottom Line as a balanced approach towards Corporate Social Responsibility focusing on People, Planet and Profit holds key towards achieving ethical corporate governance in India.

►INDEPENDENT REGULATORY BODIES

With the onset of LPG reforms, there was an onset of increased private sector participation in Indian economy and public life. The state in India faced a challenge as it was one hand a direct participant in the economy which build roads, operated trains, ran PSUs in various sectors and it was on the other hand framing rules & standards for other private players in the economy. This created a conflict of interest as private players always felt that rules will be set in such a manner that disproportionately favour the PSUs in India.

Thus, to keep an arm's length between regulators and ministries which operate PSUs, many sectors in the Indian economy have seen the growth of Independent

Regulators. These regulators were statutorily made independent to give private sector confidence.

1. Finance related: IREDA, RBI, SEBI, PFRDA, IBC etc.
2. Electricity: CERC, SERC
3. Railways: Rail Development Authority etc.

ISSUES IN REGULATORY BODIES

- Regulatory framework across various public utility industries lacks a consistent and coherent approach.
- Lack of uniformity and predictability in powers and functions of regulators.
- Lack of consistency in selection procedure of members of regulatory bodies.
- Issues of independence and accountability of regulators.
- Lack of clarity on budgetary allocation for functioning of regulatory bodies.
- Mechanisms for appealing against orders passed by regulators
- Varying mandates of regulators: For ex. Regulator in port sector is mandated to set tariffs only whereas regulators in electricity sector have much wider powers of licensing, market development and imposing penalties apart from tariff fixation. The telecom and gas sector regulators are assigned to promote competition which is not part of the responsibilities of port or electricity regulators.
- Diverse sectoral approaches have resulted in an uneven regulatory environment
- Considerable delays in setting up of regulatory institutions and processes.
- Efficiency and quality of regulation affects economic participation of developing countries.
    1. Dilutes political control over important policy decisions.
    2. Increases technocracy: Many of the regulators are specialists, however, they are unelected and not accountable to people directly.

WAY FORWARD

Suggestions of Damodaran Committee for Regulatory Reforms

REGULATORY ARCHITECTURE

- Carving out clear mandate for new regulatory authority:
    - Before setting up a new regulatory organisation, adequate thought should be given to the need for such an organisation, the ability to man that organisation and to invest it with functional autonomy.
    - Setting up of new regulatory organisation should not be a knee-jerk response to a situation, but a well thought out plan of Ministry to move away from writing out and implementing regulations.
- Appointments& Supervision of regulatory authorities:
    - Appointments of persons to head regulatory organisations should be attempted in a far more transparent manner.
    - There should be a transparent system in which regulatory bodies are accountable to an appropriate Parliamentary Committee.
- Autonomy of regulatory authorities:
    - Genuine functional autonomy needs to be given to regulatory authorities.
    - Financial autonomy of regulators needs to be ensured where regulatory organisations are not dependent on departments for financial support.
- Self-evaluation by regulatory organisations:
    - Each regulatory organisation should undertake self-evaluation of it once in 3 years and put out the conclusions in public domain for informed discussion.
- Steps should be taken so that regulators function under the overall framework of democratically elected government. However, this direction should be on broad policy directions and not day to day interference. For ex. MoU signed between Ministry of Finance and RBI for Inflation Targeting which makes RBI accountable to control inflation between 4 +- 2%.

BOOSTING EFFICACY OF REGULATORY PROCESS

- Ensuring effective consultation through a two-stage process wherein revised drafts are also put up for consultation. This would ensure misinterpretations of regulations do not exist.
- Cases of systemic importance need to be dealt with on a priority basis by regulatory bodies.
- Regulatory review authority: Existing body of regulations should be reviewed for contemporary relevance, clarity and continuity. This can be accomplished by creating Regulation Review Authority in each organisation which will continuously examine stock of existing regulations and weed out those that do not have continuing use.
- Regulatory Impact Assessment should be done for every proposed regulation.
- Recommendations of NITI Aayog:

1. Need for a uniform approach to common issues of regulatory bodies. Niti Aayog's draft Regulatory Reform Bill should be finalised and passed by parliament.
2. Enable and handhold businesses on regulatory compliance.

►REGULATORY IMPACT ASSESSMENT

- It is an evidence-based tool to support public decision making. It is a systematic appraisal of how a proposed policy is likely to affect certain categories of stakeholders and outcomes.
- This tool can be applied to primary legislation or secondary regulation of Central and State governments, independent regulators, regional governments and local authorities.
- It is mostly used during the policy formulation stage. It is not a substitute for political decision making and does not replace judgement or the balancing act between values and preferences that public choices imply. Rather, it informs final choice of decision makers with evidence and inputs from stakeholders.
- The overall strategy in which RIA is embedded is 'better regulation'. The strategy is anchored to three building blocks of learning from evidence:
  1. Proportionality or targeting
  2. Knowledge utilization
  3. Integration with other policy instruments and institutional design.

►AADHAAR DETAILS CANNOT BE SHARED: UIDAI TO HC

Unique Identification Authority of India (UIDAI) has told Delhi High Court in a bank robbery case that it cannot share biometric information with investigating agencies to match prints and photograph details from crime scene.

REASON FOR NOT SHARING AADHAAR DETAILS

- UIDAI prohibits sharing information - UIDAI stated that the purpose and objective of Aadhaar Act is to provide unique identity to residents and sharing of biometric information other than to generate Aadhaar Number and authentication is not permissible under the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 – [referred as Aadhaar Act].
- Sharing information technologically not feasible - UIDAI also stated that it does not collect biometric information suitable for forensic use and matching of biometric details of the accused may not be technologically feasible.
- Aadhaar Act prohibits sharing or using core biometrics of any resident under Aadhaar Act. As per Aadhaar Act, "core biometric information" means fingerprint, Iris scan, or such other biological attribute of an individual as may be specified by regulations.
- Authentication has been described as a process by which Aadhaar number along with demographic information or biometric information of an individual is submitted to the Central Identities Data Repository for its verification and such Repository verifies the correctness, or the lack thereof, based on information available with it.

SECTION 29 - RESTRICTION ON SHARING INFORMATION

- No core biometric information, collected or created under this Act, shall be (a) shared with anyone for any reason whatsoever; or (b) used for any purpose other than generation of Aadhaar numbers and authentication under this Act.
- Aadhaar Number [demographic information or photograph] of a resident shall not be published, displayed or posted publicly, except for the purposes as may be specified by regulations.

WHEN CAN AADHAAR INFORMATION BE SHARED?

According to Section 33 of Aadhaar Act, Aadhaar details of a resident can be disclosed

- On the orders of High Court
- In the interest of national security – orders must be given by an officer not below the rank of Secretary to the Government of India.
- Direction to disclose Aadhaar details given by the Secretary shall be reviewed by an Oversight Committee consisting of the Cabinet Secretary and the Secretaries to the Government of India in the Department of Legal Affairs and the Department of Electronics and Information Technology before it takes effect.
- Validity – 3 months - Any direction issued to disclose Aadhaar details through the Oversight Committee shall be valid for a period of 3 months from the date of its issue, which may be extended for a further period of 3 months after the review by the Oversight Committee.

WHEN AADHAAR DETAILS NEEDS TO BE UPDATED?

- On attaining 5 or 15 years - Where an Aadhaar number holder has attained the age of 5 or 15 years, the first update in his/her Aadhaar must be necessarily accompanied by a biometric information update.
- Aadhaar Deactivated if Not Updated - Where an Aadhaar number holder who has attained the age of 5 or 15 years fails to update his/her biometric information within 2 years of attaining such age, his/her Aadhaar number shall be deactivated.
- Can Update Aadhaar within 2 years - The facility of biometric information update shall be available free of cost to the Aadhaar number holder till attaining the age of 7 or 17 years, respectively. Thereafter, the Aadhaar number holder can activate his/her Aadhaar number by updating his/her biometric information.
- Aadhaar number shall not be omitted even if Aadhaar number holder does not update biometric information, and the Aadhaar number shall remain in deactivated state.

WHO CAN HAVE AADHAAR CARD IN INDIA?

- Every resident shall be entitled to obtain an Aadhaar number by submitting demographic and biometric information by undergoing the process of enrolment.
- Resident means an individual who has resided in India for a period or periods amounting in all to 182 days or more in the 12 months immediately preceding the date of application for enrolment.
- Biometric Information means photograph, fingerprint, Iris scan, or such other biological attributes of an individual as may be specified by regulations.
- Demographic Information includes information relating to the name, date of birth, address and other relevant information of an individual, as may be specified by regulations for the purpose of issuing an Aadhaar number, but shall not include race, religion, caste, tribe, ethnicity, language, records of entitlement, income or medical history.
- Enrolment means the process to collect demographic and biometric information from individuals by the enrolling agencies for the purpose of issuing Aadhaar numbers to such individuals under the Aadhaar Act.

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 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.

CONCERNS HIGHLIGHTED BY CAG IN THE FUNCTIONING OF UIDAI

- Data Mismatch - Comptroller and Auditor General (CAG) has highlighted the issues of data-matching, errors in authentication, and shortfall in archiving which is a primary function of UIDAI. As per CAG, the data of Aadhaar Card holders have not been matched with their Aadhaar number even after 10 years in some cases.

- No analysis of Authentication Errors - CAG has also criticised the absence of a system to analyse the factors leading to authentication errors. This is happening due to lack of data archiving policy of UIDAI which is considered a vital storage management best practice. Data Archiving Policy for storing of certain data for certain period.
- Deprived Government of Revenue - UIDAI provided Authentication services to banks, mobile operators and other agencies free of charge till March 2019, contrary to the provisions of their own Regulations, depriving revenue to the Government.
- Putting privacy of Residents at Risk - UIDAI has not ensured that the applications or devices used by agencies or companies for authentication were not capable of storing the personal information of the residents, which put the privacy of residents at risk.
- UIDAI had not ensured security and safety of data in Aadhaar vaults - They had not independently conducted any verification of compliance to the process involved.
- No specific Proof for Residence - UIDAI has not prescribed any specific proof, document, or process to confirm whether a person who is applying for Aadhaar has resided in India for the period specified by the Rules. Therefore, "there is no assurance that all the Aadhaar holders in the country are 'Residents' as defined in the Aadhaar Act".
- Multiplicity of Aadhaar Cards - UIDAI generated Aadhaar numbers with incomplete information, which, along with the lack of proper documentation or poor-quality biometrics, have resulted in multiple or duplicate Aadhaar cards being issued to the same person.
- Lack of Arrangement with Postal Department - UIDAI does not have adequate arrangements with the postal department, due to which many Aadhaar cards were returned to the government after they could not be delivered to their intended recipients.
- Onus of Updating Aadhaar on Citizens - Aadhaar numbers with poor quality biometrics induces authentication errors. UIDAI takes no responsibility for it and transfers the onus of updating the biometrics to the resident and charges fees for it.

What should be done - UIDAI should go beyond self-declaration, and "prescribe a procedure and required documentation other than self-declaration, to confirm and authenticate the residence status of applicants.

►GRIEVANCE REDRESSAL MECHANSIM

Department Related Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice brought 111th Report on 'Strengthening of Grievance Redressal Mechanism of Government of India'. The Committee has identified the shortcomings and 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)

- Nodal agency for policy initiatives on public grievances redress mechanism & 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.
- Allocation of Business Rules, 1961, allocates to DARPG the responsibility for *Policy, Coordination and Monitoring* of issues relating to
  - Redress of Public Grievances in general and
  - Grievances pertaining to Central Government Agencies, in particular.

- In accordance with 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 1988. DPG was set up initially to look into individual complaints pertaining to four Central Government Departments, but now is handling grievances pertaining to 16 Central Government Organisations.
- DPG has been envisaged as an appellate body investigating grievances where the complainant had failed to get redress at the hands of internal machinery and the hierarchical authorities.
- Unlike the Department of AR&PG, DPG has been empowered to call for the files and officers for discussion to ensure grievance handling has been done in a fair, objective and just manner.
- DPG can also suggest suitable recommendations to be adopted by the concerned Ministry/department which must implement them within one month.

GRIEVANCE REDRESSAL MECHANISM (CPGRAMS)

- CPGRAMS is an online portal available to public 24x7 to lodge their grievances against the authorities on any subject related to service delivery. It is a single portal connected to all the Ministries/Departments of Government of India and States.
- CPGRAMS also facilitates tracking grievances through a system generated Unique Registration Number.
- The system enables Ministries/ Departments to take appropriate action and upload the Action Taken Report (ATR) on the system which can be viewed by the citizens online with the help of the unique registration number.
- Public grievances usually come in two forms: *1. Through the CPGRAMS; and 2. Through post.*

The grievances received by post are digitized and sent both through the System as well as by post to the Ministry/ Department/ State Government concerned.

CONCERNS EXPRESSED & RECOMMENDATIONS PROVIDED BY THE COMMITTEE

CONCERNS EXPRESSED	RECOMMENDATIONS OF STANDING COMMITTEE
Disposing Grievance without proper closure along with suggestion to visit another agency or subordinate office.	**Comply Instructions of DARPG –** and Ministries or Departments must give valid reasons for closure.
Most grievances received on CPGRAMS relating to states are disposed and not forwarded to respective states	**CPGRAMS should play the role of facilitator for the public** without impinging on the nature of federalism and forward grievances to respective state government or their department. The performance of states on the portal can be left to them but the facilitation responsibility of the Centre cannot be shed when a public grievance is registered.
Lack of Awareness among people about grievance redressal mechanisms in most government departments and their subordinate offices.	**Incorporate following in newer versions of CPGRAMS -** Opening channels for effective communication, promoting productive relationship, Mitigating and preventing adverse impact on stakeholder caused by department's operations, and more importantly Making stakeholders part of the process.
No efforts are made to hold satisfaction surveys to ascertain outcome of measures to redress grievances.	**Need for More Analysis of Grievance Prone Areas and Departments -** Major areas of grievances as recorded in CPGRAMS are employee related grievances, harassment, atrocities, corruption, civic amenities, labour issues etc.
Considerable variation across organisations in number of grievances recorded, disposed off and pending	**Best Suggestions from Public must be rewarded:** feedback and suggestions on performance of grievance redressal system should be taken from the public to improve the effectiveness, efficiency and credibility of grievance redress mechanism and grievance prevention possibilities. Best suggestions should be

	rewarded and their implementation and value addition should be highlighted for improving the credibility of the system.
Location specific complaints are tough to redress	***Strengthen Public Interface Mechanisms for redress like*** Lok Adalats and Jan Sunvais, taking it to the doorstep of the people needing redress.
CPGRAMS has not been uniformly operationalized in all organizations. Also, wide variations are apparent across the Ministries/ Departments and other organizations in respect of the extent of commitment, framework and processes instituted and the capacity to handle grievances.	***There should be an overall review/evaluation of the procedure of handling grievances*** of the Ministries/ Departments/ Organisations in the Government of India.
DARPG in collaboration with BSNL, operationalized a Feed Back Call Centre on disposed COVID-19 related public grievances received in CPGRAMS.	**The Committee recommends DARPG to create a Dashboard on the website pertaining to grievance redressal comprising performance indicators** such as • average complaints per day, • disposal rate, • average disposal time, • Excellent/ Satisfactory Feedback, • Complaint shared from different channels.
Ministries/Departments do not detect public grievances appearing in newspapers for Suo-moto redressal.	***Ministries /Departments to undertake a regular review of grievances, which are raised in print and electronic media and*** include analysis in quarterly report submitted t DARPG. It should also ensure that the review undertaken by them and the action taken on the suggestions are put on its website.

WAY FORWARD

- *Timely ventilation and redressal of grievances are necessary for any citizen friendly administration* - Therefore, the Committee recommends that there should be an overall review/evaluation of the procedure of handling grievances of the ministries/ departments/ organisations in the government of India.
- *Gradual move towards One Nation –One Grievance redressal portal is a welcome step* - However, the committee recommends the department to ensure that certain features are incorporated while integrating CPGRAMS with state portals, namely, identifying right stakeholders for redressal, facility of auto forwarding delayed or specific kind of grievances to right team/person, among others.

FEDERAL ISSUES

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	How have the recommendations of the 14th Finance Commission of India enabled the states to improve their fiscal position?
2020	How far do you think cooperation, competition and confrontation have shaped the nature of federation in India? Cite some recent examples to validate your answer.
2020	Indian Constitution exhibits centralising tendencies to maintain unity and integrity of the nation. Elucidate in the perspective of the Epidemic Dis-eases Act, 1897; The Dis-aster Management Act, 2005 and recently passed Farm Acts.'
2019	From the resolution of contentious issues regarding distribution of legislative powers by the courts, 'Principle of Federal Supremacy' and 'Harmonious Construction' have emerged. Explain.
2018	Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.
2016	Discuss the essentials of the 69th Constitutional Amendment Act and anomalies, if any that have led to recent reported conflicts between the elected representatives and the institution of the Lieutenant Governor in the administration of Delhi. Do you think that this will give rise to a new trend in the functioning of the Indian federal politics?
2016	To what extent is Article 370 of the Indian Constitution, bearing marginal note "Temporary provision with respect to the State of Jammu and Kashmir", temporary? Discuss the future prospects of this provision in the context of Indian polity.
2013	Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.

►FEDERALISM AMIDST INCREASING CENTRALISATION

Excessive centralisation in political decision making is impacting federal principles as envisaged in the Constitution of India. This has led to politicisation of certain offices, both constitutional and statutory further straining relations between Centre and States.

UNDERSTANDING FEDERALISM

- Federalism binds one political union along with several autonomous states or provinces.
- Federalism seeks to reconcile unity with multiplicity, centralisation with decentralisation and nationalism with localism.
- Originality of federal system lies in balance of power – which is concentrated and divided simultaneously.

NATURE OF FEDERALISM

- Two Level of Governments: Federalism refers to constitutionally allocated distribution of powers

between two or more levels of government in the modern nation-state system. One, at national level and other, at provincial, state or local level.

- Division of power & functions: Federalism is a system of government in which power is divided between a central authority and various constituent units i.e., states or provinces through a written constitution.
- Both Units function Independent of each other**:** Both levels of governments at Centre and in states enjoy their power independent of other as mandated by constitution.
- Independent Judiciary: Disputes between two levels of government are addressed by an independent judiciary by interpreting the law of the land.

BIRTH OF INDIAN FEDERALISM

- Ensuring Unity in Diversity: Written constitution advocating strong Centre helped in accommodating diversities and stemming disintegration during independence.
- Threat of future partitions & princely states aiming for independence forced the constitution makers to adopt strong Centre.
- Strong Centre helped in tackling socio-economic problems in cooperation with States through planning and electricity.

CONSTITUTIONAL PROVISIONS ON INDIAN FEDERALISM

- Article 1: Mentions India 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. It allows federation to evolve, grow and respond to regional aspirations as we have witnessed in the past.
- Formation of new State: When a new state is formed, Schedule I & Schedule IV of Constitution are amended:
  - Schedule I: contains list of States and UTs**.**
  - Schedule IV: provides for allocation of seats in Rajya Sabha. Allocation of seats in Rajya Sabha is made based on population of each State.
- Distribution of Legislative, Administrative & Financial Powers: Constitution has demarcated each level of government by devising an elaborate scheme of distribution of legislative, administrative and financial powers between the Centre and the States.
- Article 246 of Constitution enumerates Federal character of Constitution. It 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 Union and State Governments, recommend sharing of taxes between them, lay down principles determining distribution of these taxes among States. Thus, Finance Commission is a constitutionally mandated body that is at Centre of fiscal federalism.
- Settling Inter-state river water disputes under Article 262: For this purpose, Parliament has enacted Inter-State River Water Disputes Act, 1956.
- Inter-state Council (Article 263) inquires into and advise upon disputes arising between States.
- GST Council (Article 279A) makes recommendations to Union and State Government on issues related to GST. GST Council is chaired by Union Finance Minister and other members are Union State Minister of Revenue or Finance and Ministers in-charge of Finance or Taxation of all States.

However, conflict between Centre and States has increased in recent past due to over centralisation tendency of union government.

INDIA'S FEDERALISM TILTED TOWARDS THE CENTRE

- Constitution establishes a dual polity – Centre and States – with division of powers and functions through Article 246.
- Constitution provides autonomy to states under VIIth schedule but in times of emergency empowers the Union Government.
- Flexibility in hands of Central government was deliberate and designed to enable Central action to protect national integrity in the face of Partition.
- Indian Federalism stands on three pillars:
  1. Strong Central Government
  2. Flexible federal system
  3. Co-operative federalism

RECENT INSTANCES OF INCREASING CENTRALISATION

REGIONAL ISSUES

- Growing regionalism based on language, culture, ethnicity – demand for new states
- Increasing friction between states – boundary disputes (Assam-Mizoram), disputes on river-water sharing

- States (Haryana, Maharashtra, Karnataka, Andhra, MP) providing reservation to locals in jobs – public & private
- Exercises such as Register of Indigenous Inhabitants of Nagaland (RIIN), NRC-Assam is further fuelling regional identity.

LEGISLATIVE ISSUES

- Increasing Centralisation
  - Converting Bills into Money Bill
  - Excessive use of ordinance
  - Lack of debates in Parliament on key issues
  - Passing of Bills without sending to Parliamentary Committees
  - Merging of three Municipal Corporations of Delhi
- Increasing use of Concurrent List by Centre to frame laws for socio-economic development –
  - Three Farm Laws
  - Greater central role – Electricity Amendment Bill – Selection Committee - State Electricity Regulatory Commission
  - Government of National Capital Territory of Delhi (Amendment) Act, 2021 – disturbing balance between LG-CM
- Delay in Local Elections in Delhi by merging three Municipal Corporation of Delhi - Delhi Municipal Corporation (Amendment) Act, 2022

ADMINISTRATIVE ISSUES

- Politicisation of Governor's role
- Issue of Vice-Chancellors of State Universities
- Reserving Bills for President – Article 200
- Use of Article 356 to dismiss government
- Increasing interference of Governors & LG in daily administration – ignores elected government
- Special Powers of Governors under Fifth and Sixth Schedule
- Constitutional Asymmetry – Special Provisions – Article 371A-J
- lack of co-ordination with states on issues of health facilities of state – state list
- Concerns & Challenges in working of– Inter-state Council, Zonal Council, NE Council
- Punjab Government put its claim on Chandigarh after Centre amended rules governing functions of the Bhakra Beas Management Board (BBMB).

FINANCIAL ISSUES

- Limited borrowing powers of state from outside India – Article 293
- Higher Share of Cess and surcharge collected by Centre (A-271) is not distributed among States – Agri Infrastructure Cess
- Problems in Paying GST compensation Cess to States due to fall in revenue because of COVID.
- Sharing of finance by states in Centrally Sponsored Schemes (CSS) is also a burden on states.
- Lack of operational & financial autonomy to implement CSS by states
- Reducing number of Left Wing Affected Districts impacts central assistance to such districts
- Fiscal Deficit of State cannot exceed 3% of State's GDP as per FRBM Act.
- Centre's Permission on future Borrowings through recently launched 50-year interest free loan for states.

FACTORS WHICH HAVE FEDERATED INDIAN POLITY

- LPG reforms have increased the freedom of states in economic sphere, as central planning control has reduced.
- Proportion of Public spending by States is collectively more than that of Central Government.
- Norms laid down by Supreme Court has tilted the balance in favour of States. (Federalism as basic structure).
- Rise of regional political parties and coalition politics have tilted the political balance in favour States. This has empowered States Rajya Sabha.
- Vigilant media, citizenry and regional identities which do not appreciate imposition by Centre.

WAY FORWARD: Constitutional powers including fiscal relations are inherently biased towards Centre. Despite this, Constitution provides healthy space to ensure state's autonomy through Article 246. Thus, Centre must act responsibly without impeding state's powers as provided under Indian Constitution to maintain harmonious relations between Centre and states.

►ASSYMETRIC FEDERALISM

Asymmetric Federalism refers to treating different states differently as per the need and circumstances of time and in the best interest of Union of India.

ASYMMETRY PROVIDED IN INDIAN CONSTITUTION

- PART XXI dealing with Temporary, Transitional and Special Provisions.

- Article 371 – 371J: Special Provisions for states to protect socio-cultural aspects.
- Article 370: Temporary provision was provided for erstwhile state of Jammu and Kashmir.
- Special powers of Governor under Schedule V for the benefit of Scheduled Areas.

ASYMMETRIC FEDERALISM

Benefits/Advantages	Concerns/Disadvantages
• Accommodates Diversity through asymmetrical provision of power sharing between states. • Providing special provisions within constitution for some states which gained statehood after independence. • Constitutional provisions allow Centre to address regional demands – Ex. creation of new states or altering of boundaries, accommodate linguistic and ethnic diversities. • Special Treatment to certain States based on their special need – Enables overall socio-economic and cultural development of regions. • Fifth and Sixth Schedule of Constitution comprise distinctive provisions for administration and protection of Scheduled Areas and Scheduled Tribes in any state (Fifth Schedule), and in states of Assam, Meghalaya, Tripura, and Mizoram (Sixth Schedule). • UTs are based on asymmetric needs and requirements – helps to address needs of different regions. • Flexible mode to grant statehood or converting state into UTs based on national or security need – without altering basic structure.	• Discriminatory in nature and do not ensure equality to all states. Example – Special Provisions under Article 371A to 371-J. • Leads to Power Asymmetry for states and UTs. Ex. Puducherry can legislate on any matter under State List or Concurrent List. Whereas Delhi cannot legislate on police, land and public order within State List. • Parliament has overriding powers over any law made by the Assembly in the Union Territories. • Discrimination leads to secessionist tendency: Asymmetric Agreement with few states results in denial of autonomy to such states that can provide ground for growth of secessionist tendency among states – (Ex. Naga Framework Agreement) • Leads to demand of special status category by states. • Helps in converting regional aspiration into political demands –Ex. demand for Nagalim. • Special Status to Erstwhile state of Jammu & Kashmir through Article 370. • Special Powers to Governors under Article 371 and Article 371A-J.

WAY FORWARD Thus, asymmetric nature of Indian federalism should not be seen against equality because all regions did not have similar socio-economic conditions specially areas of northeast India post-independence. So, to take all states and UTs along the developmental path, special provisions have been incorporated in the Indian Constitution to ensure balanced and equitable development of the entire country.

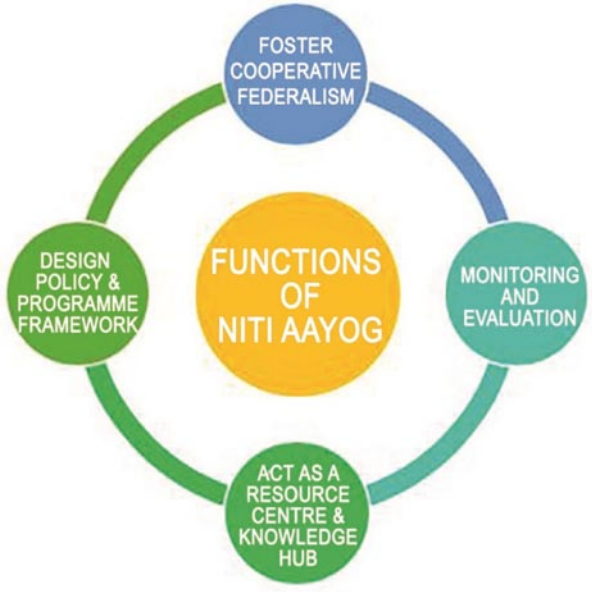
►NITI AAYOG

NITI Aayog was formed by resolution of Union Cabinet in 2015 through Government of India (Allocation of Business) Rules, 1961. It 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.

GOVERNING COUNCIL OF NITI AAYOG

- Composition: Governing Council of NITI Aayog, comprising Chief Ministers of all States and UTs with legislatures and Lt Governors of other UTs, came into effect in 2015 via a notification by Cabinet Secretariat.
- Meetings of Governing Council have been held under chairmanship of Prime Minister with Chief Ministers/Lt Governors of States/UTs and other members of Governing Council.
- Governing Council is the premier body tasked with evolving a shared vision of national priorities and strategies, with active involvement of States, in shaping development narrative. Governing Council, which embodies objectives of cooperative federalism, presents a platform to discuss inter-sectoral, inter-departmental and federal issues to accelerate implementation of the national development agenda.

FUNCTIONS OF NITI AAYOG



WORK DONE BY NITI AAYOG

- NITI Aayog actively participates in designing strategic policies, fostering cooperative federalism, providing knowledge and innovation support and undertaking evaluation and monitoring of major investments.
- Economic: Recommended closure of sick PSUs, strategic disinvestment of CPSUs and Make In India Strategy for Electronics, National Energy Policy, Developmental strategy for North-East India, Pioneering transition to Electric Vehicles in India. Appraisal for 12th Five Year Plan.
- Agriculture: Model Land Leasing Act, Roadmap for revitalizing Agriculture,
- Social Sector Initiatives: Restructuring of Tribal Sub Plan, Indexes for monitoring of Education and Health in States, Monitoring execution of SDG goals in India. pushed for reforms in Medical Council of India and University Grants Commission.

STEPS TAKEN IN COOPERATIVE FEDERALISM

- Governing Council (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: Restructuring and rationalisation of CSS to give states greater leverage in their execution.
  - Skill Development
- 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 sates and UT.
- NITI Forum for North-East to address various challenges in region and recommend interventions to achieve sustainable economic growth.
- Sustainable Development in Indian Himalayan Region
- Development support services for States and UTs to achieve transformational and sustained delivery of infrastructure projects. 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 school education sector.
- E-Amrit: A one-stop destination for all information on electric vehicles. Developed in cooperation with UK.

COMPETITIVE FEDERALISM

- Endeavors to promote competitive federalism by facilitating improved performance of States/UTs.

- Encourages healthy competition among states through transparent rankings, in various sectors, along with a hand-holding approach.
- Some 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.
- Releases delta rankings for 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.
- Works closely with all stakeholders, including State/UT Governments, concerned Ministries/Departments in developing indicator frameworks, review mechanisms and capacity-building.

CRITICISM OF NITI AAYOG

- No role in influencing private or public investment.
- Does not seem to influence policymaking with long-term consequences. Ex. Demonetization and GST.
- As a think-tank, it should maintain a respectable intellectual distance from the government. Instead, it is seen doing uncritical praise of the Government-sponsored schemes and programs.
- Does not have the power to analyse the performance of various government schemes.
- Not been able meet its mandate in terms of fulfilling needs of the states.
- Granted too-wide mandate and too-many powers which can be counter-productive and prone to misuse.
- Lack of political authorization and legitimacy, as Vice Chairman is not a member of Parliament.
- Technocratic institution which lacks democratic oversight leads to reduced acceptability.
- NITI Aayog has no financial authority but does prepare a strategy, how this strategy is to be implemented is not clear.
- Limited voice of local bodies in the plans prepared.
- Limited understanding of system wide interlinkages and complex relationships in a market economy.
- Lack of proper independent evaluation system which provides feedback into the planning process.

WAY FORWARD

- Political authorization and legitimacy: Giving statutory status to NITI Aayog.
- Vice-Chairman of NITI Aayog should be given Cabinet Status and should be regular invitee to cabinet meetings for increasing influence over policy issues.
- Technical skills along with sectoral expertise should include expertise in economic systems and behavioral modelling, critical to understand market forces.
- Play a critical role in achieving SDG goals especially in the context of climate change.

►NEET RAISES FEDERAL ISSUES

Based on recommendations of A.K. Rajan Committee, Tamil Nadu Government, in 2021 passed NEET Exemption Bill exempting students of state to appear in National Cum-Eligibility Test (NEET) for admission into medical colleges. Governor initially reserved Bill but later sent back to Assembly under Article 200 for re-consideration.

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

- Entry 25 of Concurrent List allows both state and Centre to legislate on Education, including technical education, medical education and universities, subject to the provisions of 7th schedule.
- Entry 32 of State List: Incorporation, regulation and winding up of corporations other than those specified in List I and universities.

STATE'S ARGUMENT TO EXEMPT ITS STUDENTS FROM NEET

- Within federal right of state to conduct separate exam: Based on entry 25 of Concurrent List, state believes that it is within its federal right and sovereignty to propose such a legislation which has been provided under Concurrent List.
- SC in Modern Dental College case**:** Constitution Bench held that State government has power to legislate on student admissions to higher educational institutions. Tamil Nadu is relying on this judgment.
- State can regulate student admissions: SC ruled that law regulating student admission was within jurisdiction of State government under State List.

Thus, NEET Exemption Bill has been passed by Tamil Nadu relying on judgment.

REPUGNANCY OF LAWS UNDER ARTICLE 254

- Whether NEET Exemption Bill is inconsistent with central law allowing pan India NEET Examination for admission into medical courses.
- If state law infringes central law or is against central law, then it attracts Article 254 of Constitution under

which such a law must be reserved for President's Assent. Only when President assents to such inconsistency, the state legislation becomes valid and comes into effect.

- However, no timeline has been fixed under Article 254 under which the President is bound to assent or refuse assent to any state law.

RECOMMENDATIONS OF A.K. RAJAN COMMITTEE

Recommendations of Justice A. K. Rajan committee constituted by Tamil Nadu Government to study impact of NEET on aspirants from socially disadvantaged sections in medical admissions in Tamil Nadu.

CONSTITUTIONAL REASONS

- Eliminate NEET at all levels by state specific exams.
- Entry 32 of state list a special provision whereas Entry 25 is a general provision.
- Article 254 regarding Repugnancy cannot be invoked as Entry 32 of State List exclusively allows state for 'Regulation of Universities'.
- President's Assent for State Bill will remove any constitutional inconsistency.

POOR CONDITIONS OF POOR & OPPRESSED STUDENTS

- Rural urban divide: NEET has made it difficult for rural students, especially students belonging to backward and tribal communities to pass the test.
- Students from Tamil Nadu Medium declined: Admission of students from Tamil Medium declined significantly from 14.8% in 2016 to 1.99% in 2020.
- Students from State Board also Declined: from getting admission through NEET from 65.66% in 2016-17 to 48.22% in 2017-18.
- Ensure Social Justice: Test conducted by state will ensure social justice by catering to special needs of students belonging to backward community and students from vernacular medium.

CRITERIA PROPOSED FOR ADMISSION

- Higher secondary scores shall become sole admission criteria for admission to first degree medical programs, and to ensure equality in opportunity for students from different Boards of Education, normalisation of scores may be followed.
- Identification of Adversities: Socio-economic and other demographic adversities that cause poor performance of all relevant students, mainly disadvantaged and underprivileged, in their Higher Secondary examination shall be identified.
- Adversity Score: According to degree of intensities of adversities, re-profiling of scores can be done using a pre-developed framework of 'Adversity Score'.

REFORMING LEARNING IN SCHOOLS

- Reform higher secondary education to ensure parity for students from poor backgrounds. By reforms in:
  - Curriculum Reforms
  - Teaching methods to promote learning
  - Assessment process in Board Examination – to encourage students with subject knowledge and higher order skills including reasoning, decision making, social disposition etc.
- Deemed Universities to be brought under State's Purview – with President's approval.

►DELHI GOVT VS. LG'S POWER

According to Delhi government, amendment to Government of NCT of Delhi (GNCTD) Act 1991 violates basic structure of Constitution and alters the balance of power between LG and Council of Ministers as highlighted by Supreme Court in 2018 Judgment in "Government of NCT of Delhi vs Union of India".

ABOUT CONSTITUTION 69TH AMENDMENT ACT

- 69th Constitution Amendment Act & Government of National Capital Territory of Delhi (GNCT) Act, 1991 was enacted based on recommendations of Balakrishnan Committee.
- Added Article 239AA and Article 239AB to Constitution to give constitutional status to government of Delhi.
- ARTICLE 239AA (Special provisions for Delhi) Provides for Legislative Assembly of Delhi that can legislate on matters in State & Concurrent List except –on Public Order, Police and Land.
- ARTICLE 239AB (Provision for failure of constitutional machinery in Delhi): President after receiving report of LG may suspend the operation of Article 239AA or any law made under Article 239AA for one year.

DELHI HIGH COURT JUDGMENT - 2016

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

SC JUDGMENT – 2018

- Article 239AA has envisaged a representative form of government for Delhi.

- Article 239AA provides for legislative powers over matters falling within State and Concurrent List, (except police, land and public order).
- LG to act on aid and advice of Council of Ministers except when he refers matter to the President.
- In case of difference of opinion, LG to immediately send file to the President without delay.
- LG must try to resolve the difference through dialogue and discussion with Council or CM.
- LG cannot refer every matter to the President as Article 239AA (4) mentions about "any matter".

GOVT. OF NCT DELHI AMENDMENT ACT, 2021

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

►SALIENT FEATURES – GOVT. OF NCT DELHI ACT, 1991

The Act supplements the provisions of the Constitution relating to the Legislative Assembly and Council of Ministers for the National Capital Territory of Delhi. Let us go through the salient features of the Act.

SALIENT FEATURES

- Seats in Legislative Assembly are filled by persons chosen by direct election from territorial constituencies.
- Reservation of seats for Scheduled Castes in the Legislative Assembly based on their population as per 2001 Census.
- Qualifications for membership of Legislative Assembly – citizen of India, and not less than 25 years of age and possess such other qualifications as required.
- *Duration of Legislative Assembly – 5 years, unless sooner dissolved.* Expiration of five years shall operate as dissolution of the Assembly.
- *Duration of Assembly can be extended in case of proclamation of Emergency under Article 352* for 1 year at a time and not extending in any case beyond a period of six months after the Proclamation has ceased to operate.
- Summoning of Session of House by LG - 6 months shall not intervene between its last sitting in one session and the date appointed for its first sitting in the next session.
- Legislative Assembly to choose Speaker and Deputy Speaker
- Special address by the Lieutenant Governor – (i) commencement of the first session after election of LA and (ii) at the commencement of first session of each year.
- A member shall be disqualified on holding Office of Profit.
- The members shall be disqualified on grounds of defection under Tenth Schedule.
- Restriction on discussion in the Legislative Assembly – conduct of Judges of SC or HC in discharge of duties
- Courts not to inquire into proceedings of Legislative Assembly.
- Election Commission to delimit constituencies
- Matters in which Lieutenant Governor to act in his discretion - which falls outside the purview of the powers of Legislative Assembly; matters in which powers or functions are entrusted or delegated to the 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.
- Advice given by ministers to LG shall not be inquired into in any court
- Lieutenant Governor to administer members of LA oaths of office and of secrecy.
- President shall make rules for procedure to be adopted in the case of a difference of opinion between the Lieutenant Governor and the Council of Ministers or a Minister.
- All executive action of the Lieutenant Governor whether taken on the advice of his Ministers or otherwise shall be expressed to be taken in the name of the Lieutenant Governor.
- Duties of the Chief Minister - to communicate to the LG all decisions of the Council of Ministers relating to the administration of the affairs of the Capital and

proposals for legislation, to furnish such information relating to the administration of the affairs of the Capital and proposals for legislation as LG may call for & if the Lieutenant Governor so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council.

- Provision in case of failure of constitutional machinery – President's order under Article 239AB shall expire at the end of one year from the date of issue of the order and the provisions of clauses (2) and (3) of Article 356 shall apply to such order as they apply to a Proclamation issued under clause (1) of article 356.
- Article 356(2) - Any such Proclamation may be revoked or varied by a subsequent Proclamation.
- Article 356(3) - Every Proclamation issued under Article 356 shall be laid before each House of Parliament and shall, except where it is a Proclamation revoking a previous Proclamation, cease to operate at the expiration of two months unless before the expiration of that period it has been approved by resolutions of both Houses of Parliament.

►GOVERNMENT OF NATIONAL CAPITAL TERRITORY OF DELHI (AMENDMENT) ACT, 2021

The Government of National Capital Territory of Delhi (Amendment) Act, 2021 enhances the powers of the Lieutenant Governor and limits the elected government's power in Delhi.

SALIENT FEATURES

- Amends powers and responsibilities of Legislative Assembly and the Lieutenant Governor.
- The term "government" referred to in any law made by Legislative Assembly of Delhi will imply Lieutenant Governor (LG).
- Rules must be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha. Earlier, Legislative Assembly of Delhi had power to makes its own procedure.
- Prohibits Delhi's Legislative Assembly from making any rule to enable itself or its committees to:
  (i) consider the matters of day-to-day administration of the NCT of Delhi and
  (ii) conduct any inquiry in relation to administrative decisions.
  (iii) The Amendment also ensures that all such rules made before its enactment will be void.
- Requires LG to reserve those Bills for President which incidentally cover any of the matters outside the purview of the powers of the Legislative Assembly.
- The 1991 Act specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG. The Amendment adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.

SALIENT FEATURES - GOVT. OF NCT DELHI AMENDMENT - 2021

AMENDMENT	OBJECTIONS RAISED
1. The term "government" referred in any law made by Legislative Assembly will imply LG of Delhi.	• **Makes LG as the *"default administering authority"*** instead of Elected Delhi Govt. • **Disturbs balance** – Delhi CM-LG, Central Govt. and Elected Govt of Delhi – disturbs the federal polity • **Goes Against 2018 SC Judgment** – ○ against representative govt. ○ curbs constitutionally provided legislative powers of Delhi. ○ Discretionary power of LG to be used only in exceptional cases and not in routine manner ○ In case of difference of opinion – matter was to be sent to the President. The amendment makes LG the final authority. ○ Constitutional post holders – LG & CM to work in a collaborative manner to strengthen "Collaborative

	Federalism".
2. Rules regulating the procedure and conduct of business in Delhi Assembly to be consistent with the Rules of Procedure and Conduct of Business in the Lok Sabha.	• **This affects the independent functioning and working style of Delhi Assembly.** • **It increases supervision of the Central Government by making Delhi Assembly adhering to Lok Sabha Rules and Procedure.**
3. The Amendment prohibits Delhi Assembly from making any rule to enable itself or its committees to: (i) consider the matters of day-to-day administration of the NCT of Delhi and (ii) conduct any inquiry in relation to administrative decisions.	• Impacts the executive powers of Delhi Government. • Taking away executive powers from Delhi Govt • Impact powers of Govt to form committee over any administrative issue happening within jurisdiction of Delhi
4. The 1991 Act specifies that all executive action by the government, whether taken on the advice of the Ministers or otherwise, must be taken in the name of the LG. The Amendment adds that on certain matters, as specified by the LG, his opinion must be obtained before taking any executive action on the decisions of the Minister/ Council of Ministers.	• Increase LG-CM conflict on routine matters • LG can block any welfare legislation due to tussle between centre and Delhi Assembly. • Might delay day-to-day administrative work of Delhi Government. • Empowers Central Govt through LG to decide policy matters independent of Council of Minister.

WAY FORWARD - Despite the concerns, Central Government must work in coordination with Delhi Legislative Assembly to ensure good governance for the residents of Delhi.

►MERGER OF MUNICIPAL CORPORATIONS OF DELHI

Delhi Municipal Corporation (Amendment) Act, 2022 (passed by Parliament) merges 3 municipal corporations of Delhi (North, South & East) into a single corporation by amending Delhi Municipal Corporation Act, 1957.

OBJECTIVE TO INTRODUCE 2022 AMENDMENT

- Delhi Municipal Corporation (Amendment) Bill, 2022 seeks to:
  - (i) Unify three municipal corporations into a single, integrated and well-equipped entity.
  - (ii) Ensure robust mechanism for synergized, strategic planning & optimal utilisation of resources
  - (iii) Bring greater transparency, improved governance and more efficient delivery of civic service for people of Delhi.

THREE MUNICIPAL CORPORATION OF DELHI

- Delhi Municipal Corporation Act, 1957 was amended in 2011 by Delhi Legislative Assembly to trifurcate, 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.

DELHI MUNICIPAL CORPORATION (AMENDMENT) ACT, 2022

- Unifies three corporations of Delhi
- Transfers powers of Delhi Government to Central government to decide:
  - a) Total number of seats of councilors, number of seats reserved for Scheduled Castes.
  - b) Division of area of corporations into zones and wards (iii) delimitation of wards.
  - c) Matters such as salary and allowances and leave of absence of Commissioner.
  - d) Sanctioning of consolidation of loans by corporation.
  - e) Sanctioning suits for compensation against Commissioner for loss or waste or misapplication of Municipal Fund or property.
- Reduces number of seats from 272 to not more than 250.
- Removes office of Director of Local Bodies**:** Director of Local Bodies assisted Delhi government and discharged functions of: (i) coordinating between Corporations (ii) Framing recruitment Rules for various posts (iii) Coordinating collecting and sharing of toll tax collected by respective corporations.

- Appoints Special Officer to exercise powers of Corporation until first meeting of Corporation is held after commencement of the Bill.
- Provision for e-governance system for citizens' services on an anytime-anywhere basis for better, speedy, accountable, and transparent administration.
- Omits provision for conditions of service of sweepers employed for doing house scavenging.

CLAIMS IN FAVOUR OF 2022 AMENDMENT	CLAIMS AGAINST 2022 AMENDMENT
• Article 239AA empowers Parliament to legislate on UT of Delhi. • More autonomy to Unified Corporation. • Post of Director led to interference, diluted authority of commissioner as all transfer and inter-corporation issues had to be reported to it. • Improve functioning of Commissioner's office due to more autonomy. • Ensure robust service delivery architecture, greater transparency & improved governance. • Improve financial irregularities and help to pay salaries on time. • Help to reduce frequent Strikes of workers.	• Replaces "government" in Delhi Municipal Corporation Act, 1957 with "Central Government" – increased Central control over local body. • Parliament lacks legislative competence as trifurcation was done by Delhi Government. • Goes against federal structure as local bodies is listed in State List. Constitution empowers state to constitute municipal corporations. • Decision to Limit Seats to 250 goes against principles of delimitation – which is based on population.

Article 243Q. Constitution of Municipalities

(1) There shall be constituted in every State -

a) a Nagar Panchayat for a transitional area from a rural area to an urban area.

b) a Municipal Council for a smaller urban area

c) a Municipal Corporation for a larger urban area,

Entry 5 of State List: Local government, constitution and powers of municipal corporations, improvement trusts, districts boards, mining settlement authorities and other local authorities for purpose of local self-government or village administration.

Thus, as per Constitution, power to constitute municipal corporation has been bestowed to state governments.

►MECHANISM TO SETTLE INTER-STATE DISPUTES

In a constitutional set-up based on federal principle, sovereignty is divided between federation and the units. Division of sovereignty implies creation of boundaries, and this is bound to raise disputes, as to on which side of the boundary the matter falls. The reason is, that neither geographical phenomena, nor social currents, nor political forces, are defined by the boundaries so drawn. Where such differences do arise, it is desirable that there be a well thought out systemic mechanism, for inter-state dispute resolution.

NATIONAL COMMISSION TO REVIEW WORKING OF THE CONSTITUTION (NCRWC)

- Constitution contemplates a variety of mechanisms for settlement of inter-State disputes.
- Concept of Dispute has wide coverage in the Constitution and covers not only disputes that come up before the judiciary, but also disputes for whose resolution an extra-judicial machinery is contemplated by the Constitution.

CONSTITUTIONAL MECHANISMS INCLUDES

- Judicial Mechanism under Article 131
- Solving dispute through Inter-State Council under Article 263
- Parliament altering the boundary under Article 3
- Disputes relating to water – Article 262

STATUTORY & OTHER MECHANISM

- Zonal Council
- Inter-state River Water Disputes Act

1. JUDICIAL MECHANISM – ARTICLE 131

- Article 131 confers original jurisdiction on the Supreme Court "in any dispute" between the federation and its units, or between the units themselves.
- Article 131 covers any dispute between:
  - **(a)** Government of India and one or more States – (Centre & States)
  - **(b)** Government of India and any State or States on one side and one or more other States on the other – (Centre with states & Other States)
  - **(c)** Two or more States – (Between States)

2. SOLVING DISPUTES THROUGH INTER-STATE COUNCIL – ARTICLE 263

- Under Article 263 of the Constitution, there is provision for the formation of an inter-State Council. Although this Council has several functions, it is also competent to tender advice regarding the resolution of inter-State disputes including boundary disputes.
- The government has also reconstituted the *Standing Committee* of *the Inter-State Council* with Union Home Minister Amit Shah as chairman.
- The functions to be discharged by the Council are:
  (a) inquiring into and advising upon disputes which may have arisen between States.
  (b) investigating and discussing subjects in which state/s and Union have common interest; or
  (c) make recommendations for better co-ordination of policy and action among states.

SARKARIA COMMISSION REPORT

- Commission on Centre-State Relations under the Chairmanship of Justice R. S. Sarkaria in its report in January 1988 recommended that:
  (a) A Permanent Inter-State Council called the Inter-Governmental Council (IGC) should be set up under Article 263.
  (b) The IGC should be charged with the duties set out in clauses (b) and (c) of Article 263, other than socio-economic planning and development.
- Government of India accepted the recommendations of the Sarkaria Commission to set-up an Inter-State Council and notified the establishment of the Inter-State Council through Presidential Order dated 28-05-1990.
- Government also established Inter-State Council Secretariat in 1991 headed by a Secretary to the Government of India.

COMPOSITION OF THE INTER-STATE COUNCIL

- Council consists of Prime Minister as Chairman, Chief Ministers of all States and UTs, Administrators of UTs, Six Ministers of Cabinet rank in the Union Council of Ministers.

FUNCTIONS OF THE INTER-STATE COUNCIL

- Making recommendations upon such subject and for better coordination of policy and action regarding any issue or subject matter.
- Inquiring into and advising upon disputes which may have arisen between/among States.
- Investigating and discussing subjects in which some or all the States, or the Union and one or more of the States have a common interest.
- Deliberating upon other matters of general interest to the states as may be referred by the Chairman.

FUNCTIONS OF STANDING COMMITTEE

- Have continuous consultation and process matters for consideration of the Council.
- Process all matters pertaining to Centre-State Relations before they are taken up for consideration in the Inter-State Council.
- Monitor implementation of decisions taken on the recommendations of the Council
- Consider any other matter related to disputes of centre-states.
- Chaired by Union Home Minister.
- Standing Committee takes suggestions from constitutional, geological, environmental and other experts on different matters of disputes.

3. PARLIAMENT ALTERING BOUNDARY ANDER ARTICLE 3

- Parliament may by altering the boundaries of states end boundary disputes between states.
- Thus, Article 3 allows Parliament through legislation to:
  (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

  Ex.: Recently Parliament converted erstwhile state of Jammu and Kashmir into two Union Territories.

4. INTER-STATE DISPUTES – SHARING OF RIVER WATER

- The Constitution under Article 262 allows Parliament to make law on adjudication of any dispute with respect to the use, distribution and control of waters of any inter-state river.
- Accordingly, Parliament has legislated the Inter-state River Water Disputes Act, 1956 which creates Tribunals to settle inter-state river water dispute.
- Further, Article 262 also provides that neither the Supreme Court nor any other court is to exercise jurisdiction in respect of any such disputes. This means that till the dispute is being heard by the Tribunal, party to the disputes i.e., states cannot approach Supreme Court for any intervention or final hearing.

Water under VII Schedule

- Water is included in Entry 17 of State List under Seventh Schedule of the Constitution. It can be subject to the Centre's arbitration if it involves a clear case of conflict or dispute as mentioned under Entry 56 of Union List.
- As per Entry 17 of the State List, States have competence over water supplies, irrigation and canals, drainage and embankments, water storage and waterpower subject to the provisions of entry 56 of Union List of the Constitution.
- Entry 56 of Union List relates to regulation and development of Inter-state rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

IMPORTANT HIGHLIGHTS – INTER-STATE RIVER WATER DISPUTES ACT, 1956

- Request by States to Centre to refer river water sharing dispute to the Tribunal.
- Notification in official gazette of Tribunal by Centre within 1 year of request.
- Investigation and Submission of Report by Tribunal to the centre and disputing states.
- Publication of Decision of Tribunal in the Official Gazette.
- Decision of the Tribunal is final and binding on the parties to the dispute.
- Dissolution of Tribunal by Central Government after it forwards its report and when Centre is satisfied that no further reference to the Tribunal would be needed.
- Supreme Court or any other Court shall NOT have jurisdiction in respect of any water dispute which may be referred to a Tribunal under this Act.

CONCERNS & PROBLEMS - INTER-STATE RIVER WATER DISPUTES ACT, 1956

- No timeline has been provided in the Act for completion of the Award.
- No mechanism for negotiation prior to constitution of Tribunal.
- Delay in notifying of Tribunal's decision (Award) by the Centre – perpetuates disputes.
- Continuous River-Water disputes fuels animosity and furthers regionalism.
- Formation of new state (Telangana) further aggravates river-water sharing.
- Hesitation of Centre in constituting Tribunal leads to judicial intervention - Example –Tribunal constituted to settle Mahadayi River water dispute.
- Non-adherence of Award by the Tribunal is another concern as hardly states agree on the award and approach Supreme Court for final hearing.

SARKARIA COMMISSION – INTER-STATE WATER DISPUTES

The Sarkaria Commission in its report on Inter-State River Water Disputes has recommended to Amend Inter-state River Water Disputes Act, 1956 to

- Constituting Tribunal by centre without reference from states in case of disputes
- Constitute Data Bank and information system at the national level - states to give necessary data to the Tribunal for adjudication of disputes.
- Award of the Tribunal to be effective within five years from the date of constitution of the Tribunal.
- Tribunal's Award to have the same force and sanction as Judgment of Supreme Court.

Based on these recommendations, central government earlier introduced amendment to Inter-State River Water Disputes Act in 2017 and then in 2019. But the Bill is still pending.

INTER-STATE RIVER WATER DISPUTES (AMENDMENT) BILL 2019

- Dispute resolution:
  - Setting up of Disputes Resolution Committee (DRC) by Centre as first step to resolve river-water dispute – when states refer disputes to centre.
  - If a dispute cannot be settled by the DRC, the central government will refer it to the Inter-State River Water Disputes Tribunal.
- Permanent Tribunal: Central government will set up a Permanent Inter-State River Water Disputes Tribunal, for adjudication of water disputes. This Tribunal can have multiple benches to look into multiple disputes.
- Appointment of Experts known as Assessors – provide technical support by furnishing relevant data and information which shall be helpful in the adjudication of water disputes.
- Fixed Time frame: Tribunal must give its decision on the dispute within 2 years, which may be extended by another year.
- Centre to Maintain Data Bank for each River Basin for which states to furnish relevant data and information.
- Decision of the Tribunal shall be final and binding on the parties involved in the dispute.

However, the sustainable solution to these disputes depends upon how effective the tribunal award is implemented.

►ZONAL COUNCIL

Under States Reorganisation Act, 1956, five Zonal Councils have been set up namely Northern, Central, Eastern, Western and Central Zonal Councils. They are regional forum of cooperative endeavour for States linked with each other economically, politically and culturally. Zonal Council was created as an instrument of inter-governmental consultations and cooperation for socio-economic growth and arrest fissiparous tendencies.

OBJECTIVES OF ZONAL COUNCILS

- Bringing out national integration.
- Arresting growth of acute state consciousness, regionalism, linguism and particularistic tendencies.
- Enabling Centre and States to cooperate and exchange ideas and experiences.
- Establishing climate of cooperation amongst States for successful execution of development projects.

FUNCTIONS OF ZONAL COUNCIL

- Each Zonal Council shall be an advisory body and discusses matter concerning states and UTs and make recommendations on the following:
  - matters of common interest in the field of economic and social planning
  - matters concerning border disputes, linguistic minorities or inter-State transport
  - matters relating to reorganisation of States.

►NORTH-EAST COUNCIL

Northeast Council is nodal agency for economic and social development of Northeast Region which consists of 8 States of Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim and Tripura. Northeast Council was constituted in 1971 by an Act of Parliament. With creation of Ministry of Development of Northeast Region (DoNER) in 2004 administration of NEC came under the new Ministry.

FUNCTIONS

- Function as a regional planning body for Northeast.
- Give priority to schemes and project benefiting two or more North-Eastern States.
- Review implementation of projects & schemes included in regional plan.
- Recommend measures for effective co-ordination among Northeastern States.
- Facilitate consideration of feasibility of including new projects in regional plan and undertake necessary surveys and investigation for projects.
- Review maintenance of security and public order in the Northeast and recommend measures to address.

BENEFITS

- Propel economic growth by addressing concerns and resolving issues impeding concerns.
- Improve performance & productivity including improved ease of doing business and ease of living.
- Helps to achieve northeastern region Vision 2020 drawn by NEC.
- Major infrastructure projects in roads, railways, airways and power have been implemented and telecom connectivity has also improved considerably as part of NER Vision 2020.
- Harnessing of hydroelectric potential in the region.
- Funding projects in many priority areas such as in health, tourism, agriculture and allied activities, industries, irrigation and flood control, human resources development, etc.

CHALLENGES

- Despite hydroelectric projects, the region continues to depend on power supply from outside the region.
- Transport and communication network is still at nascent stages of development and many areas of North-east remain poorly connected.
- Poor road and rail connectivity further impacts industrial growth, tourism and development of markets and trade.
- Lack of proper funds allocated to the region further impedes its development.
- CAG reports on NEC funded projects have pointed to recurring delays in completion of the projects due to flaws in the planning process, delay and non-release of funds to the implementing agencies and inadequate monitoring and absence of impact assessments.
- Lack of completion of developmental projects also impacts security in the region as it is infested with insurgencies from various groups and organisations.

►BOUNDARY DISPUTES IN INDIA

At the time of independence, there were four categories of states namely PART A, PART B, PART C & PART D States. However, the State Reorganisation Act, 1956 removed these

criteria and it created 14 states and 6 Union Territories (UT). From 1956 till present times, India has witnessed changes in the boundaries and nature of states and UTs. Some of the UTs were categorised as states, two UTs were recently merged, two UTs have legislative assemblies and former state of Jammu and Kashmir was bifurcated into two UTs one having legislative assembly. Even though changes in the state's boundaries were carried out through States Reorganisation laws passed by Parliament, still disputes relating to boundary or even sharing of river water remains. So, let us go through some of the disputes, their reasons and an overall understanding as to why these disputes have not yet solved. The Union Home Ministry (MHA) in December 2021informed Lok Sabha that 11 States and 1 Union Territory have boundary disputes between them and "occasional protests and incidents of violence are reported from some of the disputed border areas".

History of State Reorganisation

- First States Reorganisation Commission, 1953: appointed by Prime Minister Jawahar Lal Nehru. SRC was headed by S. Fazal Ali and had two members namely K. M. Panikkar & H. N. Kunzru.
- Constitution 7th Amendment implemented states reorganisation and added Article 350A -*facilities for instruction in the mother-tongue at the primary stage of education to children belonging to linguistic minority groups.*
- SRA, 1956 also provided for the following: Amendment to First & Fourth Schedule; Provision of High Courts for the new States; Zonal Council; Delimitation of Constituencies; All India Services; Services under State Public Service Commission.

RECENT EXAMPLES OF INTER-STATE BOUNDARY DISPUTES

- Tussle over Belagavi: Based on recommendations of SRA, 1956, Belgaum was included in Karnataka as majority population was Kannada speaking. Later, Maharashtra petitioned Centre to include Konkani speaking areas into Maharashtra which led to constituting Mahajan Committee which suggested retaining Belagavi in Karnataka and transfer some areas of Karnataka to Maharashtra and vice versa. However, the dispute continues along border areas.
- Punjab Claims Chandigarh: Punjab Reorganisation Act 1966 resulted in 1. Formation of a new state Haryana carved out of Punjab 2. Formation of UT of Chandigarh 3. Transfer of some territory from Punjab to Himachal Pradesh. Since then, Chandigarh has been joint capital of Punjab and Haryana. However, Punjab Government has passed a resolution urging Union government to transfer Chandigarh to Punjab. Chandigarh was made to compensate for loss of Lahore during partition. The resolution was passed after Centre amended rules of Bhakra Beas Management Board and placed it under its control.
- Inter-state Disputes in North-East: Assam has had boundary disputes with all north-eastern States that were carved out of it as these divisions were based on administrative decisions where local tribals were not consulted. Nagaland became a State in 1963, Meghalaya became an Autonomous State in 1970 and a full State in 1972. Arunachal Pradesh and Mizoram were separated from Assam as UTs in 1972 and as States in 1987. None of the new States accepted "constitutional boundary" that they see as dictated by partisan administration of undivided Assam without consulting tribal stakeholders. They claim that disputed areas were traditionally under control of tribal chieftains who were not consulted before demarcating boundaries of states.
- Assam-Mizoram Border Dispute: Dispute started after Mizoram was carved out as a separate state in 1980. The present-day dispute along 165 km boundary stems from 1875 notification - derived from Bengal Eastern Frontier Regulation (BEFR) 1873 - differentiated Lushai Hills from the plains of Cachar, and another notification of 1933 that demarcates a boundary between Lushai Hills and Manipur. Mizo leaders have argued against 1933 demarcation whereas leaders of Assam have claimed 1933 demarcation to be final demarcation that demarcates a boundary between Lushai Hills and Manipur.
- Assam-Arunachal Border Dispute: dates to 1873 when inner line Regulations bifurcated plains and hills. Resulted in formation of Northeast Frontier Tracts (NEFT) in 1915. However, in 1951 based on Gopinath Bordoloi Committee's Report on administration of NEFA, around 3,648 sq. km of "plain" area of Balipara and Sadiya foothills was transferred from Arunachal Pradesh (then NEFA) to Assam's Darrang and Lakhimpur districts. Arunachal claims that transfer of land in 1951 was arbitrary local tribes were not consulted who had customary rights over these lands. Whereas according to Assam, demarcation done in 1951 is constitutional.

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

IMPACT OF BORDER DISPUTES

- Results in economic blockade at times leading to disruptions in supply chain and logistics.
- Leads to aggravated violence and destruction of public property – as was witnessed along Assam-Mizoram Border in 2020.
- Disturbance in public order along border.
- Results in demand for new states
- Regional identity takes the Centre stage – demand for Bodoland, Nagalim etc.

WAY FORWARD - Chief Ministers of Assam and Arunachal Pradesh have decided to form district-level committees for settling their inter-state boundary disputes. Similar forums must be constituted to settle pending inter-state border disputes in India.

►FINANCE COMMISSION

A constitutionally mandated (Article 280) body that is at the center of fiscal federalism as it addresses vertical and horizontal imbalances in the finances of states.

- Responsibilities
  - Evaluate status of finances of Union and State Governments.
  - Recommend sharing of taxes between Centre and States.
  - Lay down principles for distribution of these taxes among States.
- Its working is characterised by extensive and intensive consultations with all levels of governments, thus strengthening the principle of cooperative federalism.
- Its recommendations are geared towards improving quality of public spending and promoting fiscal stability.

ENSURING FISCAL FEDERALISM

- As per Article 280, Finance Commission constituted by President every fifth year shall consist of a Chairman and four other members to be appointed by the President.
- As per Article 280, FC makes recommendations for:
  - Distribution between Union and States of the net proceeds of taxes and allocation between States of respective shares of such proceeds.
  - Principles which should govern the grants-in-aid of revenues of States out of Consolidated Fund of India and the sums to be paid to States by way of grants-in-aid of their revenues under Article 275 of Constitution.
  - Measures needed to augment Consolidated Fund of State to supplement resources of Panchayats and Municipalities in State based on recommendations made by the Finance Commission of the State.
  - The Commission shall review the status of the finance, deficit, debt levels, cash balances and fiscal discipline efforts of the Union and the States and recommend a fiscal consolidation roadmap for sound fiscal management.

CONSTITUTIONAL PROVISION TO ADDRESS VERTICAL AND HORIZONTAL IMBALANCES

- States being closer to people and more sensitive to the local needs have been assigned functional responsibilities involving expenditure disproportionate to their assigned sources of revenue resulting in vertical imbalances.
- Horizontal imbalances across States are on account of factors, which include historical backgrounds, differential endowment of resources, and capacity to raise resources.
- In an explicit recognition of vertical and horizontal imbalances, the Indian Constitution embodies the following enabling and mandatory provisions to address them through the transfer of resources from the Centre to the States.
  - Levy of duties by the Centre but collected and retained by the States (Article 268)
  - Taxes and duties levied and collected by the Centre but assigned in whole to the States (Article 269).
  - Sharing of all Union taxes between Centre and States under Article 270.
  - Statutory grants-in-aid of revenues of States (Article 275)
  - Grants for any public purpose (Article 282)
  - Borrowings by States (Article 293)

14TH FC STRENGTHENED FISCAL POSITION OF STATES

- Increasing vertical distribution of taxes from 32% to 42% in the form of untied grants.
- Providing broader parameters for horizontal distribution of taxes: 1971 census, changes in population since then, income distance, forest cover and area etc.

- Providing maximum weightage to "income distance" (50%) for horizontal distribution of taxes which was based on per capita income of states ensuring more funds for poor states.
- Considering state's entire revenue expenditure needs without distinguishing between plan & non-plan expenditure.
- Providing grants for Panchayats and Municipalities - 2011 Census.
- Ensuring basic and performance grants in the ratio of 90:10 for Panchayats and 80:20 for Municipalities.
- Creating GST Compensation Fund to address lack of revenue
- Providing revenue deficit grant to some states.

FIFTEENTH FINANCE COMMISSION ALSO INCLUDED THE FOLLOWING IN ITS TERMS OF REFERENCE:

- Resources, potential and fiscal capacity of Central Government and State Governments for 5 years – April 2020 – March 2025.
- Expense of Central Government - defence, internal security, infrastructure, railways, climate change, commitments towards administration of UTs without legislature and other committed expenditure and liabilities.
- Expense of State Government: Financing socio-economic development & critical infrastructure, asset maintenance expenditure, balanced regional development and impact of debt and liabilities of their public utilities.
- Impact on fiscal situation of Union Government of substantially enhanced tax devolution to States as per 14th FC Recommendation.
- Impact of GST including payment of compensation for possible loss of revenues for 5 years to states and abolition of a number of cess.
- Conditions that Union Government may impose on States while providing consent under Article 293(3) of Constitution – borrowing by states.

CONCERNS

- Finance Commission should be made a permanent constitutional body like Election Commission to reduce dependency on central government.
- Central Government unilaterally fixes terms of reference of FC beyond remit of Art. 280.
- Unilateral appointment of members to FC by Centre.
- Use of a general Census for all states which has diverse population and resources – affects devolution of funds. Because of use of 2011 Census, which was protested by states meeting family planning norms, Finance Commission had to introduced Demographic Performance as a criterion to factor fertility rates to allay the concerns raised by the southern states.

WAY FORWARD - Since, Finance commissions working is characterised by extensive and intensive consultations with all levels of governments. Thus, it plays a key role in strengthening and promoting cooperative and competitive federalism.

►MERGER OF UT OF DADRA & NAGAR HAVELI AND DAMAN & DIU

Government has merged UTs of Dadra & Nagar Haveli and Daman merged into one UT named as UT of Dadra and Nagar Haveli and Daman and Diu. This has been done under Article 3(a) of Constitution as state also includes UT. This was done in view of fruitful utilization of manpower, improve administrative efficiency, reduce administrative expenditure and improve service delivery as well as facilitate better monitoring of schemes.

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

Explanation I — In this article, in clauses (a) to (e), —State includes a Union territory

CHANGES IN CONSTITUTION

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

LEGISLATURE & EXECUTIVE

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	To what extent, in your view, the Parliament is able to ensure accountability of the executive in India?
2021	Explain the constitutional provisions under which Legislative Councils are established. Review the working and current status of Legislative Councils with suitable illustrations.
2021	Do Department -related Parliamentary Standing Committees keep the administration on its toes and inspire reverence for parliamentary control? Evaluate the working of such committees with suitable examples.
2020	"Once a Speaker, Always a Speaker"! Do you think this practice should be adopted to impart objectivity to the office of the Speaker of Lok Sabha? What could be its implications for the robust functioning of parliamentary business in India?
2020	Rajya Sabha has been transformed from a 'useless stepney tyre' to the most useful supporting organ in past few decades. Highlight the factors as well as the areas in which this transformation could be visible.
2019	Individual Parliamentarian's role as the national lawmaker is on a decline, which in turn, has adversely impacted the quality of debates and their outcome. Discuss.
2018	Why do you think the committees are considered to be useful for parliamentary work? Discuss, in this context, the r ole or the Estimates Committee.
2017	The Indian Constitution has provisions for holding joint session of the two houses of the Parliament. Enumerate the occasions when this would normally happen and also the occasions when it cannot, with reasons thereof.
2017	Discuss the role of Public Accounts Committee in establishing accountability of the government to the people.
2014	The 'Powers, Privileges and Immunities of Parliament and its Members' as envisaged in Article 105 of the Constitution leave room for a large number of un-codified and un-enumerated privileges to continue. Assess the reasons for the absence of legal codification of the 'parliamentary privileges'. How can this problem be addressed?
2013	The role of individual MPs (Members of Parliament) has diminished over the years and as a result healthy constructive debates on policy issues are not usually witnessed. How far can this be attributed to the anti-

	defection law, which was legislated but with a different intention?

►UPCOMING PRESIDENTIAL ELECTIONS

July 24, 2022, ends the tenure of President Ram Nath Kovind as he completes 5 years in office. Election for the office of President has been scheduled on 18th July 2022 by the Election Commission. Art. 324 authorises Election Commission to conduct elections for the office of President.

WHO ELECTS THE PRESIDENT OF INDIA?

- Article 54 - The President is elected by an Electoral College, which consists of the elected members of both Houses of Parliament and the elected members of the Legislative Assemblies of all the States and of NCT of Delhi and the Union Territory of Puducherry.
- This means, in the upcoming polls, the number of electors will be 4,896 — 543 Lok Sabha MPs, 233 MPs of the Rajya Sabha, and 4,120 MLAs of all States, including the National Capital Territory (NCT) of Delhi and Union Territory of Puducherry.

WHAT IS THE TERM OF THE OFFICE OF THE PRESIDENT?

- Article 56 - The President shall hold office for a term of 5 years from the date on which he enters upon his office. He shall, however, continue to hold office notwithstanding the expiry of his term, until his successor enters upon his office.

WHEN IS THE ELECTION OF THE OFFICE OF PRESIDENT OF INDIA HELD?

- According to the Presidential and Vice-Presidential Elections Act, 1952 – Election to the office of President and Vice-President is notified by the Election Commission within the period of 60 days before the expiry of the term of office of the outgoing President. The election is fixed accordingly so that the President-elect can enter upon his office on the day following the expiry of the term of the outgoing President.

WHAT ELECTORAL SYSTEM/PROCESS IS FOLLOWED FOR THE ELECTION TO THE OFFICE OF THE PRESIDENT?

- Article 55(3) - the election of the President shall be held in accordance with the system of proportional representation by means of single transferable vote and the voting at such election shall be by secret ballot.

WHAT ARE THE QUALIFICATIONS REQUIRED BY A CANDIDATE TO CONTEST THE ELECTION TO THE OFFICE OF THE PRESIDENT OF INDIA?

- Article 58 - A candidate should fulfil the following eligibility conditions to contest the election to the Office of President:
  - (i) Must be a citizen of India,
  - (ii) Must have completed 35 years of age
  - (iii) Must be eligible to be a member of the Lok Sabha,
  - (iv) Should not be holding any office of profit under the Government of India or the Government of any State or under any local or other authority subject to the control of any of the said Governments.
- However, the candidate may be holding the office of President or Vice-President or Governor of any State or Ministers of the Union or any State and shall be eligible to contest election.

MANNER OF ELECTION OF PRESIDENT & VALUE OF VOTES

- Article 55 - The Constitution stipulates that there shall be uniformity, as far as practicable, in the scale of representation of the different States at the election.
- For securing such uniformity among the States inter-se as well as parity between the States as a whole and the Union, a formula based on the population of each State is given in the Constitution for determination of the value of vote which each elected Member of Parliament and of the Legislative Assembly of each State is entitled to cast.
- The Constitution (Eighty-fourth) Amendment Act, 2001 provides that until the relevant population figures for the first census to be taken after the year 2026 have been published, the population of the States for the purposes of calculation of value of votes for the Presidential Election shall mean the population as ascertained at the 1971-census.
- The value of the vote of each member of a State Legislative Assembly included in the Electoral College is calculated by dividing the population of the State concerned (as per 1971 Census) by the total number of elected members of the Assembly, and then further dividing the quotient by 1000.
- If the remainder, while so dividing is 500 or more, then the value is increased by "1".
- Total Value of votes of all members of each State Assembly is worked out by multiplying the number of elective seats in the Assembly by the number of votes for each member in the respective State.

- The total value of votes of all the States worked out as above in respect of each State and added together is divided by the total number of elected members of Parliament (Lok Sabha 543+Rajya Sabha 233) to get the value of votes of each Member of Parliament.

ILLUSTRATION

Total population of Andhra Pradesh (1971 census)	:	2,78,00,586
Total No of elective seats in the State Assembly	:	175
No. of votes for each member	:	2,78,00,586
		1000×175
		= 158.8605
		= 159

- The total value of votes of all the States added together is divided by the total number of elected members of Parliament (Lok Sabha 543 + Rajya Sabha 233) to get the value of votes per each Member of Parliament.
- However, for the upcoming Presidential Elections, the value of vote for MPs has gone down from 708 to 700 as erstwhile state of Jammu and Kashmir was converted into two Union Territories. This resulted in dissolution of state assembly of Jammu and Kashmir thereby reducing Value of Votes for MP to 700.
- Thus, the fixed value of each vote by an MP of the Rajya Sabha and the Lok Sabha is 700 whereas the vote value of each MLA differs from State to State based on a calculation that factors in its population vis-a-vis the number of members in its legislative Assembly.

NOMINATION STAGE

- Before the voting, comes the nomination stage, where the candidate intending to stand in the election, files the nomination along with a signed list of 50 proposers and 50 seconders.
- These proposers and seconders can be anyone from the total of 4,896 members of the electoral college from the State and national level. An elector cannot propose or second the nomination of more than one candidate.

RETURNING OFFICER

- By convention, the Secretary General, Lok Sabha or the Secretary General, Rajya Sabha is appointed as the Returning Officer, by rotation.
- Two other senior officers of the Lok Sabha/ Rajya Sabha Secretariat and the Secretaries and one more senior officer of Legislative Assemblies of all States including NCT of Delhi and Union Territory of Puducherry, are also appointed as the Assistant Returning Officers. The Election Commission of India makes such appointments.

SCRUTINY OF NOMINATION PAPERS

- As per the Presidential and Vice-Presidential Elections Act, 1952, all nomination papers received are scrutinized by the Returning Officer on a particular by the Election Commission under.
- At the time of such scrutiny, *the candidates, one proposer or one seconder of each candidate* and *one other person duly authorized, in writing, by each candidate shall be entitled to be present.*
- They shall be given all reasonable facilities for examining the nomination papers of the candidates and raise objections about those nomination papers.

GROUNDS OF REJECTION OF NOMINATION PAPER

A nomination paper may be rejected by Returning Officer on following grounds under Section 5E of the Presidential and Vice-Presidential Elections Act, 1952 if:

1. On the date of scrutiny of nominations, the candidate is not eligible for election as President under the Constitution; or
2. If any of the proposers or seconders are not qualified to subscribe a nomination paper, i.e., he is not an elector at the election; or
3. If it is not subscribed by the required number of proposers and/or seconders; or
4. If the signature of the candidate or any of the proposers or seconders is not genuine or has been obtained by fraud; or
5. If the nomination paper is not presented in person by the candidate or any of his proposers or seconders or if it is not delivered to the Returning Officer, within the prescribed time limit, or the candidate has failed to make the required security deposit in the prescribed manner.

However, a candidate's nomination shall not be rejected, if he has submitted another set of nomination papers, which are without any irregularity or defect. A candidate's nomination shall not be rejected on the ground of any defect that is not of substantial character.

SECURING VICTORY

- A nominated candidate does not secure victory based on a simple majority but through a system of bagging a specific quota of votes.
- While counting, the EC totals up all the valid votes cast by the electoral college through paper ballots and to win, the candidate must secure 50% of the total votes cast + 1.
- Unlike general elections, where electors vote for a single party's candidate, the voters of the Electoral

College write the names of candidates on the ballot paper in the order of preference.

►CONTOVERSY ON THE OFFICE OF CHANCELLOR

West Bengal Government has decided to make its Chief Minister the chancellor of its state-run universities by amending State Universities Act. This decision has been taken after continued strained relations with Governor who presently is the Chancellor. Strained relations between Chief Minister and Governor on Universities have also been witnessed in Kerala, and Tamil Nadu.

STATE UNIVERSITIES ACT

- 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 Governor as the Chancellor of state universities by virtue of Governor's office.
- For example, Uttar Pradesh State Universities Act, 1973 or West Bengal State Universities Act, 2007 appoints Governor as the Chancellors of all state universities.
- Thus, Chancellors hold statutory powers.

CHANCELLOR, BY VIRTUE OF HIS OFFICE IS A HEAD OF THE UNIVERSITY AND VESTED WITH THE FOLLOWING POWERS:

- Appoints Vice-Chancellors.
- Presides over Convocation of State Universities.
- Appoints nominees on various bodies like Senate, Syndicate, Board of Management, Selection Committee or Academic Council of State Universities.
- Grant leave or institute disciplinary action and award penalties.
- Power to hear representation of employees & students.
- Power to take final decisions on election disputes about the representation in different bodies of the universities and managing committees of its colleges.
- Power to nominate experts in appointment of teachers of various categories in the university.
- Convenes review meetings of Vice-Chancellors and concerned ministries.

REASONS TO REPLACE GOVERNOR AS CHANCELLOR OF ALL STATE UNIVERSITIES

- Governor while acting as Chancellor of State Universities takes decision without the aid and advise of Council of Minister. This discretionary based decision has become one of the major reasons of dispute.
- Continuous disputes on the appointment of Vice-Chancellors of state universities.
- Such disputes have resulted in strained relations between the appointed Governor and elected Chief Minister.
- The dispute has politicized the appointment of vice-chancellors across state universities.

CONCERN EXPRESSED BY SARKARIA COMMISSION'S REPORT

- State University Acts generally provide that the Governor by virtue of his office, shall be the Chancellor or head of the University concerned and endowed with various powers such as appointment of vice-Chancellor.
- The question is whether the Governor's functions as Chancellor of a University fall within the purview of Art. 163(1).
- *This would imply that a Governor is bound to act on the aid and advice of his Council of Ministers in the discharge of his functions as Chancellor* except in so far as he is required by the statute to exercise any of the functions in his discretion.
- There have been instances where, in selecting Vice-Chancellors, Governors as Chancellors have acted in their discretion, over-ruling the advice of the Council of Ministers.
- First Instance -The question first arose when the Governor of Bombay had to nominate members of the Senate of the University of Poona in consultation with the Vice-Chancellor. *The Attorney-General for India reportedly held that, as Chancellor, the Governor was not bound to act on the aid and advice of his Ministers.* The position was later accepted by Pandit G.B. Pant as Chief Minister of Uttar Pradesh when a question arose about the role of the Governor as Chancellor of Universities in that States.
- Different Views of State Governments –According to one, Chancellor of a University (the Governor) is not bound to accept the advice of his Ministry. Yet another State Government has sought to make a distinction between the statutory functions of the Governor as Chancellor which can be challenged in a court of law, while the action taken by him in his capacity as Governor, which cannot be so challenged.
- First ARC's View: First ARC recommended that the functions assigned to a Governor by statute (Ex. those

of Chancellor of the University) should be exercised by him in his discretion. The Governor may consult the Chief Minister if he so wishes, but he should not be bound by the latter's advice. The Commission surmised that the idea underlying the assignment of certain functions to the Governors by statute was to insulate them from political influence.

CONSTITUTIONAL PROVISIONS

Art. 154 (Executive power of State) (1) Executive power of State shall be vested in Governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.

Art.163 (Council of Ministers to aid and advise Governor) (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.

Art. 361 - Protection of President and Governors and Rajpramukhs— (1) The President, or the Governor or Rajpramukh of a State, shall not be answerable to any court for the exercise and performance of the powers and duties of his office or for any act done or purporting to be done by him in the exercise and performance of those powers and duties.

REASONS FOR SARKARIA COMMISSION'S RECOMMENDATIONS

Commission bifurcated Governor's Role, Powers & Duties into two categories:

1) Powers & Functions conferred on Governor in his capacity as Governor constitute one such category. Such functions pertain to the office of the Governor, as provided for in Art. 154(1) and are to be exercised by him on ministerial advice in accordance with Art. 163(1). Further, by virtue of Art. 361(1), the Governor enjoys personal immunity from answerability to any court for the exercise by him of such functions.
2) The other category of functions are those which a statute may confer on the Governor, not in his capacity as Governor but in a different capacity such as, for instance, the Chancellor of a University. Here, the Governor functions in pursuance of a statute in relation to the affairs of the University—not as Governor but as Chancellor, (irrespective of the fact that he holds the office in the University in ex-officio capacity). Even though the governor is the chancellor by virtue of his office and would cease to be the Chancellor on ceasing to be Governor, *it does not necessarily follow that the functions assigned to him as Chancellor of the University are to be performed by him in his capacity as the Governor.* It has been held that the immunity given to the Governor, under Art. 361(1) does not extend to the exercise of powers and duties falling under this category.

- The statutory functions of Chancellor do not fall within purview of Art. 154(1) and cannot be regarded as 'business of the Government of the State' under Art. 166(3), the reason being that the office of Chancellor is distinct from that of the Governor.
- The office of Chancellor, even though held by the Governor under a statute in an ex-officio capacity cannot be equated with the state. The former, being an officer of the University, is not obliged to seek the advice of the State Government in the matter of exercise of his functions such as the appointment of Vice-Chancellor under Art. 163(1). The same view has been taken by the Andhra Pradesh High Court in M. Kiran Babu Vs. Government of Andhra Pradesh.
- Governor as Chancellor must act based on state law - Governor, in his capacity as Chancellor of a University, may possibly be required by the University's statute (Ex. Calcutta and Burdwan University Acts) to consult a Minister mentioned in such statute on specified matters. In such cases, the Governor may be well advised to consult the Minister on other important matters also. In either case, there is no legal obligation for him to necessarily act on any advice received by him.

PUNCHHI COMMISSION'S VIEW

- Governor should not be burdened with positions and powers which are not envisaged by the Constitution and which may expose the office to controversies or public criticism.
- This will allow the Governor to discharge the Constitutional obligations fairly and impartially.
- Conferring statutory powers on the Governor by State Legislatures have that potential and should be avoided.
- Making the Governor the Chancellor of the Universities and thereby conferring powers on him which may have had some relevance historically, has ceased with change of times and circumstances.
- The Council of Ministers will naturally be interested in regulating University education and there is no need to perpetuate a situation where there would be a clash of functions and powers.
- The Commission recommended that the Governor should not be assigned functions casually under any Statute and his role should be confined to the Constitutional provisions only.

►RELEASE OF A.G. PERARIVALAN BY SC

A.G. Perarivalan, one of the seven convicts in the Rajiv Gandhi assassination case has been released by the Supreme Court by exercising its power under Art. 142. Three Judge Bench also disapproved Governor's decision to send recommendations of state cabinet (remit remaining part of sentence) for President's consideration. Clemency powers of Governor and President are provided under Art. 161 and 72.

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 Art. 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 Art. 72 & 161 respectively by President and Governors need to be exercised in conformity with the aid and advice of the Council of Ministers under Art. 74 and 163.
- Decision not constrained by time - Clemency powers of President and Governor under Art. 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 look into 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

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

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 civilized 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.

REPORT ON CAPITAL PUNISHMENT - LAW COMMISSION'S VIEW ON PREROGATIVE OF MERCY IN THE EXECUTIVE

- There are many matters which may not have been considered by the Courts. The hands of the Courts are tied down by the evidence placed before it.
- A death sentence passed by the Court after consideration of all materials placed before it may yet require reconsideration because:
  - (i) Facts not placed before the Court
  - (ii) Facts placed before the Court but not in the proper manner

(iii) Facts discovered after passing of the death sentence

(iv) Events which may have developed after passing of death sentence

(v) Other unknown developments related to the sentence

MEANING OF PARDON, REPRIEVE, RESPITE, COMMUTATION & REMISSION

- *In Pardon*, it affects both the punishment prescribed for the offence and guilt of the offender. A full pardon may 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 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 of death sentence to life imprisonment.
- *Remission* is the reduction of the amount of a sentence without changing its character. Example: A person is imprisoned for14 years in solitary confinement. In Remission, his sentence might reduce to 10 years but the nature i.e., solitary confinement will not change.

IS JUDICIAL REVIEW AVAILABLE ON CLEMENCY POWERS?

- In Epuru Sudhakar case, Supreme Court laid down that judicial review under Art. 72 and 161 is available on following grounds:
  a) Order has been passed without application of mind.
  b) Order is malafide.
  c) Order has been passed on extraneous or wholly irrelevant considerations.
  d) 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 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.

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 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.

SC FINAL VERDICT TO RELEASE PRISONERS

- Governor sending State government's recommendation on remission**:** SC held that there is no constitutional provision for Governor to refer a recommendation made by State Cabinet to President.
- On Centre's Plea on "appropriate government"**:** SC rejected Centre's argument which stated that "appropriate government" to decide on remission of sentence in matters to which executive power of Union extends is Union Government.
- Union taking Precedence over State where both State and Centre have power to make laws, 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.

►INDIAN LEGISLATIVE SERVICE

Based on the understanding of Article 98 and 187 of the Indian Constitution which provides for separate Secretariats for Lok Sabha and Rajya Sabha, the need to create an independent All India Legislative Service under Article 312 to serve across the legislative bodies in India has been felt.

Article 312 - All-India Services

- Rajya Sabha in the national interest can create by law one or more all India services including an all-India judicial service common to the Union and the States by passing a resolution supported by not less than two-thirds of the members present and voting.
- Parliament can also regulate the recruitment, and the conditions of service of persons appointed, to any such all India service.

Article 98 - Secretariat of Parliament

1. Each House of Parliament shall have a separate secretarial staff. However, Parliament can also create posts common to both Lok Sabha and Rajya Sabha.
2. Parliament may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of either House of Parliament.
3. Until such law is created for recruitment, President may, after consultation with the Speaker of the House of the People or the Chairman of the Council of States, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House of the People or the Council of States.

Article 187 - Secretariat of State Legislature

1. The House or each House of the Legislature of a State shall have a separate secretarial staff.
2. The Legislature of a State may by law regulate the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the House or Houses of the Legislature of the State.
3. Governor may, after consultation with the Speaker of the Legislative Assembly or the Chairman of the Legislative Council, make rules regulating the recruitment, and the conditions of service of persons appointed, to the secretarial staff of the Assembly or the Council.

SECRETARIAL STAFFS ARE GENERALLY NOT APPOINTED AS SECRETARY-GENERAL OF LOK SABHA

- Dr. P.P.K. Ramacharyulu is the first-ever Rajya Sabha secretariat staff who was appointed as Secretary-General of Rajya Sabha by the Chairman of the Rajya Sabha in September 2021.

- Appointment of Secretarial Staff as Secretary-General is generally not the usual norm as usually members from civil services (IAS, IRS etc.) are appointed to the post both in Lok Sabha and Rajya Sabha.
- Appointment of Dr. P.P.K. Ramacharyulu as Secretary-General of Rajya Sabha was both a well-deserving signal for long-serving staff of the Parliament secretariat and course correction to restore the legitimacy of their long-time demand.
- However, Ramacharyulu was replaced by a former bureaucrat, P.C. Mody, in less than three months due to political pressures.

SECRETARIAT - LOK SABHA & RAJYA SABHA

- Each House of Parliament has its separate Secretariat which functions under the direction and control of its Presiding Officer. Thus, Lok Sabha Secretariat functions under the ultimate guidance and control of the Hon'ble Speaker, Lok Sabha whereas Rajya Sabha Secretariat functions under the guidance of Chairman of Rajya Sabha.
- Lok Sabha - In the discharge of his Constitutional and statutory responsibilities, the Speaker of Lok Sabha is assisted by the Secretary-General, Lok Sabha, (whose pay scale, position and status etc. is equivalent to that of the highest ranking official in the Government of India i.e. Cabinet Secretary), functionaries of the level of the Additional Secretary, Joint Secretary and other officers and staff of the Secretariat at various levels.
- The Secretary-General, Rajya Sabha, functions as the head of the Rajya Sabha Secretariat and advisor to the Chairman, Rajya Sabha.

FUNCTIONS OF SECRETARY GENERAL

- He is the advisor to the Speaker/Chairman and to members on all parliamentary functions and activities including all matters of procedure and practice.
- He acts as the link between the changing composition of different houses and is the custodian of the parliamentary conventions and traditions.
- He discharges many legislative, administrative and executive functions including providing facilities to the members of Parliament.
- He is responsible for the maintenance and upkeep of buildings and properties of Parliament.
- He is the head of Secretariat and is responsible for its administration, maintaining discipline and ensures secretarial work of the House and its committees is organised efficiently.
- He provides secretarial assistance and staff to all Parliamentary Committees and advise them in need.
- He issues summons on behalf of the President asking members to attend the session of the House.
- He authenticates Bill in the absence of Speaker, sends and receives messages on behalf of the House, receives notices, petitions, documents and papers addressed to or intended for the House.
- He issues summons under his signature to witnesses to appear before the House or Committees.
- He controls the finances and accounts of the House and its secretariat; circulates lists of business, prepares journals, minutes and verbatim records of the House, edits and publishes large number of periodicals and other parliamentary publications.
- The elections to the offices of the President of India and the Vice- President of India are regulated by the Presidential and Vice-Presidential Election Act, 1952, and the rules made thereunder. For the purposes of these elections, it has been the established practice that the Secretary-General of the Rajya Sabha/Lok Sabha is appointed as Returning Officer.

Secretary-General Lok Sabha

- As the overall head of the Bureau of Parliamentary Studies and Training, Secretary-General of Lok Sabha organises various study, courses, seminars, training and orientation program in parliamentary institutions and procedures for new members of Parliament and State Legislatures, for probationers of IAS, IFS and other All India Services.
- As the Secretary of Indian Parliamentary Group, Secretary-General of Lok Sabha organises the activities of the India Branch of the Commonwealth Parliamentary Association and the Inter-Parliamentary Union.
- When the Commonwealth Speakers' Conference is held in India, the Secretary-General of Lok Sabha is the ex-officio Secretary-General of the Conference.

Secretary-General Rajya Sabha

- The Secretary-General signs messages to be sent from the Rajya Sabha to the Lok Sabha; reports to the House messages received from the Lok Sabha; and lays on the Table copies of the Bills received through such messages, if the House is in session, or otherwise, communicates such messages to Members.
- The Secretary-General also certifies all Bills to be transmitted or returned to the Lok Sabha.

PRIVILEGES OF SECRETARY-GENERAL

- The Secretary General is not subject to criticism in the House and his actions are not discussed either inside or outside the House. He is answerable only to the Speaker/Chairman.
- In his capacity as the Officer of the House, the Secretary-General enjoys the privileges of freedom from arrest. He cannot be obstructed in the execution of his duty, as it would amount to contempt of the House.
- Any act which obstructs performance of official duty of Secretary-general or other officers, the House will treat such act as breach of privilege.

REASONS TO CREATE ALL INDIA LEGISLATIVE SERVICE

- Dominated by All India Service Officers - Most of the Secretary Generals of Lok Sabha and Rajya Sabha have been people from the civil services (IAS, IRS etc.) who have has little experience of working in the environment.
- Less Opportunity for Secretarial Staffs - Very Few Secretariat staffs have been promoted to become the Secretary General of either Lok Sabha or Rajya Sabha.
- Extensive Experience – Secretarial staffs are trained to work in the Secretariat both in state and centre will be better placed to take up the role of Secretary-General.
- Independent Functioning - Separate secretarial staff through All India Legislative Service will ensure independence of the working of Secretariats and avoid conflict of interest.
- Better Accountability - An independent all India Service will help the Parliament and its members to ensure better accountability over the executive which is the norm of Parliamentary Practice.
- Inspire States for similar services - Such all India service will also inspire states to come up with their own legislative service for better functioning of local bodies (panchayat, block panchayat, Zila Parishad, municipal corporations etc.) and state assemblies.
- Regularize Recruitment - Such an independent Legislative Service at centre and states will not only regularize recruitment process at local, state and central level but also will ensure competent and well-trained staff to handle the intricacies of Parliamentary work.
- Example of UK - Even in United Kingdom, the Clerk of the House of Commons has always been appointed from the legislative staff pool created to serve Parliament.

CONCERNS ON APPOINTING CIVIL SERVANTS AS SECRETARY-GENERAL OF LOK SABHA & RAJYA SABHA

- Nature of Job - Job requirement of All India Services does not mandate managerial role of Secretariats of both houses of Parliament.
- It violates the principle of separation of power and creates conflict of interest as member of executive manning a post of legislature.
- Appointments for the post of Secretary-General are done mostly on political lines to ensure among other things ease of passing of Bills and other aspects of secretarial governance.

CONCLUSION

Thus, based on international best practices including Britain, India should adopt such democratic institutional practice by creating and ALL INDIA LEGISLATIVE SERVICE under Article 312 of the Indian Constitution.

►CENTRE NOT APPROVING STATE'S ANTI-LYNCHING BILLS

State Governments of Rajasthan, West Bengal, Manipur and Jharkhand have passed their respective bills against mob lynching and has not only defined lynching but has also made it a separate offence for which strict jail term has been provided. However, these Bills still await President's approval under Article 254 as Indian Penal Code does not define lynching or mob violence. So, let us go through the developments surrounding the issue of lynching in India.

THE BILLS CURRENTLY EXAMINED BY HOME MINISTRY ARE

1. The Rajasthan Protection from Lynching Bill, 2019 - It provides for life imprisonment and a fine from Rs. 1 lakh up to Rs. 5 lakh to those convicted in cases of mob lynching leading to the victim's death. It also provide for effective protection of the Constitutional rights of vulnerable persons, to punish the acts of lynching, to provide for designated courts for the expeditious trial of such offences, for rehabilitation of victims of mob lynching and their families.
2. The West Bengal (Prevention of Lynching) Bill, 2019 – It proposes a jail term from 3 years to life imprisonment for those involved in assaulting and injuring a person and defines terms such as "lynching" and "mob". The State also proposed the West Bengal Lynching Compensation Scheme.
3. Prevention of Mob Violence and Mob Lynching Bill, 2021 (Jharkhand) - envisages imprisonment for those pronounced guilty of mob violence and lynching for periods ranging from three years to life term, besides

fine and attachment of property. It also punishes for creating hostile environment which includes threatening or coercing the victims, their family members and witnesses or any person aiding them.

4. The Manipur Protection from Mob Violence Bill 2018 - recommending life imprisonment for those involved in mob violence if it led to death. The Act has defined lynching in a comprehensive way and covers many forms of hate crimes. It covers any act or series of acts of violence or aiding, abetting such act/acts whether spontaneous or planned, by a mob on the grounds of religion, race, caste, sex, place of birth, language, dietary practices, sexual orientation, political affiliation, ethnicity or any other related grounds. As per the law, mob means a group of two or more individuals, assembled with a common intention of lynching. However, the law does not cover solitary hate crimes carried out by one individual.

STATE LAWS ARE BEING EXAMINED BY THE CENTRE FROM THREE ANGLES UNDER ARTICLE 254

1. Repugnancy or inconsistency with Central laws
2. Deviation from national or central policy and
3. Legal and Constitutional validity

Based on the comments provided by Central Government, the President either rejects or gives assent to a Bill.

REASONS FOR MASS LYNCHING

- Cases of lynching have been increasing in India over last few years. Various reasons can be accorded to such inhuman cases of lynching:
  - Circulation of fake news via social media
  - Believe in rumours without verification of key facts
  - Incitement of mob resulting in loss of lives
  - Lack of action from state authorities at appropriate time

TEHSEEN POONAWALA V UNION OF INDIA (2018)

- In July 2018, Supreme Court in the case of Tehseen Poonawala v Union of India, suggested guidelines for *preventive, remedial* and *punitive measures* to be taken by government in such instances of mob lynching.
- The Court also asked Parliament to categorise "lynching" as a separate offence and provide adequate punishment for the same. However, so far no action has been taken by the Central Government.
- However, Manipur has legislated a separate law to criminalise mob lynching. So, in this analysis, let go through the guidelines provided by Supreme Court in Tehseen Poonawala Judgment.

Preventive Measures

- Nodal Officer not below the rank of SP - The State Governments shall designate, a senior police officer, not below the rank of Superintendent of Police, as Nodal Officer in each district. Such Nodal Officer shall be assisted by one of the DSP rank officers in the district for taking measures to prevent incidents of mob violence and lynching.
- Special Task Force to procure intelligence on cases of mob lynching – State Government shall constitute a special task force to procure intelligence reports about the people who are likely to commit such crimes or who are involved in spreading hate speeches, provocative statements and fake news.
- Identifying Vulnerable Areas - The State Governments shall forthwith identify Districts, Sub-Divisions and/or Villages where instances of lynching and mob violence have been reported in the recent past.
- Nodal Officer to hold regular meetings with the local intelligence units in the district along with all Station House Officers of the district - to identify the existence of the tendencies of vigilantism, mob violence or lynching in the district and take steps to prohibit instances of dissemination of offensive material through different social media platforms or any other means for inciting such tendencies.
- Identify and Eradicate Hostile Environment in the vulnerable Area - The Nodal Officer shall also make efforts to eradicate hostile environment against any community or caste which is targeted in such incidents.
- DGP of State to take stock of situation from District Officials: Director General of Police/ Secretary, Home Department of States shall take regular review meetings (once a quarter) with all Nodal Officers and State Police Intelligence heads. Director General of Police shall issue a circular to the Superintendents of Police about police patrolling in the sensitive areas.
- Home Ministry to Co-ordinate with State Government to sensitize the law enforcement agencies - by involving all the stake holders to identify the measures for prevention of mob violence and lynching against any caste or community and to implement the constitutional goal of social justice and the Rule of Law.
- Create Awareness Against the Evil of Mob Lynching - The Central and the State Governments should broadcast on radio and television and other media

platforms including the official websites of the Home Department and Police of the States that lynching and mob violence of any kind shall invite serious consequence under the law.

Remedial Measures

- Filing FIR without delay by the Police to register crime - In incidents of lynching or mob violence, the jurisdictional police station shall immediately cause to lodge an FIR, without any undue delay, under the relevant provisions of IPC and/or other provisions of law.
- Intimating Nodal Officer about Investigation Stages - The Station House Officer shall intimate the Nodal Officer who shall be duty bound to ensure that the investigation is carried out effectively and the Report of police officer on completion of investigation (charge sheet) in such cases is filed without undue delay from the date of registration of the FIR or arrest of the accused.
- State must provide Compensation to victims or their dependents in case of victim's death - The state shall provide compensation to the victims of mob violence within 1 month from the date of judgment. To compute compensation, the State Governments shall give due regard to the nature of bodily injury, psychological injury and loss of earnings including loss of opportunities of employment and education and expenses incurred on account of legal and medical expenses.
- Cases of Mob Lynching to be tried by Fast Track Court - The cases of lynching and mob violence shall be specifically tried by designated court/Fast Track Courts earmarked for that purpose in each district. Such courts shall hold trial of the case on a day-to-day basis. The trial shall preferably be concluded within six months from the date of taking cognizance.
- Awarding Maximum Sentence - To ensure deterrence and to set an example, the trial court must ordinarily award maximum sentence as provided for various offences under the provisions of the IPC.
- Safety Measures to protect Victims - The Court must take appropriate measures for the safety of such victims for protection and for concealing the identity and address of the witness.
- Victims to receive Legal Aid through NALSA - The victims or the next of kin of the deceased in cases of mob violence and lynching shall receive free legal aid if he or she so chooses and engage any advocate of his/her choice from amongst those enrolled in the legal aid panel under the Legal Services Authorities Act, 1987.

Punitive Measures

- Act of deliberate Negligence or Misconduct on failure to protect victims - Wherever it is found that a police officer or an officer of the district administration has failed to comply with the aforesaid directions to prevent and/or investigate and/or facilitate expeditious trial of any crime of mob violence and lynching, the same shall be considered as an act of deliberate negligence or misconduct for which appropriate action must be taken against such officer.
- State to take Disciplinary Action against Erring Officials - As per Supreme Court judgment in *Arumugam Servai v. State of Tamil Nadu*, the States are directed to take disciplinary action against the concerned officials if it is found that
  (i) such official or group of officials did not prevent the incident, despite having prior knowledge of it, or
  (ii) where the incident has already occurred, such official(s) did not promptly apprehend and institute criminal proceedings against the culprits.

COMMITTEE HEADED BY HOME SECRETARY ON MOB LYNCHING

- Four Member Committee of Secretaries headed by Home Secretary was formed in 2018 to investigate the incidents of mob violence and lynching and submit recommendations on ways to tackle the challenge.
- The Committee was constituted in wake of Supreme Court judgment where the Court directed the Centre to draft strong legislation to make lynching a separate offence and to take preventive measures to control the spread of fake messages on social media platforms, after a series of mob lynching incidents took place.

ADVISORY BY MINISTRY OF HOME AFFAIRS

- As per the Constitutional scheme, 'Police' and 'Public Order' are State subjects. State Governments are responsible for controlling crime, maintaining law and order, and protecting the life and property of the citizens. They are empowered to enact and enforce laws to curb crime in their jurisdiction. State Governments are also competent to enact legislation to make mob lynching a separate offence.
- Accordingly, Ministry of Home Affairs issued advisories to States/UTs for maintenance of public order and prevention of crime in their areas of jurisdiction including advisory on addressing the issue

of lynching by mob on suspicion of child lifting and on disturbances by miscreants in the name of protection of cow.

CAMPAIGN FOR MANAV SURAKSHA KANOON (MASUKA)

- Due to increasing instances of mob lynching and to protect citizens of India, National Campaign Against Mob Lynching, committee has released a draft law named Manav Suraksha Kanoon (MASUKA).
- Important Highlights of MASUKA includes:
  1. It defines 'mob' and 'lynching' and suggests that lynching should be made a non-bailable offence.
  2. Address Police Inaction and Complicity by immediate suspension of concerned SHO of the area until time-bound judicial probe.
  3. Life imprisonment for those convicted under mob lynching.
  4. It provides for Rehabilitation and Compensation for victims and their families.
  5. It provides for witness protection scheme

WAY FORWARD

- Centre should define lynching as a separate offence in the Indian Penal Code as per the Supreme Court judgment.
- Ministry of Home Affairs should recommend the President to approve respective state bills on lynching. This will strengthen the legal infrastructure against mob violence and will propel other states to pass similar laws.
- There is a need for strict identification and regulation of fake news by authorities including Election Commission.
- Involving Election Commission and taking their advice as instances of fake news finds its roots mostly during elections in India.
- Strict punishment to those involved in cases of mass lynching to send stern and strict message towards deterrence of such crime.
- Awareness among citizens on the impact of believing on fake news by district authorities.

►KERALA LIMITS LOKAYUKTA'S POWERS

Kerala Government seeks to amend the Kerala Lokayukta Act, 1999 through an Ordinance which has been approved by the Governor under Article 213. This move has been opposed on grounds of dilution of powers of the Lokayukta and being violative of certain constitutional and legal principles.

LOKPAL & LOKAYUKTA ACT, 2013

- It establishes Lokpal for the Union and Lokayukta for States to inquire into allegations of corruption against certain public functionaries.
- It provides for an Enquiry Wing and a Prosecution Wing to deal with cases of corruption.
- The Inquiry Wing conducts preliminary inquiry into alleged cases of corruption against public servants under Prevention of Corruption Act, 1988.
- The Prosecution Wing files cases before the Special Court to prosecute public servants under Prevention of Corruption Act, 1988.
- Section 63 of the Act empowers state government to establish the office of Lokayukta through a law made by respective state legislature to deal with complaints relating to corruption against certain public functionaries,
- There are some states like Kerala and Maharashtra who has constituted the office of Lokayukta prior to the enactment of the legislation to investigate cases of corruption against public servants.

PROPOSED CHANGES IN KERALA LOKAYUKTA ACT

- Powers given to Competent Authority - The amended Act makes it obligatory for the competent authority to review the "declaration of guilt" by the Lokayukta under Section 14 of the Act before acting against the culpable official. Within three months, the competent authority could accept or reject the ombudsman's finding.
- Any Retired Judge can be Appointed as Lokayukta - The Ordinance also repealed the regulation that only retired Supreme Court justices or former Chief Justices of High Courts could assume the office of Lokayukta. Instead, the amendment gives the State government the authority to appoint any retired judge as the Ombudsman.

Reasons for Change according to State Government

- Against Article 163 and 164 - The Government has defended the proposed ordinance on the ground that the section amounts to removal of a Minister duly appointed by the Governor on the advice of the Chief Minister and violates Articles 163 and 164 of the Constitution.
- No Provision for Appeal – There is no provision for appeal for such public authorities and resignation is the only alternative.

- Decisions of Lokayukta can be Reviewed - The proposed amendment will allow the government or authority to decide on the Lokayukta's finding within three months.

CONCERNS ON THE PROPOSED AMENDMENT

- Ordinance Route prevents discussions and scrutiny in the assembly.
- Reducing the Authority of Lokayukta by amending section 14 of the Kerala Lokayukta Act, 1999.
- Insulates members of the ruling party, cabinet members and senior officials considered close to government apparatus
- Impact ongoing investigations against members of government
- Increase Corruption

Article 163 - Council of Ministers to aid and advise Governor:

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.
2. If any question arises whether any matter is or is not a matter as respects which the Governor is by or under this Constitution required to act in his discretion, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion.
3. The question whether any, and if so what, advice was tendered by Ministers to the Governor shall not be inquired into in any court.

Article 164 - Other provisions as to Ministers

1. The Chief Minister shall be appointed by the Governor and the other Ministers shall be appointed by the Governor on the advice of the Chief Minister, and the Ministers shall hold office during the pleasure of the Governor.

CONCERNS EXPRESSED ON LOKAYUKTA OF KERALA HAVING MORE POWERS THAN LOKPAL

- The Lokayukta is basically an investigative body with certain powers to carry out an investigation into cases relating to the Prevention of Corruption Act. The only special feature of this body is that it is headed by a retired judge of the Supreme Court or a retired Chief Justice of a High Court. But that does not alter the basic character of the Lokayukta as an investigative body.
- Declaration of Guilt - Lokpal Act does not empower the Lokpal to remove the Prime Minister or any Minister of the government. However, the amended section 14 of Kerala Lokayukta Act empowers the Lokayukta to declare whether a public servant is guilty or not.
- Resignation becomes mandatory - Based on this, the competent authority can ask the public servant to resign from the office. Now, if the public servant is the Chief Minister of the state or any minister of the state government, then such minister must resign.
- Violative of Lokayukta Act - This aspect is violative of the Lokayukta Act, 2013 as even the Lokayukta does not have powers to remove any Member of Parliament or the Prime Minister.

LEGAL AND CONSTITUTIONAL POINTS RAISED AGAINST KERALA LOKAYUKTA ACT

1. Cannot ask to Resign - An investigative body does not have the legal authority to direct the public servant to resign his post based on its findings. It can only submit its findings to the competent authority or, as is provided in the Lokpal Act, file a case in the special court.
2. Lokpal or Lokayukta not a Court – and does not enjoy powers of higher courts which alone can issue such directions in the nature of writs.
3. Removal of Minister by Lokayukta violates Article 164 - Chief Minister or a Minister holds office during the pleasure of the Governor under Article 164. The Constitution of India does not contemplate any external pressure on the Governor to withdraw his pleasure.
   - Sarkaria Commission had suggested that the Governor can dismiss a Chief Minister only when he loses his majority in the Assembly and refuses to step down. The Supreme Court has accepted this recommendation of the Sarkaria Commission.
   - Withdrawing Pleasure by the Governor - Another occasion when the Governor could withdraw his pleasure is when the Chief Minister is disqualified from being a member of the House on account of his having been convicted in a criminal case and sentenced to not less than two years of imprisonment.
4. Thus, a chief minister cannot be asked to resign when he enjoys a majority in the House unless he has been convicted for more than two years or looses majority.

5. Governor can't be compelled by external law other than the Constitution - The Governor, being a high constitutional authority, cannot be compelled by an external law to act in a particular manner to perform his constitutional duties and functions.
6. Decision of Investigative Agency should not be carried out by Governor - No agency created by a law made by the Assembly, particularly an investigative body, can declare that its decision be carried out by the Governor. It would amount to a violation of the Constitution.
7. Office Bearers of Political Party not Public Servant - The Kerala Lokayukta law includes the office bearers of political parties within its definition of 'public servant'. However, Prevention of Corruption Act does not cover office bearers of political parties as they are not public servant.
8. Closure of Case by Lokayukta - The law suggests that if Lokayukta is satisfied with the decision of the competent authority, then the Lokayukta can close the case. This tantamount to providing judicial powers of Court to the office of Lokayukta. However, the Lokayukta does not have the legal capacity to close the corruption case as it is not a Court.

►SIGNIFICANCE OF PARLIAMENT

- Representative Democracy: Enables representation of various section of society, voice their concerns and participate in decision making.
- Responsible Government:
  - Ensures collective responsibility of the Council of Ministers to the Lok Sabha and by extension to the people of India.
  - Enables citizens to keep elected executives in control.
  - Offers various tools for parliamentarians to extract accountability from government. For ex. Zero Hour, Question Hour, Motions and Resolutions etc.
- Consociational democracy: Allows differing and fragmented sections of political opinion to come together into stable coalitions over issues.
- Deliberative democracy: Highest forum for deliberation over national issues.
- Law Making functions:
  - Only institution which can carry out Amendments to the Constitution.
  - Highest law-making body in the country.
  - Parliamentary Committees allow members scrutinize functioning of government, its finances and scrutinize legislations effectively.
- Thus, legislature is not merely a law-making body but rather it is the Centre of all democratic political process including discussions, deliberations, protests, demonstration, unanimity, concern and co-operation.
- Accountability thus lies at the heart of democratic government and is implemented through procedures put in place by the legislature whose functions include law making, controlling the national finances and approving taxation proposals and having discussions on matters of public interest and concern.
- However, it has been observed that in most democracies, legislatures are losing central place to the executive. In India too, the Cabinet initiates policies, sets the agenda for governance and carries them through.
- Despite this, the executive with strong leadership have to face Parliament's scrutiny and cannot enforce every piece of legislation either through ordinance route or through executive orders.

BENEFITS OF DEMOCRACY

- Allows citizens right to choose their representatives.
- Promotes equality among citizens.
- Enhances the dignity of the individual.
- Improves the quality of decision making.
- Provides a method to resolve conflicts.
- Allows room to correct mistakes.
- Addresses socio-economic problems of citizens.
- Allows room for participation by citizens.
- There have been no famines observed in democracies.

►DECLINE IN PRODUCTIVITY OF PARLIAMENT & STATE LEGISLATURES

In the last two years we have already witnessed decline in Parliament's productivity due to less number of sittings conducted. However, after a low of 33 days in 2020, Parliament saw only a small improvement in 2021 by functioning for 58 days. The situation is not very different for state assemblies as per a survey conducted for nine legislative assemblies. Restrictions due to Covid have been used as an excuse to shorten the legislative sessions. All the

data of 2020 was sourced from PRS Legislative Research's report "Annual Review of State Laws 2020".

Fewer work days

The table shows the number of days nine State Assemblies sat in 2021 and 2020. While Punjab had the lowest tally of 11, Odisha fared better with 43 sittings

State	2021	2020
Odisha	43	
H.P.	32	25
Rajasthan	26	29
Gujarat	25	23
West Bengal	19	14
Haryana	18	13
U.P.	17	13
Maharashtra	15	18
Punjab	11	15

Data for sitting days of Odisha Assembly in 2020 were not available

Article 85 - Sessions of Parliament, prorogation and dissolution

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.

Note* - Constitution of India does not mention about three sessions of Parliament.

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

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.

WHAT GENERALLY CONSTITUTES DISRUPTION OF PARLIAMENTARY OR ASSEMBLY PROCEEDINGS?

- Disruptions encompass an undesired statement, action and gesture that not only delay the transaction of business in Parliament, but also violate the behavioural protocol that every MP is required to observe.
- Disruption also includes showing of placards, shouting of slogans, entering the well of the House, and repeated call for adjournment motions.
- However, walk-outs from the House do not fall within the scope of disruptions, but rather constitute a legitimate form of protest.

REASONS FOR DISRUPTIONS

- Discussion on matters of controversy and public importance Ex. Demand for discussion on Pegasus Snooping and Farm Laws.
- Opposition members coming together as a group to block key Bills in Rajya Sabha.
- Application of Anti-Defection - Application of Whip by Political Parties to vote in a certain way stifles individual opinion of members and place political party's privilege and desires over individual.
- Disruptions also help the Ruling Party to evade responsibility on key aspects of governance and policy measures - Governments may in some instances schedule the transaction of business of each Session in such manner to pave the way for greater disruptions in Parliament. Such disruptions make it impossible for the Speaker/Chairman to conduct the Question Hour/Zero Hour and allow governments to avoid answering questions posed to them.
- Lack of dedicated time for unlisted discussion - increase in the number of parties in the House has led to a proportionate reduction in the amount of time available to each party for discussion.
- Rare resort to disciplinary powers by Speaker/Chairman - As a result, most members engaging in disorderly conduct are neither deterred nor restrained from engaging in such conduct.

IMPACT OF DISRUPTION

- Decline in overall productivity of the assembly and Parliament.
- Bills are passed hurriedly and without much debate or scrutiny.
- Less number of Bills is referred to Parliamentary or State Legislative Committees.
- Passing of Budgets by states and Parliament without much debate and discussion.
- Declining functioning of Parliament and State Assemblies reflects disregard for parliamentary practices and democratic norms.

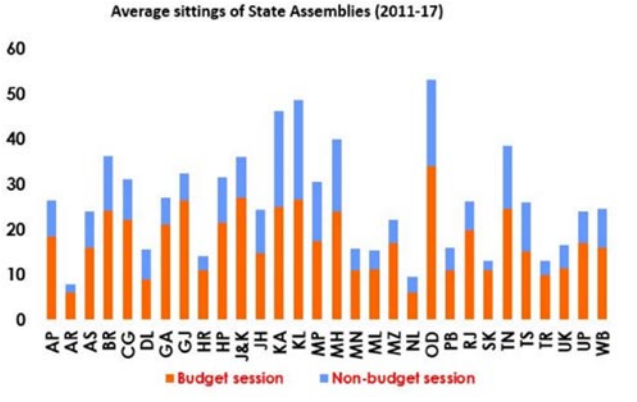
WHAT CONTINUED PARLIAMENTARY DISRUPTIONS REFLECT?

- Break in Parliamentary Proceedings and that of State Assemblies impacts their productivity which is unhealthy for Indian democracy.
- Increasing unparliamentary behaviour during the session shows lack of respect for democratic norms and decorum.
- Disregarding the Speaker/Chairman leads to disciplinary actions against erring Members including their suspension from discussion.

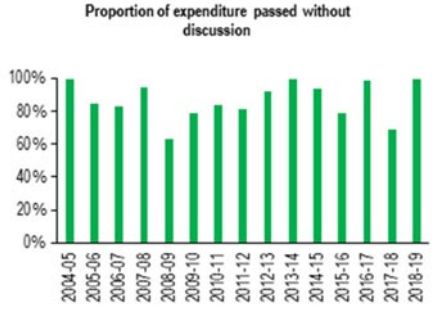
PAST OBSERVATIONS ON FUNCTIONING OF PARLIAMENT & STATE LEGISLATURES

Increased disruptions of Parliament and State Legislative Assemblies (SLA) has impacted legislature's core functioning of law making through discussions. Bills Sent to Parliamentary Committees have seen a decline:

Lok Sabha	Percentage of Bills sent to Committees
15th Lok Sabha	71%
16th Lok Sabha	27%
17th Lok Sabha (Present)	12% so far



16th Lok Sabha passed 83% percent of the budget without discussion.



WHY IS DECLINING WORKING HOURS OF PARLIAMENT & STATE ASSEMBLIES A CONCERN?

- Lack of debates on key issues impacts governance.
- Lack of discussion in turn affects lives of citizens in multiple ways.
- Shows lack of concern by elected members and their performance deficit goes unaccounted
- Results in passing of budget of various departments without any discussion. This leads to disproportionate and unbalanced allocation of resources
- Budget passed without discussion shows lack of coordination with opposition members
- Increasing use of Ordinance route to pass legislation by Centre and states.

BROAD FRAMEWORK OF PARLIAMENTARY REFORMS TO IMPROVE LEGISLATURE'S FUNCTIONING & PRODUCTIVITY

1. Compulsory presence of Prime Minister during Question Hour and Zero Hour (like Britain) will lead to constructive debates and an assurance to the opposition that the Executive is responsible to the Parliament.
2. Both pre and post Legislative Impact Assessment to be ensured for quality and informed law making for creating wider awareness about the targeted outcomes by bringing out social, economic, environmental and administrative impacts besides the involvement of all stakeholders in law making.
3. Ensuring effective functioning of the Department Related Standing Committees of Parliament through longer tenures and promoting specialisation based on academic backgrounds.
4. Women Reservation - The Constitution (One Hundred and Eighth Amendment) Bill, 2008 which sought reserving one-third of all seats for women in the Lok Sabha and the state legislative assemblies needs to be re-introduced.
5. Enforceable Code of Conduct - Law makers should abide by the Rules of the House and political parties to take responsibility in this regard by evolving and enforcing a code of conduct.
6. Rules on Interruptions of Proceedings - Making rules that automatically take effect against erring Members in case of interruptions and disruptions.
7. Roster System - Political parties to evolve roster system for ensuring attendance of at least 50% of their members in the legislatures all through the proceedings of the House everyday to address the issue of lack of quorum.
8. Publication of Reports - Secretariats of legislatures to publish regular reports on the attendance of members inside during the proceedings and the extent of their participation in the form of questions raised, debates participated in etc.
9. Opportunities for New Entrants - Political parties to ensure that the new entrants and back benchers are given adequate opportunities to participate in the debates instead of seniors.
10. Prevent Criminalisation of Politics – Political Parties must abide by SC Judgment whereby it has refrained

political parties from distributing tickets to candidates facing serious or other criminal charges.

11. Review Whip System & Anti-Defection Law - to ensure freedom of speech of individual MPs and MLAs without adversely affecting stability of the Government. Also, to transfer power to Speaker to decide anti-defection cases under Tenth Schedule either to a Tribunal having retired SC Judges or Election Commission.
12. Tribunals for MPs - Setting up special courts/tribunals for time bound adjudication on criminal complaints against legislators and election related matters.
13. Action against Non-Ethical Conduct - Timely and effective action against legislators for non-ethical conduct.
14. Governments to be responsive to the views and concerns of the Opposition - and the Opposition to be responsible and constructive in holding the government accountable.
15. Simultaneous Elections – to ensure governance is not adversely impacted on account of staggered and continuous polls.

These reforms will improve functioning of Parliament and State Assemblies, quality of law making thereby increasing trust of citizens in parliamentary democracy.

►QUESTION HOUR & ZERO HOUR

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

ZERO HOUR

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

TYPES OF QUESTIONS

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

- 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.

IMPORTANCE OF QUESTION HOUR

- Holds ministers accountable for the functioning of their ministries
- Raises important issues on constituency, national and international matters.
- Elicit Wider Debates on important issues of national importance
- Exposes financial irregularities of various government institutions.
- Enable ministries to gauge the popular reaction to their policy and administration.

- Enables members to ventilate the grievances of the public in matters concerning the administration.
- Bring to timely notice many policy loopholes which otherwise would have gone unnoticed.
- It leads to appointment of Commissions or sending controversial Bills for further scrutiny to Parliamentary Committees.

►PROLIFERATION OF MINISTRIES

A new Ministry of Cooperation has been formed. Over the years, there has been a proliferation of new ministries in India. Currently, there are more than 50 Ministries and many more departments. As compared to India, other democracies such as the US and the UK have around 20-25 ministries and various functions of government are distributed in these.

REASONS FOR PROLIFERATION OF MINISTRIES

1. Creating new department to deal with individual subjects leads to greater attention and resources on that field.
2. Functions of government have increased.
3. Centralizing tendency of Union Government which takes upon itself functions which can be better managed at the State Level or by the Private Sector.
4. Coalition politics meant that varying factions had to be placated by giving ministership.
5. Large number of ministers is essential for a diverse country as it empowers representational democracy.

ISSUES WITH PROLIFERATION OF MINISTRIES

1. Lack of coordination among different ministries.
2. Inability to adopt an integrated approach to national priorities and problems.
3. Constitution currently places a limitation on the size of the council of ministers to be 15% of strength of Lok Sabha.

Thinning of resources across various issues. Also, increase in manpower increases establishment cost of government. For ex. The Ministries related to transport currently are: 1) Ministry of Railways, 2) Ministry of Road Transport and Highways, 3) Ministry of Ports, Shipping and Waterways, 4) Ministry of Civil Aviation. However, there is a need for the India to develop a comprehensive national multi-modal transport in an integrated way. Thus, an umbrella Ministry of Transportation with 4 separate departments dealing with Railways, Roadways, Waterways and Airways would have helped achieve the goal better.

Thus, there is a need to strike a balance between the requirements of functional specialization and the need for a holistic approach to key issues.

RECOMMENDATIONS OF 2ND ARC

1. The concept of a Ministry needs to be redefined. A Ministry would mean a group of departments whose functions and subjects are closely related and is assigned to a First or Coordinating Minister for the purpose of providing overall leadership and coordination. This concept of a Ministry and the Coordinating (or First) Minister may be explicitly laid down in the Allocation of Business Rules. Adequate delegation among the Ministers would have to be laid down in the Transaction of Business Rules. Because of this, rationalization of Secretary level posts wherever required may also needed.
2. Individual departments or any combination of these could be headed by the Coordinating (or First) Minister, other Cabinet Minister(s)/Minister(s) of State.
3. The structure of the Government of India should be rationalised by grouping together closely related subjects to reduce the number of Ministries to 20-25.

►SPEAKER & DEPUTY SPEAKER

The office of the Speaker in the Maharashtra Assembly was vacant for nearly 17 months but was filled up by an election held within days of Eknath Shinde Government taking over. Earlier, the Governor of Maharashtra was refusing to fix a date for the election of Speaker citing the pendency of litigation, related to amendments to the Assembly Rules on the mode of electing a Speaker. Even though the Supreme Court is yet to dispose of an appeal, Governor fixed the date and Speaker has been elected for the Maharashtra Assembly.

CONSTITUTIONAL PROVISIONS – STATE ASSEMBLY

Article 178 - The Speaker and Deputy Speaker of the Legislative Assembly

- Every Legislative Assembly of a State shall choose two members of the Assembly to be respectively Speaker and Deputy Speaker thereof and,
- So often as the office of Speaker or Deputy Speaker becomes vacant, the Assembly shall choose another member to be Speaker or Deputy Speaker, as the case may be.

Article 179 - Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker

- A member holding office as Speaker or Deputy Speaker of an Assembly –

(a) shall vacate his office if he ceases to be a member of the Assembly.

(b) may at any time by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) may be removed from his office by a resolution of the Assembly passed by a majority of all the then members of the Assembly.

- Resolution to remove Speaker or Deputy Speaker shall be accompanied by
- No resolution to remove Speaker or Deputy Speaker shall be moved - unless at least 14 days'notice has been given.
- Whenever the Assembly is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the Assembly after the dissolution.

Article 180 - Power of the Deputy Speaker or other person to perform the duties of the office of, or to act as, Speaker

- While the office of Speaker is vacant, the duties of the office shall be performed by the Deputy Speaker or,
- If the office of Deputy Speaker is also vacant, by such member of the Assembly as the Governor may appoint for the purpose.
- During the absence of the Speaker from any sitting of the Assembly the Deputy Speaker or, if he is also absent, such person as may be determined by the rules of procedure of the Assembly, or,
- If no such person is present, such other person as may be determined by the Assembly, shall act as Speaker.

Article 181 - The Speaker or the Deputy Speaker not to preside while a resolution for his removal from office is under consideration

- While any resolution for the removal of the Speaker or Deputy Speaker from their office is under consideration, then the Speaker or Deputy Speaker shall not preside over the sittings of the Assembly.
- The Speaker shall
  - have the right to speak in, and otherwise to take part in the proceedings of, the Legislative Assembly while any resolution for his removal from office is under consideration in the Assembly and
  - shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

Article 189 - Voting in Houses, power of Houses to act notwithstanding vacancies and quorum

- All questions at any sitting of a House of the Legislature of a State shall be determined by a majority of votes of the members present and voting, other than the Speaker or Chairman, or person acting as such.
- The Speaker or Chairman, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.
- Until the Legislature of the State by law otherwise provides, *the quorum to constitute a meeting of a House of the Legislature of a State shall be ten members or one-tenth of the total number of members of the House*, whichever is greater.

Article 182 - The Chairman and Deputy Chairman of the Legislative Council

- The Legislative Council of every State having such Council shall, as soon as may be, choose two members of the Council to be respectively Chairman and Deputy Chairman thereof and,
- So often as the office of Chairman or Deputy Chairman becomes vacant, the Council shall choose another member to be Chairman or Deputy Chairman, as the case may be.

Article 183 - Vacation and resignation of, and removal from, the offices of Chairman and Deputy Chairman

- A member holding office as Chairman or Deputy Chairman of a Legislative Council—

(a) shall vacate his office if he ceases to be a member of the Council;

(b) may at any time by writing under his hand addressed, if such member is the Chairman, to the Deputy Chairman, and if such member is the Deputy Chairman, to the Chairman, resign his office; and

(c) may be removed from his office by a resolution of the Council passed by a majority of all the then members of the Council:

- Provided that no resolution for the purpose of removal shall be moved unless at least 14 days' notice has been given of the intention to move the resolution.

Article 185 - The Chairman or the Deputy Chairman not to preside while a resolution for his removal from office is under consideration

- At any sitting of the Legislative Council, while any resolution for the removal of the Chairman or Deputy

Chairman from his office is under consideration, the Chairman or the Deputy Chairman:

- shall not preside

- However, the Chairman
  - shall have the right to speak in, and otherwise to take part in the proceedings of the Legislative Council while any resolution for his removal from office is under consideration in the Council and
  - shall be entitled to vote only in the first instance on such resolution or on any other matter during such proceedings but not in the case of an equality of votes.

CONSTITUTIONAL PROVISIONS – PARLIAMENT

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

ARTICLE 93 - The Speaker and Deputy Speaker of the House of the People — The House of the People shall, as soon as may be, choose two members of the House to be respectively Speaker and Deputy Speaker thereof and, so often as the office of Speaker or Deputy Speaker becomes vacant, the House shall choose another member to be Speaker or Deputy Speaker, as the case may be.

ARTICLE 94 - Vacation and resignation of, and removal from, the offices of Speaker and Deputy Speaker — A member holding office as Speaker or Deputy Speaker of the House of the People –

(a) shall vacate his office if he ceases to be a member of the House of the People;

(b) may at any time, by writing under his hand addressed, if such member is the Speaker, to the Deputy Speaker, and if such member is the Deputy Speaker, to the Speaker, resign his office; and

(c) 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:

Provided that no resolution for the purpose of clause (c) shall be moved unless at least fourteen days 'notice has been given of the intention to move the resolution:

Provided further that, whenever the House of the People is dissolved, the Speaker shall not vacate his office until immediately before the first meeting of the House of the People after the dissolution.

CASTING VOTE – ARTICLE 100

Under the Constitution, the Speaker or Deputy Speaker cannot vote in a Division Vote as they only have casting vote which is exercised in the case of equality of votes.

ARTICLE 100 - Voting in Houses, power of Houses to act notwithstanding vacancies and quorum

(1) Save as otherwise provided in this Constitution, all questions at any sitting of either House or joint sitting of the Houses shall be determined by a majority of votes of the members present and voting, other than the Speaker or person acting as Chairman or Speaker.

Chairman or Speaker, or person acting as such, shall not vote in the first instance, but shall have and exercise a casting vote in the case of an equality of votes.

SPEAKER'S POWER TO CERTIFY A BILL AS MONEY BILL

- Article 110(3) - If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final.
- The SC held that the decision of the Speaker under clause (3) of Article 110 of the Constitution though final, is subject to judicial scrutiny on the principle of constitutional illegality.

ANTI-DEFECTION AND SPEAKER

Important Highlights of Kihoto Hollohan v Zachilhu and others

- The majority judgment (3:2) held that the Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House.
- Clothing of power to adjudicate questions under the Tenth Schedule in them should not be considered exceptionable.
- The Court further held that that the Schedule's provisions were remedial and intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.
- The Court ruled that Speaker/Chairman while deciding cases of anti-defection acts as a Tribunal and accordingly the decision of Speaker/Chairman is subject to judicial review.
- However, judicial review would not cover any stage prior to the making of decision by Speaker or Chairman.

POWER OF SPEAKER TO SUSPEND MP

The Lok Sabha Speaker had suspended seven Congress members for the remaining period of the Budget session for 'gross misconduct and utter disregard' for House rules. So, we need to know about powers of Speaker/Chairman to suspend members of Lok Sabha & Rajya Sabha.

Rules of Procedure and Conduct of Business in Lok Sabha

- Maintaining Orderly Business - Speaker of Lok Sabha maintains order in the House to ensure its smooth functioning. In the process Speaker is empowered either to withdraw or suspend the member from the House.
- Withdrawal of Member – Regarding disorderly conduct in the House by any member, Speaker may direct such member to withdraw from the House immediately for the entire day and such member shall not sit in the House for the remaining proceedings of the day.
- Suspension of Member - The Speaker may name a member who disregards the authority of the Chair or abuses the rules of the House by persistently and willfully obstructing the business of the House.
- A motion shall be presented in the House for the named person's suspension. A motion on being passed by the House results in suspension of the member for the remainder of the Session of the House.
- The suspension of such member can be terminated on presenting of another motion in the House.
- Regarding Expulsion of Members, Speaker appoints a committee to investigate the conduct and activities of MP, whether it is derogatory to the dignity of the House and inconsistent with the Code of Conduct.
- Committee on Ethics can also be asked to give its recommendations. Consequent to the findings of committee a motion for expulsion is adopted by the house.

ABOUT DEPUTY SPEAKER

- Election – to be fixed by Speaker of LS and notice for the election the Secretary-General shall send to every member notice of this date. The members of Lok Sabha may elect a Deputy Speaker among themselves.
- Presiding over Sessions - He presides over Lok Sabha when Speaker is absent from sitting of House including Joint Sitting. Deputy Speaker shall have same powers as Speaker when he is presiding over any session of Lok Sabha. Deputy Speaker shall not preside (in case Speaker is absent) while a resolution for his removal from office is under consideration.
- Removal (Article 94) – He shall vacate his office if he ceases to be a member of the House of the People; He may resign by writing under his hand addressed to the Speaker; He may be removed from his office by a resolution of the House of the People passed by a majority of all the then members of the House. (Effective Majority which is equal to more than 50% of the effective strength of the House. It does not include vacancies.)
- Vacancy - While office of Speaker is vacant, duties of office shall be performed by Deputy Speaker.
- Chairperson: Whenever Deputy Speaker is appointed as Member of any Committee, he automatically becomes its Chairperson and performs necessary functions of the committee.
- Casting Vote - While holding office of Speaker, deputy speaker cannot vote in the first instance and can only exercise his casting vote in case of tie.
- Committee Membership - Deputy Speaker is a member of General Purposes Committee and Library Committee. Deputy Speaker is the ex-officio Chairperson of the Committee.

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

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

►PARLIAMENTARY PRIVILEGES

Supreme Court has ruled that legislative privilege cannot be extended to provide legal immunity to criminal acts committed by lawmakers. Legislators charged with unruly behaviour that results in offences under penal laws cannot be protected either by their privilege or their free speech rights.

UNDERSTANDING PARLIAMENTARY PRIVILEGES

- Parliamentary privilege is the sum of certain rights enjoyed by each House collectively... and by members of each House individually, without which they could not discharge their functions, and which exceed those

possessed by other bodies or individuals. Some privileges rest solely on the law and custom of Parliament, while others have been defined by statute.

- Certain rights and immunities such as freedom from arrest or freedom of speech belong primarily to individual members of each House and exist because the House cannot perform its functions without unimpeded use of the services of its members.
- Other rights and immunities, such as the power to punish for contempt and the power to regulate its own constitution belong primarily to each House as a collective body, for the protection of its members and the vindication of its own authority and dignity.
- Fundamentally, Privilege is only a means for effective discharge of the collective functions of the House that the individual privileges are enjoyed by members.
- A breach of privilege is a violation of any of the privileges of MPs/Parliament. Among other things, any action 'casting reflections' on MPs, parliament or its committees could be considered breach of privilege. This may include publishing of news items, editorials or statements made in newspaper/magazine/TV interviews or in public speeches.

CONSTITUTIONAL PROVISONS FOR 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.

FREEDOM OF PUBLICATION - ARTICLE 361-A

- Article 361-A was added by the 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 famous Searchlight case, Supreme Court 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 can 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).

INTERNAL AUTONOMY

- Article 122 (1) grants immunity on the same lines to internal functioning of the House. The validity of any proceedings in Parliament cannot be called into question on the ground of alleged irregularity or procedure.
- Article 122 (2) further says that officers of Parliament who regulates its procedure and maintains order is not subject to jurisdiction of any court while exercising those powers. *Thus, House of Parliament is free from judicial control in its functioning.*
- *Speaker cannot be sued for damages for any action taken against a member including that of arrest* - A High Court or Supreme Court cannot issue a writ under Article 226 or Article 32 to restrain the functioning of the House or legislation even though the subject of legislation is *ultra vires*. Only when a Bill becomes a law after President's assent, the Courts can decide upon its constitutionality.

- Parliament enjoys immunity from judicial process and such courtesy is also extended to Committee of House as a committee is one of its part through which a House functions. However, illegality or unconstitutionality of a procedure can be enquired into by a Court of Law.

INQUIRIES

- A House has power to make inquiries and order attendance of witnesses - A person charged with contempt or breach of privilege of the House can be summoned to be present and answer the questions relating to disobedience. The House can even order the person's custody in extreme cases.
- The Committee of Privilege can order for persons, records and to administer an oath or affirmation to a witness before it. If such orders are not obeyed will also be considered as breach of privilege of the House.

DISCIPLINARY POWERS OVER MEMBERS

- A House of Parliament has power to enforce discipline, to punish its members for their offending or obstructive behaviour, to suspend or even to expel a member for unfit behaviour or misconduct in the House.
- The Courts do not interfere with the power of the House to impose disciplinary proceedings. The House also has the power to terminate the suspension at their discretion.
- Lok Sabha Speaker has suspended five members of opposition for their unruly behaviour in the past as it brought disrepute to the House of Parliament.

ISSUESWITHNON-CODIFICATION OF PARLIAMENTARY PRIVILEGES

- Parliament has yet not codified privileges available to members despite its mentioning in the constitution under Article 105(3) and 194(3).
- Misuse of Privileges - This has led to misuse of certain privileges accorded to the members of Parliament and State Legislatures. Privilege motions are misused in India to fulfil political ambitions. Such actions need to be avoided by the office bearers.
- India mostly follows British conventions with respect to privileges enjoyed by the House and its members. Since independence, the jurisprudence on privilege has evolved and various important case laws have shown the pathway.
- Need to Streamline Parliamentary Privileges - Parliamentary democracy functions on the pillars of freedom of speech and criticism. Every government should profit by the criticism faced by it during its tenure as such criticisms helps in streamlining and improving the quality and effectiveness of governance.

WAY FORWARD

Thus, there is a stringent need to codify privileges, powers and immunities of the House. It will provide proper guidelines to be followed and remove uncertainties which currently prevail. In a democracy free speech and rule of law should be the norm, not the exception.

►PARLIAMENTARY COMMITTEES

The work done by the Parliament in modern times is not only varied and complex in nature, but also considerable in volume. The time at its disposal is limited. It cannot, therefore, consider all the legislative and other matters that come up before it. A good deal of its business is, therefore, transacted in Committees of the House, known as Parliamentary Committees.

- Parliamentary Committee means a Committee which is appointed or elected by the House or nominated by the Speaker and which works under the direction of the Speaker and presents its report to the House or to the Speaker and the Secretariat.
- By their nature, Parliamentary Committees are of two kinds: Standing Committees and Ad hoc Committees.
- Standing Committees are permanent and regular committees which are constituted from time to time in pursuance of the provisions of an Act of Parliament or Rules of Procedure and Conduct of Business in Lok Sabha. The work of these Committees is of continuous nature. The Financial Committees, Department Related Standing Committees (DRSCs) and some other Committees come under the category of Standing Committees.
- Ad hoc Committees are appointed for a specific purpose and they cease to exist when they finish the task assigned to them and submit a report. The principal Ad hoc Committees are the Select and Joint Committees on Bills. Railway Convention Committee, Joint Committee on Food Management in Parliament House Complex etc. also come under the category of ad hoc Committees.

NEED FOR PARLIAMENTARY COMMITTEES

- Thorough scrutiny of bills
- Eases work burden of the Executive as it is involved in multiple works.

- Allows detailed deliberation on the Bills in a calm atmosphere.
- Parliamentary Committees acts as vibrant link between the Parliament, the Executive and public – through opinion seeking
- Committees assist Legislature & Prevent Misuse of Power of Executive
- Through Committees, Parliament exercises its control and influence over administration.
- Provides Expertise on diverse areas of legislations which helps in understanding the nuances of any issue at hand.
- Give opportunity to new MPs (back benchers) who do not get adequate time to speak in Parliament.
- The committee system is designed to enhance the capabilities of MPs, enlighten them on the whole gamut of government activity and contribute ideas to strengthen parliamentary system and improve governance.

CHALLENGES OF PARLIAMENTARY COMMITTEES

- Elections to Parliamentary Committees occur annually, this often leads to continuous change in their composition. MPs fail to develop specialization.
- Lack of adequate specialized secretariat support.
- There is no mandate in the rule of both houses of Parliament to necessarily refer bills to Standing Committees. Government in the name of exigency, does not want bills to be referred to Standing Committees. This often leads to lack of detailed scrutiny of a bill.
- MPs are unable to pay attention to committees as their political, social and constituencies make a huge demand on their time. They fear that if they fail to attend to these, they will lose election.
- Despite the committee functioning under the overall control of the presiding officers, no mechanism for a regular assessment of performance of committees have been put in place.

WAY FORWARD

- Tenure of Parliamentary Committees needs to be increased to the term of the house.
- Presiding officers should send all bills for scrutiny by Parliamentary Committees.
- A mechanism needs to be developed for regularly assessing the performance of committees by presiding officers. For ex. A meeting of chairman of all committees with the Speaker and Vice-President should happen during each session of the house.
- Recommendations of the committees should be compulsorily implemented.

►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.

SIGNIFICANCE

PAC is charged with a critical function of legislature - overseeing government finances. PAC holds ministries accountable to audit reports of the CAG, inquiries into whether government funds were spent for purposes for which they were allocated, and into the reasons for any excess expenditure by government bodies.

1. Highest Parliamentary financial oversight committee.
2. Even increasing demand from citizens for probity and accountability especially in matters of public finance.
3. PAC should function as a model and mentor for the PACs functioning in the State legislatures ensuring integrity of public expenditure at State level.

HISTORICAL EVOLUTION

- First set up in 1921 in the wake of the Montague-Chelmsford Reforms.
- Underwent a radical change with the coming into force of the Constitution (1950), when the PAC became a Parliamentary Committee functioning under the control of the Speaker with a non-official Chairman appointed by the Speaker from among the Members of Lok Sabha elected to the Committee. The Minister of Finance ceased to be a Member of the Committee.

STRUCTURE OF PAC

- PAC is constituted by Parliament every year.
- Members of PAC – Consists of 22 members of which 15 are from Lok Sabha and 7 members of Rajya Sabha elected every year according to the principle of proportional representation by means of single transferable vote.
- Chairperson appointed by Speaker. There is convention that the Chairman is from opposition.
- Union Minister is not eligible to be elected as a member of PAC.
- The Reports of the Committee are adopted by consensus among members.

FUNCTIONS OF PAC

- Consider Demands for Grants of various Ministries/Departments of Union Government and make reports to the Houses. Thus, PAC ascertains that money granted by Parliament has been spent by the government "within the scope of the demand".
- Brings extravagant expenditure into notice of Parliament - The committee not only ensures that ministries spend money in accordance with parliamentary grants, bit also brings to the notice of the Parliament instances of extravagance, loss, in fructuous expenditure and lack of financial integrity in public services.
- Examine Bills referred to Committee - by Chairman, Rajya Sabha or the Speaker, Lok Sabha and make reports thereon.
- Consider Annual Reports of Ministries/departments, Policy Documents and make suitable reports.
- Examine Report of CAG - of accounts of the Union Government submitted by CAG to the President. Article 151 of the Indian constitution requires the President to lay this report before each House of the Parliament.
- In examining the report of the CAG, the committee has to satisfy itself that –
  (a) the expenditures made by the government, were authorized by the Parliament, and
  (b) that the expenditures under any head has not crossed the limits of parliamentary authorization.
- Examine Accounts & Audit Reports - The Committee is assisted by the Comptroller and Auditor General in the examination of Accounts and Audit Reports on revenue receipts, expenditure by various Ministries/ Departments of Government and accounts of autonomous bodies.
- Examine Loopholes in Tax Administration - While scrutinising the Reports of CAG on revenue receipts, PAC examines various aspects of Government's tax administration. PAC examines cases involving under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies the loopholes in the taxation laws and procedures and makes recommendations to check leakage of revenue.
- PAC does not examine the accounts relating to such public undertakings as such accounts are allotted to the Committee on Public Undertakings.
- PAC cannot question policies of government - It only concerns itself with the execution of policy on its financial aspects.
- Summoning by PAC - Representatives of Ministries appear before it while examining Accounts and Audit Reports relating to their Ministries. A Minister is not called before Committee either to give evidence or for consultation in connection with examination of Accounts by the Committee.
- Evaluates Taxation Issues: PAC examines cases involving under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies loopholes in taxation laws and procedures and makes recommendations to check leakage of revenue.
- Examines various Audit Reports of the CAG on revenue receipts, expenditure by various Ministries/ Departments of Government and accounts of autonomous bodies.

CHALLENGES WITH FUNCTIONING OF PAC

- The Committee, however, does not examine the accounts relating to such public undertakings as are allotted to the Committee on public undertakings.
- Cannot question policies of the government. It only concerns itself with the execution of policy on its financial aspects.
- The reports of the committee are adopted by consensus. This creates issues as dissenting issues are usually dropped by committee.
- Challenges of reports of CAG on which PAC reports are based: Increase share of government expenditure through NGOs and Public Private Partnership which are beyond the mandate of CAG audit.

SUMMONING BY PAC

- The representatives of the Ministries appear before the Committee 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.
- The Chairperson of PAC may whenever he considers necessary, (after its deliberations are concluded) have an informal talk with the Minister concerned to apprise her/him of
  (a) any matters of policy laid down by the Ministry with which the Committee does not fully agree; and
  (b) any matters of secret and confidential nature which the Committee would not like to bring on record in its report.

- The Committee later takes oral evidence of the representatives of the Ministries/Departments concerned with the subjects under examination.

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.
- After presentation to the Lok Sabha, copies of the Report are forwarded to the Ministry or Department concerned which is required to act on the recommendations and observations contained in the Report and furnish action taken notes thereon within six months from the date of presentation of the Report.
- Action taken by Ministry or Department is taken note of and report of actions taken by the concerned ministry or department on suggestions of PAC is laid on the table of Lok Sabha and Rajya Sabha.
- Replies received from Government in respect of recommendations contained in the Action Taken Reports after approval by the Chairperson are also laid on the Table of Lok Sabha/Rajya Sabha in the form of Statements.

STRENGTHENING PUBLIC ACCOUNTS COMMITTEE

- PAC should be consulted before appointment of CAG as PAC and CAG work in tandem to ensure integrity of government finances.
- PAC should frequently form sub-committees to explore more reports.
- Need for Suo-moto selection of subjects i.e. apart from Audit report based examination.
- Having in place Financial Committee Audit control room in Ministries to review pendency of ATNs fortnightly. Having penalties for wilful delay by Ministries.
- Strengthening of Secretariat of PACs by inducting professionals and experts.
- PAC can consider collection of information through social audit agencies, NGOs and through internet portals dedicated to PACs.
- Dissent notes for differing opinions should be allowed in the reports of PAC which will allow differing opinions to find space in the reports of PAC.

IMPORTANT SUGGESTIONS OF VICE-PRESIDENT

- Stressed on wise, faithful and economical utilization of monies granted by Parliament to realise the stated socio-economic outcomes.
- Need of wider debate on freebies by harmonizing the welfare and development objectives.
- PAC must examine balancing of short-term and long-term development objectives – effective use of resource for socio-economic outcomes.
- Fear of scrutiny prevent wasteful expenditure - PAC's constant pursuit of action taken by the Government creates the 'fear of scrutiny' among all the concerned and this results in systemic improvement and prevention of 'financial murders' - large scale irregularities and wasteful expenditure.
- Enhance Trust of People & Investors - PAC's effective functioning ensuring financial accountability of the Executive enhances people' trust in the 'oversight' function of the Parliament and management of public finances. Accountability and transparency in public spending improves the confidence of investors as well.
- Need for PAC to reinvent itself - considering increase in government budgetary expenditure over the last 100 years from a mere Rs.197 crore in the first Budget to Rs.35 lakh crores in the present. Given the enormity and complexity of the work, PAC must inculcate financial discipline in government's expense which must be based on needs.
- The Vice-President also stressed on improving the functioning of Committees of Parliament as they enable bi-partisan discussions rising above the political divide.
- The Vice-President also called for a minimum of 100 sittings of Parliament every year and an adequate number of sittings of State Assemblies to enable detailed discussions on a range of issues.

CONCLUSION

PAC should function in a way to ensure that financial integrity is ensured in the government and 3Es of Economy, Effectiveness and Efficiency sound government policy and decision making at all levels.

►JOINT PARLIAMENTARY COMMITTEE

- JPC is a kind of Ad Hoc Committee constituted for a specific purpose. The JPC, an ad-hoc body, 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. The details regarding membership and subjects are also decided by Parliament.

- JPC are generally constituted based on consensus arrived between the government and the opposition to investigate specific issues. The 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. The committee's members are decided by Parliament.
- Number of members for a JPC is not fixed and may vary each time. In a JPC, number of Lok Sabha members are double than the Rajya Sabha members. For example, the motion to constitute a JPC on the Stock Market Scam(2001) and Pesticide Residues in soft drinks(2003) was moved by the government in the Lok Sabha.
- The Speaker has the final word in case of a dispute over calling for evidence.

JOINT PARLIAMENTARY COMMITTEE

- The first JPC was constituted to enquire into the allegations of corruption in defence contract in purchase of Bofors in 1987.
- The second JPC was constituted to enquire into irregularities into Banking and Security transactions in 1992 which is popularly referred as Harshad Mehta scam.
- The third JPC was constituted an identical scam in stock market manipulation popularly known as Ketan Parekh scam.
- The fourth JPC was constituted in 2003 to inquire into enquire into levels of pesticide residues in soft drinks, fruit juice and other beverages.
- Fifth JPC was set to probe 2G spectrum scam in 2011 to examine policy prescriptions and their interpretation" by successive governments in the allocation and pricing of telecom licenses and spectrum from 1998 to 2009. The said JPC had 20 MPs from Lok Sabha and 10 members from the Rajya Sabha.
- VVIP Chopper Scam in 2013. The last time a committee was set up in 2015 for the purpose of examination of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill.

POWERS OF JPC

- A 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.
- If a witness fails to appear before a JPC in response to summons, his conduct constitutes Contempt of the House.
- 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.
- The Speaker has the final word in case of a dispute over calling for evidence.

RECOMMENDATIONS OF JPC

- JPC recommendations have persuasive value but the committee cannot force the government to take any action on the basis of the report.
- The government may decide to launch fresh investigations based on a JPC report. However, the discretion to do so rests entirely with the government.
- The government is required to report on the follow-up action taken based on the recommendations of the JPC and other committees.
- However, the opposition can always attack the government on the reports and recommendations made by the JPC in a particular case.

►DEPARTMENT RELATED PARLIAMENTARY STANDING COMMITTEE

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.

CONSTITUTION

- The need to constitute Subject Specific Committees or Department-related Parliamentary Standing Committees was felt for the last several years.

- 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 effected. 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.

COMPOSITION

- 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 UNDER CHAIRMAN OF RAJYA SABHA

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

DRPSC UNDER THE SPEAKER OF LOK SABHA

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 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 related Ministries/Departments, referred to Committee by Chairman or Speaker and report thereon.

(c) Considering Annual Reports of Ministries/Departments and report thereon.

(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.

PROCEDURE

The procedure to be followed by each Standing Committee during the consideration and preparation of report on the Demands for Grants is as follows:—

(a) after the general discussion on the Budget in the House is over, the Houses shall be adjourned for a fixed period.

(b) the Committees shall consider the Demands for Grants of the concerned Ministries during the aforesaid period.

(c) the Committees shall make their report within the period and shall not ask for more time.

(d) the Demands for Grants shall be considered by the House in the light of the reports of the Committees; and

(e) there shall be a separate report on the Demands for Grants of each Ministry.

Procedure relating to examination and reporting on Bills by DRSCs is as follows:—

(a) the Committee shall consider the general principles and clauses of the Bills referred to them and make report thereon.

(b) the Committee shall consider only such Bills introduced in either of the Houses as are referred to them by the Chairman, Rajya Sabha or the Speaker, as the case may be; and

(c) the Committee shall make report on the Bills in the given time.

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 has also been referred to respective DRPSCs.
- In its Report on ELECTRIC & HYBRID MOBILITY – PROSPECTS AND CHALLENGES IN AUTOMOBILE INDUSTRY – the 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.

ISSUES WITH FUNCTIONING OF DRPSC:

- Shorter tenure of 1 year is inadequate and even the Vice President in its Recommendations on Parliamentary Reforms have suggested for longer tenure of DRPSCs.
- Delay in constitution of the committees by the government has been another concern.
- Consideration of demand for grants within a fixed period after discussions on demand for grant.
- Reports of the Committees have persuasive value and are not binding on the executive. This decreases the accountability of the executive.

WAY FORWARD - Despite the concerns, DRPSCs have made the executive more accountable through its various reports which have helped the government to take suitable actions. Thus, the DRPSC makes the Parliament more effective in exercising control over and giving direction to the executive functioning and thereby making the executive more accountable.

►FUNCTIONS OF PRIME MINISTER'S OFFICE

Prime Minister's Office came into existence after India became independent. The Prime Minister's Secretariat, as it was then known, provided the Secretarial assistance needed by the Prime Minister in his public activities and functions as the head of the government. Prime Minister's Office is headed politically by Prime Minister and administratively by the Principal Secretary.

PRIME MINISTER'S OFFICE PERFORMS SEVERAL FUNCTIONS:

- Assists PM in his overall responsibilities as head of the government like maintaining liaison with central ministries/departments and the state governments.
- Helps the PM in respect of his responsibilities as chairman of various bodies like NITI Aayog.
- Looks after the public relations of PM like contact with the press and public.
- Deals with all references, which under the Rules of Business have to come to the prime minister.
- Helps PM in examining cases submitted under Rules.
- Maintaining liaison with the President, Governors, and Foreign Representatives in the country.
- Acting as the 'think-tank' of the PM.

PRESENT CONTEXT – IMPORTANCE OF PMO

- Prime Minister of India as of now is heading six out of eight cabinet committees thereby leading to more centralisation of powers.
- Cabinet Committees are important organ of state executive for decision making. As we can see above, Prime Minister himself heads Appointments Committee, Cabinet Committee on Economic Affairs, Cabinet Committee on Political Affairs, Cabinet Committee on Security, Committee on Investment & Growth and Committee for Employment and Skill Development.
- This effectively makes the Prime Minister and his office a virtual super cabinet as most of the important policy decisions of the government will flow through the Prime Minister Office (PMO).
- This can be said to be an example of centralisation of power based on the personality cult and leadership abilities of the Prime Minister.

►CABINET SECRETARIAT

The Cabinet Secretariat functions directly under the Prime Minister. The administrative head of the Secretariat is the Cabinet Secretary who is also the ex-officio Chairman of the Civil Services Board. The business allocated to Cabinet Secretariat under Government of India (Allocation of Business) Rules, 1961 includes (i) Secretarial assistance to the Cabinet and Cabinet Committees; and (ii) Rules of Business.

RESPONSIBILITIES OF CABINET SECRETARIAT

- Administration of Government of India (Transaction of Business) Rules, 1961 and Government of India (Allocation of Business) Rules, 1961.
- Facilitating smooth transaction of business in Ministries/ Departments.
- Provides Secretariat assists in decision-making in Government by ensuring
  - Inter-Ministerial coordination for removing difficulties and delays
  - ironing out differences amongst Ministries/Departments and
  - Evolving consensus among various Committees.
  - Co-ordination in administrative actions and policies
- Participates in managing major crisis situations and coordinates with ministries/departments to solve the crisis.

PROVIDES SECRETARIAL ASSISTANCE TO THE CABINET AND CABINET COMMITTEES IN THE FORM OF

- Convening meetings of Cabinet & its committees on the directions of Prime Minister.
- Preparation and circulation of the agenda.
- Circulation of papers related to the agenda.
- Preparation of record of discussions.
- Circulation of the record of discussions after obtaining approval of the Prime Minister.
- Monitoring implementation of decisions taken by Cabinet and its Committees.

►CABINET COMMITTEES

With reshuffle in Union Cabinet, Cabinet Secretary has notified changes in composition of Cabinet Committees.

ABOUT CABINET COMMITTEES

- Under the Article 77 of the Constitution, President has power to make rules for convenient transaction of business of Union Government and for allocation of work among ministers. Under these the President has notified, two sets of rules:

1. Allocation of Business Rules deals with distribution of subject among different ministries and departments
2. Transaction of Business Rules deals with disposal of business by ministries, inter-departmental consultations, committees of cabinet, consultation with Prime Minister and President etc.

- According to the Transaction of Business Rules, Prime Minister has power to constitute or discontinue Standing Committees of the Cabinet and the functions assigned to them.
- Membership to these Standing Committees as Prime Minister may specify.
- Secretarial assistance to cabinet committees is provided by Cabinet Secretariat, headed by Cabinet Secretary.
- Ad hoc committee of ministers may be appointed by the Cabinet, Standing Committee or Prime Minister on such matters as may be
- Rationale for Cabinet Committees:
  - Help in taking decisions where multiple ministries are involved
  - Help in horizontal consultation and coordination and dialogue between different ministries

CABINET COMMITTEES

Name of the Cabinet Committee
1. Appointments Committee of the Cabinet
2. Cabinet Committee on Accommodation

3. Cabinet Committee on Economic Affairs
4. Cabinet Committee on Parliamentary Affairs
5. Cabinet Committee on Political Affairs
6. Cabinet Committee on Security
7. Cabinet Committee on Investment and Growth
8. Cabinet Committee on Employment and Skill Development

ISSUES WITH CABINET COMMITTEES

1. Some of the Cabinet Committees are not able to meet regularly.
2. Some of the Committees are merely recommendatory in nature while others are empowered to take decisions.
3. Lack of clear timelines for cabinet committees to arrive at a decision.
4. Several important subject though inter-ministerial in nature are not dealt by any of these committees.
5. Cabinet Committees can take up a matter only if it is referred to it by order of the Minister concerned of Cabinet.

WAY FORWARD

1. Each of the Cabinet Committees should be supported by a Secretaries Committee so that issues which can be solved at Secretary level do not consume time of ministers.
2. Between the Cabinet Committees all important matters should be covered.
3. Each Cabinet Committee should meet regularly so that sustained attention is given to complex problems and the process of implementation of important policies and programs is kept under constant review.
4. The office of Cabinet Secretary should be given more manpower and support for aiding these committees.
5. Apart from Standing Committees, the provision to form Ad hoc committees should be explored for subject specific issues.

►ANTI-DEFECTION LAW

Defection means floor-crossing or switching sides by a member of one political party to another party. To control increasing instances of political defection in India, government through Constitution 52nd Amendment, added Tenth Schedule in the Indian Constitution.

ADVERSE IMPACT OF DEFECTION POLITICS ON INDIAN DEMOCRACY

- Undermining Electoral Democracy by shifting political allegiance mid-term
- Defectors Betray Electoral Mandate
- Promotes Horse Trading through bribery and corruption
- Impacts stability of government
- Greed overtakes Constitutional Morality
- Restricts individual political freedom and right to vote due to party whips
- Speaker acts in a partisan manner in cases of anti-defection and delay the process.
- Has not restricted or prohibited post poll alliance – impacts government's stability

RECOMMENDATIONS

- Amending 10th Schedule to ban all kinds of Defections individual or group defections ad protection granted to members in case of split should be scrapped.
- Contesting Fresh Elections by Defectors as defecting by members would result in loss of membership of the House concerned.
- Defectors should be debarred from holding Public Office or any other remunerative political post for remaining term.
- Vote to topple government as Invalid: Vote cast by a defector to topple a government should be treated as invalid unless supported by confidence vote (e.g.: Germany)
- Speaker not to decide matters on Defection: Power to disqualify on ground of defection should vest in EC or President on the advice of EC.

Anti-Defection Law has created a democracy of parties and numbers in India, rather than a democracy of debate and discussion. Hence a change is long overdue.

ISSUE OF MERGER UNDER TENTH SCHEDULE

Supreme Court had sought response from Rajasthan Assembly Speaker and others against merger of six BSP MLAs into ruling Congress party in 2019.

- Splits & Merger – Tenth Schedule provides for splits and mergers of political parties. A member of a House shall not be disqualified where his original political party merges with another political party or becomes part of new political party so created by merger.
- Not Less Than Two-Thirds - 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.

- Para 5 - Exemption - A special provision has been included in the 5[2nd] Constitution Amendment to enable a person who has been elected as the presiding officer of a House to sever his connections with his political party.
- Prior to Constitution 91[st] Amendment, split of 1/3[rd] of members of political party was allowed. The Dinesh Goswami Committee on Electoral Reforms, the Law Commission in its 170[th] Report *on "Reform of Electoral Laws"* and *the National Commission to Review the Working of the Constitution (NCRWC)*- all recommended the deletion of Paragraph 3 under Tenth Schedule regarding exemption from disqualification in case of a split.
- Finally, Constitution 91st Amendment omitted Paragraph 3 and limited the size of council of minister.

KEISHAM MEGHACHANDRA SINGH CASE

- Decision on Anti-defection of Speaker operates independently, it is not subject to approval of House.
- Immunity only from parliamentary procedure - Decision of Speaker on anti-defection can be judicially reviewed and only the procedure followed cannot be judicially reviewed.
- Judicial Review - Judicial Review cannot be available at a stage prior to the making of a decision by the Speaker/Chairman.
- Grounds of Judicial Review - Judicial Review is allowed on Speaker's Decision of disqualification on grounds of infirmities based on violations of constitutional mandates, mala fides, non-compliance with Rules of Natural Justice and perversity.
- Speaker/Chairman Quasi-Judicial Authority Speaker or Chairman, acting under Tenth Schedule is a Tribunal. Speaker is a quasi-judicial authority who is required to take a decision within a reasonable time.
- Judicial Power of Speaker/Chairman - Power to resolve such disputes vested in the Speaker or Chairman is a judicial power.
- Speaker to decide case in reasonable time – Supreme Court quoted Kihoto Hollohan where it held that Speaker while deciding case of anti-defection must decide within reasonable time and should not take more than three months.
- Observation in Rajendra Singh Rana case - The person who has incurred disqualification does not deserve to be MPs/MLAs even for a single day.

KIHOTO HOLLOHAN V ZACHILHU

- Constitutionality of Anti-Defection Law was upheld by Supreme Court by 3:2 majority.
- SC ruled that Speaker/Chairman while deciding cases of anti-defection acts as a Tribunal and accordingly the decision of Speaker/Chairman is subject to judicial review.
- However, judicial review would not cover any stage prior to the making of decision by Speaker/Chairman.
- Speakers/Chairmen hold a pivotal position in the scheme of Parliamentary democracy and are guardians of the rights and privileges of the House.
- Tenth Schedule's provisions were remedial and intended to strengthen the fabric of Indian Parliamentary democracy by curbing unprincipled and unethical political defections.

CRITICISM OF ANTI-DEFECTION LAW

Challenges for MPs and MLAs:

1. Reduces elected MP of a party to a mere number to be counted in favor of the party line. This ignores the fact the political parties are coalitions of interests, and its members share a broad philosophy but hold differing opinions on several issues.
2. In a Parliamentary system, every MP of ruling coalition can be compelled to vote in accordance with a decision of cabinet. This reduces separation of power and dilutes parliaments power of scrutiny as executive always has tighter control over majority of votes.
3. Reduces the incentive for MPs to consider the merits of various arguments since they are bound to toe the party line.
4. Reduces accountability of MPs to their constituents as they can avoid defending their actions in any parliamentary vote by stating that it was not their personal view but that of the party.
5. MPs may be required to vote against the interests of their constituency.

Ineffective in controlling defections:

1. Despite the law, it has failed to curb defections on several occasions when the stability of the government was at stake. Political parties offer incentives such as ministerial positions to defectors.
2. Fragmentation of political parties: The power to issue whip and anti-defection law gives any political leader greater influence if he controls a small party than if he is a senior member of larger political party.

Reforms suggested

1. If possible doing away with Anti-defection law or at least extending it to pre-poll alliances.
2. Restricting the scope of the anti-defection law to votes of confidence, adjournment motions and financial and money bills - or areas where the loss of the vote would be a censure of the government or require it to resign. Also, giving freedom to MPs to vote as they desire on other issues. MPs could still be subject to disciplinary action by the party, but they would retain their parliamentary membership.
3. Taking the power away from speakers and laying it in a neutral body such as a tribunal or election commission.
4. Laying down fixed timelines in which speakers need to take decision on anti-defection cases.

►REVIVAL OF MPLAD FUNDS

MPLADS scheme was revived last year after it was stalled during COVID-19 pandemic.

MP LOCAL AREA DEVELOPMENT (MPLAD) SCHEME

- Scheme is administered through Union Ministry of Statistics and Program Implementation (MOSPI). Projects are to be recommended to and implemented by the district-level administration.
- Amount allotted - MPLADS allot Rs. 5 crore per year to each Member of Parliament (MP) to be spent on projects of their choice in their constituency. Under the scheme, each MP can suggest to the District Collector for work to be done under the scheme.
- Role of District Authorities - Sanction of the eligible works and implementation of the sanctioned works in the field are undertaken by the District Authorities in accordance with State Government's financial, technical and administrative rules.
- Nodal District - If a Lok Sabha Constituency is spread over more than one District, the Member of Parliament can choose any one of the Districts as Nodal District in his/her constituency. The Rajya Sabha MP can choose any District in his/her State of Election as Nodal District.
- SC/ST Areas - at least 15% of the MPLADS entitlement is for areas inhabited by Scheduled Caste population and 7.5% for areas inhabited by S.T. population.
- Creating Community Assets - In case there is insufficient tribal population in a Lok Sabha Member's constituency, they may recommend this amount for creation of community assets in tribal areas outside of their constituency but within their State of election. In case a State does not have S.T. inhabited areas, this amount may be utilized in S.C. inhabited areas.
- Works can be implemented in areas prone to or affected by natural disasters.
- Funds can be converged with MGNREGA with the objective of creating more durable assets.
- Khelo India - Funds can be converged with Khelo India: National Program for Development of Sports with the objective of creating more durable assets.
- Amount released in two Instalments - The annual entitlement of Rs 5 crore shall be released, in two equal instalments of Rs 2.5 crore each directly to the District Authority of the MP concerned.
- Second instalment will be released subject to the fulfilment of the following eligibility criteria –
  - (i) unsanctioned balance amount available in account of District Authority is less than Rs.1 crore.
  - (ii) Unspent balance of fund of the MP Concerned is less than Rs. 2.5 crore; and
  - (iii) Utilization Certificate and Audit Certificate of the immediately concluded financial year ending 31st March have been furnished by District Authority.
- MPLADS Fund Non-Lapsable - Funds released to the District Authority are non-lapsable in nature. It means that funds sanctioned under MPLADS can be carried forward for utilization for subsequent year.

ISSUES WITH MPLADS

- Widespread Corruption and misuse of funds by politician and bureaucrats
- Public Accounts Committee in 2012 has highlighted gaps between funds available to the district authorities and actual expenditure on the scheme.
- Delay by district administration as per report of CAG in issuing work orders – CAG Report. Average time taken should be 45 days, but it ranges from 5 to 387 days.
- Lapses on monitoring, supervision and inspection of work to be done under MPLADS.
- Regular reports of implementation of work not sent in time to Centre.
- The scheme goes against Constitution 73rd and 74th Amendment as MPs deploy funds to do the work which local bodies are better placed to deliver.
- Also impacts separation of power mechanism as legislature functions as executive.

- Lack of adequate information available to MPs which sometimes leads to disproportionate flow of money to a given district.
- Poor Quality of work as reported by CAG – use of lesser quality of material for asset creation led to excess payments and sub-standard works.

CONSTITUTIONALITY OF MPLADS

- In 2010, Constitution Bench of SC in a unanimous verdict declared MPLADS as constitutional and held that there was no violation of concept of separation of powers because the role of an MP in this case is recommendatory and the actual work is carried out by the Panchayats and Municipalities which belong to the executive organ.
- There are checks and balances in place through guidelines which must be adhered to and fact that each MP is ultimately responsible to the Parliament.

NCRWC OBJECTION AGAINST MPLADS

- Misuse of Funds -CAG of India time and again in its report has mentioned bout the misuse and non-use of such funds.
- Against separation of powers - scheme violates the distribution of powers between the union, states and local governments as defined in the constitution and is inconsistent with the spirit of federalism.
- MPLADS inconsistent with spirit of Federalism - As per NCRWC, MPLAD Scheme is inconsistent with the spirit of federalism and distribution of powers between the Union and the States. It also treads into the areas of local government institutions.
- Finance to be allocated at Local Level - Development of local areas must be demarcated to local leaders at the level of Panchayats and Municipalities as per Constitution 73rd and 74th Amendment. The NCRWC report points out that all the activities on which MP's can spend their funds are already on state lists.
- The scheme seriously undermines local bodies by creating incentives for MPs to provide basic civic services such as roads, bridges and streetlights that are constitutionally the responsibility of local governments.
- Similar opinion was expressed by Second Administrative Reform Commission in its Report on "Ethics in Governance" and suggested to abolish MPLAD Scheme.

COMMITTEE ON MPLADS

- The Committee on Members of Parliament Local Area Development Scheme is an ad hoc Committee consisting of 24 Members who are nominated by the Speaker from amongst the Members of the Lok Sabha to serve the Committee for a period not exceeding one year. The Committee is reconstituted by the Speaker every year.
- The functions of the Committee on MPLADS of Lok Sabha are –
  (a) to monitor and review periodically the performance and problems in implementation of the MPLAD Scheme.
  (b) to consider complaints of members of Lok Sabha about the Scheme; and
  (c) to perform such other functions in respect of the MPLAD Scheme as may be assigned to it by the Speaker from time to time.

The observations/recommendations of the Committee on a subject/complaint/suggestion/ representation are contained in its Report, which, after its adoption by the Committee, is presented to the Lok Sabha by the Chairperson or in her/his absence by any other member of the Committee.

WAY FORWARD

Despite the criticism, MPLADS has been used to carry out developmental works as recommended by guidelines of MOSPI. The scheme has provided livelihood opportunities to poor in the rural and urban areas. Panchayats and Municipalities must be made compulsory participants in the implementation of MPLADS to further strengthen democratic decentralisation.

►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

Supreme Court has laid following criteria to determine whether any MP/MLA/MLC holds Office of Profit:

- Appointment has been made by government.
- Government has right to remove or dismiss those holding such office.
- Government pays remuneration for such office.
- Functions performed by the office are different from the one the member already performs
- Office holder perform these functions for government
- Government exercises control over performance of these 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.

POWER OF ELECTION COMMISSION

- Mandatory for President and Governor to act according to opinion provided by the EC in case of disqualification on grounds of office of profit.
- In case of Delhi Legislative Assembly, Election Commission had recommended disqualification for some MLAs who were appointed as Parliamentary Secretaries.
- Recommendation of Election Commission was communicated to the Hon'ble President of India who has accordingly decided to disqualify these 20 MLAs of Aam admi Party. However, the Court later decided otherwise on the issue.
- *Thus, it becomes mandatory for President to act according to opinion of Election Commission with respect to disqualification for holding office of profit.*

DEVELOPMENTS ON OFFICE OF PROFIT

- Joint Committee of Parliament on Office of Profit in two of its latest reports has observed that the expression "office of profit" has not been defined in the Constitution, the Representation of the People Act, Parliament (Prevention of disqualification) Act or even in any judgment delivered by High Court or Supreme Court.
- In Ashok Kumar Bhattacharya vs Ajoy Biswas, SC held that to determine whether a person holds an office under Government, each case must be measured and judged in the light of the relevant provisions and sections.
- Issue of Office of Profit is decided on case-to-case basis by the Courts and Election Commission. The case is interpreted based on facts and circumstances of each case and the relevant statutory provisions.

JOINT COMMITTEE OF PARLIAMENT ON OFFICE OF PROFIT

- The Joint Committee on Offices of Profit is constituted in pursuance of a government motion adopted by Lok Sabha and concurred by Rajya Sabha for the duration of Lok Sabha.
- It consists of 15 Members, ten from Lok Sabha and five from Rajya Sabha, who are elected from amongst the Members of the respective Houses according to the principle of proportional representation by means of single transferable vote.

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

(a) Examine the composition and character of all committees - membership of which may disqualify a Under Article 102 of the Constitution.

(b) Recommend in relation to the 'committees' examined by it what offices should disqualify and what offices should not disqualify; and

(c) Scrutinise Schedule to Parliament (Prevention of Disqualification) Act, 1959from time to time.

►LEGISLATIVE COUNCILS

The West Bengal &Odisha Government have decided to set up a Legislative Council. Proposals to create Councils in Rajasthan and Assam are pending in Parliament.

IMPORTANCE OF LEGISLATIVE COUNCILS

- Legislative Council is the second house of discussion depicting bicameralism at the state level.
- Currently, 6 states have Legislative Councils. These are Bihar, Uttar Pradesh, Maharashtra, Karnataka, Andhra Pradesh and Telangana.
- Institution of Checks & Balance - A second chamber in states acts as an institution of checks and balances on every Bill as it prohibits hasty, defective, careless & ill-considered legislation made by the assembly by making provision for revision and thought.
- Ensures Diverse Representation by facilitating representation of professionals and experts who cannot face direct elections. The governor nominates one-sixth members of the council to provide representation to such people.

ABOUT LEGISLATIVE COUNCIL

- Permanent Body –It is not subject to dissolution. One-third of the members of the Council retire on the expiration of every second year.
- Qualifications-Members must be citizen of India and not be less than 30 years of age.
- Creation & Abolition of LC: Under Article 169, Parliament may by law provide for creation or abolition of Legislative Council in a state if the Legislative Assembly of State passes a resolution to that effect *by much of total membership of Assembly and by a majority of not less than two-thirds of the members of the Assembly present and voting.* Parliament can then pass a law to this effect by simple majority.
- Strength of LC - Under Article 171, the Legislative Council of a state shall not have more than one-third of the total number of MLAs of the state, and not less than 40 members.
- Election & nomination of members: Of total number of members of Legislative Council of a State,
  - 1/3rd are elected by State's MLAs,
  - 1/3rd by a special electorate comprising sitting members of local governments such as municipalities and district boards.
  - 1/12th by an electorate of teachers and
  - another 1/12th by registered graduates.
  - The remaining members shall be nominated by the Governor having special knowledge or practical experience in the field of *Literature, science, art, co-operative movement and social service.*
- Chairman & Deputy Chairman - Every state having legislative council must chose two members of the Council as Chairman and Deputy Chairman of the Legislative Council.

LEGISLATIVE COUNCIL V COUNCIL OF STATES

- The legislative powers of Legislative Councils are limited as compared to Council of States or Rajya Sabha. Rajya Sabha has substantial powers to shape non-financial legislation whereas Legislative Councils lack a constitutional mandate to do so.
- Assemblies can override suggestions/amendments made to any legislation by the Council.
- Member of Councils cannot vote in elections for the President and Vice President whereas members of Rajya Sabha can vote.
- MLCs also cannot vote in the elections of Rajya Sabha members.

WHY IS RAJYA SABHA STRONGER THAN LEGISLATIVE COUNCIL?

- Rajya Sabha has a constitutional role to maintain federal equilibrium by protecting the interests of the states, whereas LCs has no such constitutional role envisaged.
- Rajya Sabha is homogeneously constituted of elected members. While the council is heterogeneously constituted body (Art 84).
- No constitutional provision allows for abolition of the Rajya Sabha. Unlike in case of council, which can be abolished with a special majority (Art 169).
- Rajya Sabha enjoys substantial powers to shape legislations and vote in elections for the President and Vice President. Legislative council enjoys no such powers.

CRITICISM OF LEGISLATIVE COUNCIL

- Does not provide effective check on law making process
- Serve as parking space for defeated politicians or those who did not receive ministerial berth
- Unnecessary delay in law making without substantial power
- Extra expenditure of government's resource and hence taxpayers' money.

WAY FORWARD

- To better utilise the role of Legislative Council, it should be allocated the responsibility to implement schemes in Panchayats and Municipalities and necessary constitutional amendment must be made for the same.
- With increasing education, there is a need to evolve the membership of Legislative council by mandating representation of members of local bodies in it.

►RAJYA SABHA

Origin of Rajya Sabha can be traced to Montague-Chelmsford Report of 1918. Government of India Act, 1919 provided for creation of a 'Council of State' as a second chamber of the legislature with a restricted franchise, which came into existence in 1921.

- Article 83(1) - Rajya Sabha is a permanent House and is not subject to dissolution. However, one-third Members of Rajya Sabha retire after every second year. A member who is elected for a full term serves for a period of six years.
- Article 80 of the Constitution lays down the maximum strength of Rajya Sabha as 250, out of which 12

members are nominated by the President and 238 are representatives of the States and of the two Union Territories of Delhi and Puducherry having state legislative assembly elected by the method of indirect election. The members nominated by the President are persons having special knowledge or practical experience in respect of such matters as literature, science, art and social service. The Fourth Schedule to the Constitution provides for allocation of seats to the States and Union Territories in Rajya Sabha.

- Article 84 of Constitution lays down qualifications for membership of Parliament. A person to be qualified for membership of the Rajya Sabha should possess the following qualifications:

1. Must be a citizen of India and make and subscribe before some person authorized in that behalf by the Election Commission an oath or affirmation according to the form set out for the purpose in the Third Schedule to the Constitution.
2. Must be not less than 30 years of age.
3. Must possess such other qualifications as may be prescribed in that behalf by or under any law made by Parliament.

ELECTORAL COLLEGE

- Representatives of each State and two UTs are elected by elected members of Legislative Assembly of that State and by the members of the Electoral College for that Union Territory, in accordance with the system of proportional representation by means of the single transferable vote.
- The Electoral College for the National Capital Territory of Delhi consists of the elected members of the Legislative Assembly of Delhi, and that for Puducherry consists of the elected members of the Puducherry Legislative Assembly.
- The Council of States shall not be subject to dissolution, but as nearly as possible one-third of the members thereof shall retire as soon as may be on the expiration of every second year. The Council of States thus reflects a federal character by representing different units of the federation.

IMPORTANCE OF RAJYA SABHA

- Played significant role in strengthening Parliamentary democracy and has secured a distinct place in our democratic polity.
- Provides remarkable contribution in legislative field by shaping government's policies and legislations.
- Continuous working of RS without dissolution reflects success of bicameralism in India.
- Gives an opportunity to Eminent and Distinguished Personalities from diverse fields such as literature, science, art and social service to serve the country.
- Promotes unity and integrity as an apex parliamentary institution, it has stood the test of time and strived to promote and foster national unity and integrity.
- Bring experience in legislative debates: MPs of Rajya Sabha are expected to be more experienced, learned and less influenced by ebb and flow of popular opinion.
- Ensures accountability of executive: As House of Elders, it is expected to hold dignified and quality debates on issues of public importance and legislative proposals and to ensure the accountability of the executive to Parliament.
- Wider Representation to all sections in society and geographical regions (12 nominated members).
- Double check on policy matters prevents policy to be passed in haste.
- Check and Balance: It makes twice discussion of many bills and policies possible thereby ensuring a double check on every matter and avoiding any hasty decision (Constitutional Amendments).
- Permanent House: thereby giving scope of urgent business to be conducted when the Lok Sabha is dissolved and elections due.
- Free from compulsions of competitive party politics: as it is an indirectly elected body and has no role in the making/unmaking of Government.
- Guardian of State: RS authorizes Parliament to make a law on state subject (Article 249).

ISSUES WITH RAJYA SABHA

- Asymmetrical representation of states based on population results in states like Goa, Arunachal Pradesh, Manipur, Meghalaya etc. having only 1 seat whereas other states have more seats. This is unlike USA where every state has equal representation in Senate.
- Specific needs of states: Smaller States need to have more representation to reflect on their issues and specific needs.
- Inadequate time to speak: Independent or nominated members and MPs from smaller parties get less time to speak in the House.
- Declining Productivity of Rajya Sabha amidst increasing washout of sessions.

CONCLUSION – There is a need to delink seats of Rajya Sabha from the population of states to give equal representation to smaller states based on the recommendations of Punchhi Commission.

►POLITICISATION OF GOVERNOR

Confrontation of centrally appointed Governors with elected state governments has increased especially in states having non-BJP government such as Maharashtra, Kerala, Rajasthan, Tamil Nadu and West Bengal. This suggests increasing interference of the central government through the office of governor in different states.

GOVERNOR'S DISCRETIONARY POWERS

- Art. 163 empowers council of minister to aid and advise the Governor in exercise of his functions along with certain discretionary powers. This acts as mechanism of check and balance against any unconstitutional decision taken by State government.
- Governor functions both as head of State and as an agent of Centre. Governor bestowed with following discretionary powers:
  - Reserve any Bill for consideration of President, Article 201.
  - Appoint Chief Minister of State (Article 164(1)) inviting leader of single largest party to prove majority in case of hung assembly.
  - Dismiss ministry as council of ministers hold office during pleasure of the Governor (Article 164(1)).
  - Sending report to President under Article 356, failure of Constitutional machinery in States.
  - Governor's responsibility for administration of Tribal Areas and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).

NABAM FELIX JUDGMENT

- Supreme Court decided that 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.
- The Court gave its decision based on discussion in Constituent Assembly debates whereby it was finalised not to give discretionary power to Governor under Article 174.

SHAMSHER SINGH V. STATE OF PUNJAB (1974)

- SC said Governor has no right to refuse to act on advice of Council of Ministries. Such a position is antithetical to the concept of 'responsible government'.

B.P. SINGHAL V. UNION OF INDIA (2010)

- SC highlighted dual role of governor: 1. Agent of the Centre & 2. Head of the state.
- SC held that there may be instances of conflict between Centre and states where *governor must act neutrally.*

NEED FOR POLITICALLY NEUTRAL GOVERNOR – SARKARIA COMMISSION'S RECOMMENDATION

- Sarkaria Commission on Centre-State Relations, the National Commission to Review the Working of the Constitution and Punchhi Commission has reiterated the need for politically neutral governor.
- Neutrality of governor is best displayed when he uses his discretionary powers as per the constitution. However, the use of discretionary power by the Governor also leaves certain space for its misutilisation.
- Sarkaria Commission has recommended the following criteria which must be considered while appointing Governors of state:
  - He should be eminent in some walk of life.
  - He should be a person from outside the State.
  - He should be a detached figure and not too intimately connected with the local politics of the State; and
  - He should be a person who has not taken too great a part in politics generally and particularly in the recent past.
  - In selecting a Governor in accordance with the above criteria, persons belonging to the minority groups should continue to be given a chance.

DISCRETIONARY POWERS OF GOVERNOR ARE:

- Reserve any Bill for the consideration of the President under Article 200
- To appoint the Chief Minister of State under Article 164(1) including inviting the leader of the single largest party in case of a hung verdict to prove majority on the floor of the House.
- To dismiss the ministry as the Chief Minister and other Ministers shall hold office during the pleasure of the Governor under Article 164(1)
- Governor's report under Article 356 in case of failure of Constitutional machinery in States.
- Governor's responsibility for certain regions such as the Tribal Areas in Assam and responsibilities placed on the Governor under Article 371A (Nagaland), 371C (Manipur), 371H (Arunachal Pradesh).

S.R. BOMMAI V UNION OF INDIA (1994)

- SC held explicitly that in situations where there is a hung assembly (where no political party has obtained a clear majority of seats), the final decision rests not with the various feuding parties but with the concerned legislature through a "floor" test.
- This case allows the Supreme Court to investigate the reasons which forms the basis of a Governor's report.

DISCRETION OF GOVERNOR

Discretion given to governor is based on constitutional limitations and Governor must follow certain rules as specified by Sarkaria Commission which suggested that in choosing a Chief Minister, Governor should be guided by the following principles:

- The party or combination of parties that command the widest support in the Legislative Assembly should be called to form the government.
- The Governor's task is to see that a government is formed — and not to try to form a government that will pursue policies that he approves.
- If no party has a majority, the Governor must invite:
  a) a pre-poll alliance,
  b) the largest single party that can gain majority support,
  c) a post-election coalition that has the required members,
  d) a post-election coalition in which partners are willing to extend outside support.
- Commission recommended that whoever is appointed as the Chief Minister, must seek a vote of confidence in the Assembly on the floor of the House within 30 days of taking over.
- Governor should not resort to mechanisms where determining of majority of government is done outside the assembly.

GOVERNOR HAS POWER TO SUMMON THE HOUSE AS PER ARTICLE 174

- SC referred Constituent Assembly debates and noted that the framers of the Constitution expressly and consciously did not grant exclusive power to the Governor to summon or dissolve the House.
- SC discussed that Article 153 of the Draft Constitution (which later became Article 174 in the present constitution), dealt with the powers of the Governor, was substantially altered to indicate that the constitution framers did not want to give Governors the discretion in summoning of the Assembly.
- After debating the intention of the framers, the court concluded that "the Constitution makers altered their original contemplation and consciously decided not to vest discretion with the Governor, in the matter of summoning and dissolving the House, or Houses of the State Legislature.
- Thus, Supreme Court in Nabam Felix judgment decided that 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.*

JUDICIARY

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	Discuss the desirability of greater representation to women in the higher judiciary to ensure diversity, equity and inclusiveness.
2020	Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this con-text justify the filing of large number of public interest petitions praying for issuing guide-lines to executive authorities.
2019	"The Central Administration Tribunal which was established for redressal of grievances and complaints by or against central government employees, nowadays is exercising its powers as an independent judicial authority." Explain.
2018	Whether the Supreme Court Judgment (July 2018) can settle the political tussle between the Lt. Governor and elected government of Delhi? Examine.
2018	How far do you agree with the view that tribunals curtail the jurisdiction of ordinary courts? In view of the above, discuss the constitutional validity and competency of the tribunals in India.
2017	Critically examine the Supreme Court's judgment on 'National Judicial Appointments Commission Act, 2014' with reference to appointment of judges of higher judiciary in India.
2017	Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.
2016	What was held in the Coelho case? In this context, can you say that judicial review is of key importance amongst the basic features of the Constitution?
2015	What are the major changes brought in the Arbitration and Conciliation Act, 1990 through the recent Ordinance promulgated by the President? How far will it improve India's dispute resolution mechanism? Discuss.

►IMPORTANT ROLE PLAYED BY JUDICIARY

- The principal role of the judiciary is to protect rule of law and ensure supremacy of law. It safeguards rights of the individual, settles disputes in accordance with the law and ensures that democracy does not give way to individual or group dictatorship.
- For judiciary to perform its functions, it is necessary that -
  - Other organs of government (legislature & executive) do not restrain the functioning of judiciary in providing justice.
  - Other organs does not interfere with the decisions of the Judiciary
  - Judges must be able to perform their duties without fear or favour

- Judiciary is a part of the democratic political structure of the country. It is therefore accountable to the Constitution, to the democratic traditions and to the people of the country.
- Thus, for judges to perform their duties fearlessly, constitution of India has ensured certain safeguards against misuse of power by either the executive or legislature.

►IMPORTANCE OF JUDICIAL INDEPENDENCE IN INDIA

Constitution has ensured independence of judiciary through several measures.

- Administration of Law & Justice - Supreme Court plays a significant role in administration of law and justice and is the final arbiter and interpreter of Constitution.
- Judicial Review - The Judiciary is the protector of the Constitution and can strike down executive, administrative or legislative acts of Centre and States if they violate legal or constitutional principles.
- SC is the final court of appeal in public and private law and enjoys advisory, appellate and original jurisdiction.
- Creative & Balanced Role of Supreme Court - in keeping the responsible and parliamentary system of government in proper working order, in maintaining federal balance and protects fundamental rights of people of India.
- Promotes and Protects Welfare State & Other Constitutional Ideals and Goals enshrined in the Preamble and other parts of the Constitution.
- Overall, an Independent Judiciary is sine qua non (an essential condition) of a vibrant democratic system.

CONSTITUTIONAL & LEGAL PROVISION TO ENSURE JUDICIAL INDEPENDENCE

- Separation of Power - Article 50 - Separation of Power between Legislature, Executive and Judiciary – is now a part of Basic Structure of the Indian Constitution.
- Security of tenure of judges: Judge of Supreme Court or High Court cannot be removed arbitrarily by the executive and their removal must undergo rigorous legislative scrutiny as provided under Article 124 (4). Further, Article 124 (5) mentions that removal of judge on grounds of "misbehaviour" and "incapacity" can be prescribed by law made by Parliament.
- The Judges Enquiry Act, 1968 – lays down the process to remove Judges of Supreme Court and High Court including the investigation necessary to prove misbehaviour or incapacity.
- Salary of Judges cannot be reduced - Article 125 (2) - Salary of Judges is fixed by Parliament and it cannot be reduced during the tenure of a Judge. Privileges, allowances, leaves and pension provided to a Judge cannot be varied or reduced to their disadvantage.
- Expense of Supreme Court charged upon Consolidated Fund of India – Article 146 (3) – This ensures financial independence of judiciary away from Parliament's vote on the matter or executive's pressure or influence.
- 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.
- Collegium System – This has further strengthened judicial independence as interference from executive in appointment is ruled out.

IS THERE A POSSIBILITY OF EROSION OF JUDICIAL INDEPENDENCE DESPITE CONSTITUTIONAL GUARANTEES?

- Post-Retirement Benefits - There is always a lurking danger of judicial independence being eroded by prevailing practices of post retirement re-employment of retired SC/HC Judges in various executive capacities. For ex - Former CJI Ranjan Gogoi was nominated to Rajya Sabha within four months of his superannuation. Former CJI P. Sathasivam was appointed as Governor of Kerala.
- The Only Ban - The only ban imposed by the Constitution on Supreme Court Judge is that he cannot plead or practice in any Court or before any authority.
- Arbitration Practice - Most Supreme Court Judges on retirement start their Arbitration Practice. This may develop a prior linkage or affiliation with any

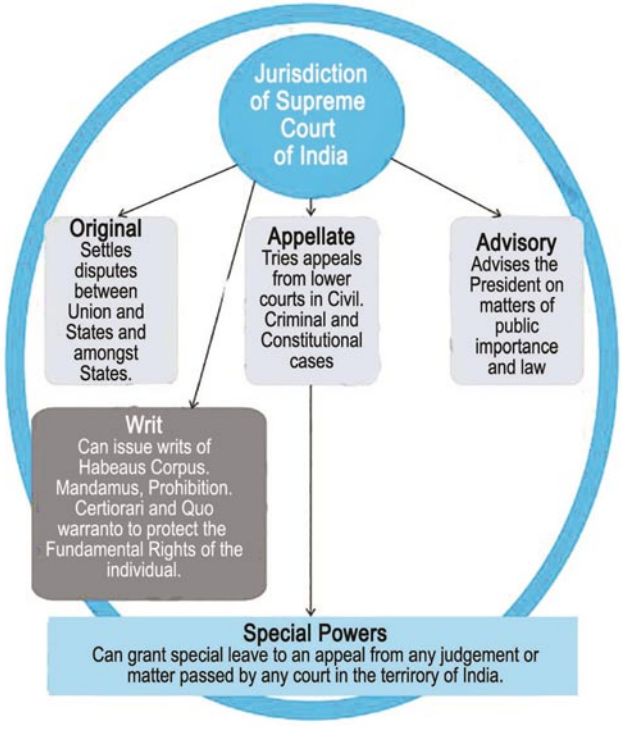
corporate, company, industry or organisation for a future job. Such prior linkage pre-retirement may impact judgments pronounced prior retirement.

- No Constitutional Bar on retired SC/HC Judges entering Active Politics – Lure of participation in active politics by political parties further erodes judicial independence. As part of quid pro quo, judges may deliver favourable judgment and this overall may hamper judicial independence.

WAY FORWARD

- Nixon M. Joseph Case Observation: On the issue of taking up jobs post retirement for Judges, Justice Narayana Kurup expressed firm opposition against such practice. The Court said that to maintain dignity and independence of judiciary as well as public confidence in the judiciary, it is necessary that a Judge should not allow his judicial position to be compromised at any cost. Justice should not only be done but seen to be done.
- Cooling off period of two years must be made part of legal principles for retired Judges of Supreme Court and High Court.
- Implementing "Restatement of Values of Judicial life" which provides complete cannons for judicial ethics as adopted by Supreme Court in May 1997 and serves as a guide for an independent & fair judiciary.

►SUPREME COURT



Supreme Court is a multi-jurisdictional Court and can be regarded as the most powerful Apex Court in the World. The functions and responsibilities of the Supreme Court are defined by the Constitution. The Supreme Court has specific jurisdiction or scope of powers.

THUS, THE CONSTITUTION CONFERS VERY BROAD JURISDICTIONS AND POWERS UPON SUPREME COURT (SC) UNDER THE FOLLOWING PROVISIONS:

(i) It is a Court of record and has power to punish a person for its contempt – Article 129.

(ii) Original jurisdiction to decide inter-governmental disputes – Article 131.

(iii) Appellate jurisdiction: SC is highest Court of Appeal in all matters of civil and criminal cases (Article 132 to 134).

(iv) Enjoys extensive Appellate Jurisdiction under Article 136 from any Court or Tribunal

(v) Power to issue writ to enforce fundamental right under Article 32.

(vi) Advisory Jurisdiction under Article 143 – advises the President on matters of public importance and laws.

(vii) It has power to review its own decisions – Article 137

(viii) It can issue necessary order for doing complete justice in any case – Article 142.

(ix) Article 145(3) allows Supreme Court to form Constitution Bench comprising minimum of five judges to decide any case involving a substantial question of law as to the interpretation of this Constitution or for the purpose of hearing any reference under article 143.

IMPORTANCE OF JUDICIAL REVIEW

- Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if according to the Courts, the law is inconsistent with the provisions of the Constitution. Such a law is declared as unconstitutional and inapplicable.
- Judicial review is not mentioned in Constitution. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the Supreme Court the power of judicial review.
- Supreme Court can also use the review powers if a law is inconsistent with the distribution of federal powers laid down by the Constitution.
- Thus, review power of the Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers.

- The review power extends to the laws passed by State legislatures also. Together, the writ powers and the review power of the Court make judiciary very powerful.
- In particular, the review power means that the judiciary can interpret the Constitution and the laws passed by the legislature.
- The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens.

►SEALED COVER JURISPRUDENCE

The practice of providing information by government agencies in sealed envelopes is referred as "Sealed Cover Jurisprudence" and has been criticised of being opaque and restrictive. This practice has been in vogue in cases like Rafale, One Media, Bhima Koregaon, NRC issue etc.

CASES IN WHICH THIS JURISPRUDENCE IS PRACTICED

- Issues of national security
- Violation of public order
- Cases of Money Laundering
- Cases of Sedition
- Ban on freedom of speech by media houses
- Trade involving two nations
- Issues of privacy - cases involving sexual assaults or child abuse
- Documents part of ongoing investigation

RECENT PRACTICES OF THE JURISPRUDENCE

- Media One Case – Ministry of Information and Broadcasting (I&B) refused to renew the license of Media One, a Malayalam based news channel on grounds of National Security. Reasons of not renewing the license of Media One were provided in a sealed envelope to the judges of Kerala HC. *The Kerala High Court based on the sealed envelope dismissed the appeal without providing the reasons of national security risks involved.*
- Rafale Aircraft Case – Former CJI Ranjan Gogoi had asked the central government to submit details related to deal's decision making and pricing in a sealed cover. This was done as the Centre had contended that such details were subject to the Official Secrets Act and Secrecy clauses in the deal.
- Bhima-Koregaon – Supreme Court refused put a stay on the arrest of activists held in Bhima-Koregaon case by relying on "evidence" submitted by the Maharashtra police in a sealed envelope. The police had stated that this information could not be disclosed to the accused as it would impede the ongoing investigation.
- NRC Exercise in Assam – The exercise led to exclusion of almost 19 lakh citizens from NRC. In response, the Supreme Court sought details from the NRC coordinator in a sealed cover. This document was not accessible either to the government or the affected parties.
- Corruption Allegation against CBI Director Alok Verma – Supreme Court insisted that the Central Vigilance Commission submit its report in a sealed cover, ostensibly to maintain public confidence in the agency.

IS THERE A LEGAL SANCTION FOR SUCH PRACTICE?

- Supreme Court derives its power from Rule 7 of order XIII of the Supreme Court Rules and Section 123 of the Indian Evidence Act of 1872.
- Rule 7 of order XIII of the Supreme Court Rules – Chief Justice can direct certain document, letter, extract or copy in sealed covers which is confidential in nature and whose publication is not warranted. Chief Justice can withhold sharing of such information or its publication from any person including the opposite party in a case.
- Section 123 of the Indian Evidence Act - Evidence as to affairs of State - No one shall be permitted to give any evidence derived from unpublished official records relating to any affairs of State, except with the permission of the officer at the head of the department concerned, who shall give or withhold such permission as he thinks fit.

CRITICISM OF SEALED COVER JURISDICTION

- Violates principles of transparency and accountability for Indian Judiciary.
- It stands in contrast to the idea of an open court where decisions can be subjected to public scrutiny.
- It impacts the rights of the accused to know the grounds on which its fundamental right – freedom of speech and expression is curtailed.
- Against Fair Trial and Adjudication - not providing access to such documents to the accused parties obstructs their passage to a fair trial and adjudication.
- It impacts judicial review – as state need not show to the accused why security of the state is threatened.
- Violates Principles of Natural Justice – as it creates bias against the accused and the accused is kept in dark on the charges framed against him.

- Results in arbitrariness in judicial decisions – because the judge is taking decisions based only on the information provided by the government agencies.
- Judgments in such instances cannot be said to be Reasoned Order
- Questions State Practice as in-camera hearing is a possible alternative.

Supreme Court in Pegasus Issue - *State does not get a "free pass every time the spectre of 'national security' is raised" and that "national security cannot be the bugbear that the judiciary shies away from, by virtue of its mere mentioning".*

RECENT SUPREME COURT OBSERVATIONS AGAINST SEALED ENVELOPES

- INX Media – Supreme Court while granting bail to P. Chidambaram, criticised Delhi High Court's decision to merely rely on documents submitted by the Enforcement Directorate (ED) in a sealed cover as it violated the principles of fair trial.
- Criminal Appeal Filed Against Bihar Government – Chief Justice of India Justice N.V. Ramana did not approve admitting information in a sealed cover by the Bihar Government.
- Ongoing Media One Trial in SC - The Central Government had come with its files to hand over to the court in a sealed cover. Justice DY Chandrachud expressed that he was against the practice of 'sealed cover jurisprudence' and asked the government the reasons as to why it could not disclose the details.

►NATIONAL COURT OF APPEAL

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

DEMAND FOR MORE COURT OF APPEALS

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

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

THE IDEA OF CASSATION BENCH – INTERNATIONAL PRACTICES

- Different Constitution Court & Court of Appeals - Many continental countries have constitutional courts as well as final courts of appeal called Courts of Cassation (Cour de Cassation in French) for adjudication of non-constitutional matters. A court of cassation is the judicial court of last resort and has power to quash or reverse decisions of the inferior courts.
- A Court of Cassation is a high-instance court that exists in some judicial systems - Courts of cassation do not re-examine the facts of a case, they only interpret the relevant law. The Court of Cassation is the highest court in the French judiciary.
- Civil, commercial, social or criminal cases are first ruled upon by lower courts of first instance or commercial courts and industrial or labour courts.
- Court of Appeal in Ireland – Ireland in 2014 established a new Court of Appeal (CoA) following a referendum. Its main function was to hear appeals (both Civil and Criminal) from the High Court and the Circuit Court which were formerly heard by the Supreme Court.
- South Africa - Supreme Court of Appeals (SCA) succeeded the Appellate Division (AD) in 1996. The SCA is second only to the Constitutional Court.
- England & Wales - the Court of Appeals is the highest court below the Supreme Court of the United Kingdom.

229TH LAW COMMISSION REPORT

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

4. Western region/zone at Mumbai

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

ARGUMENTS IN FAVOUR	ARGUMENTS AGAINST
There is a need to relieve the Constitutional Court to hear civil or criminal cases of appeal as per the constitutional directive. Thus, wide jurisdiction of SC has resulted in a significant backlog of cases. **SC in Delhi will have more time to look into constitutional matters –** Presently significant portion of time is spent on hearing civil or criminal appeals. This leaves little or no time to interpret important matters of the Constitution. Thus, National Court of Appeal by hearing appellate matters will ultimately relieve the SC to give more time to hear matters of national importance, fundamental rights and issues involving a substantial question of law and constitution. **Improve Access to Justice from remote areas** as Regional benches will remove logistical and financial challenges of petitioners from distant locations.	**Need to improve infrastructure of Lower Judiciary -** Merely creating four NCA will not solve the problem of backlog as more than 2 crores cases are pending in the lower Courts. Thus, focus must be on equipping lower judiciary by filling up the vacancies, improving Court infrastructure, improving quality of judgment as this will result in a substantial reduction in the need to approach the SC. **Setting up Regional Benches will dilute authority of SC.** **Jurisdiction of NCA would need amendments in the Constitution including amending Article 130.** Earlier central government had rejected the proposal to amend Article 130 as it would change the constitution of the Supreme Court completely.

►JUDICIAL ACTIVISM, JUDICIAL OVERREACH & PIL

Judicial Activism refers to a philosophy of judicial decision-making whereby judges allow their personal views about public policy, among other factors, to guide their decisions, usually with the suggestion that adherents of this philosophy tend to find constitutional violations and are willing to ignore precedent. Judicial activism has flourished through filing of Public Interest Litigation (PIL) starting with the judgment of Hussainara Khatoon where Justice Bhagwati accepted letter written on post card as petition in Supreme Court to initiate proceedings for undertrials languishing in jail.

IMPORTANCE OF PIL IN ADVANCEMENT OF JUDICIAL ACTIVISM

- Earlier, an individual could approach the courts only if he has been personally aggrieved. This concept underwent a change in February 1979.
- Hussainara Khatoon v State of Bihar (1979) - This can be considered as the first case on Public Interest Litigation in India. Senior Advocate Pushpa Kapila Hingorani wrote a letter to Supreme Court stating the conditions of under trial prisoners languishing in jails of Bihar. In the letter she asked the honourable Court to intervene and initiate proceedings. The letter was accepted by Honourable Justice P.N. Bhagwati and in the process around 40,000 under trial prisoners were released from jails across the country. This case started the revolution of Public Interest Litigation or PIL as we know today.
- Opening of Floodgates for PIL - Around the same time, the Supreme Court also took up the case about rights of prisoners. This opened the gates for large number of cases where public spirited citizens and voluntary organisations sought judicial intervention for protection of existing rights, betterment of life conditions of the poor protection of the environment, and many other issues in the interest of the public. PIL has become the most important vehicle of judicial activism.
- PIL Expanded Judiciary's Oversight – Rather than mere responding to cases filed before it, judiciary started considering many cases merely based on newspaper reports and postal complaints received by the court. Therefore, the term judicial activism became the more popular description of the role of the judiciary helped with the judicial tool of PIL.
- Judicial Activism mainly occurs due to the non-activity of the other organs of the government.
- The phrase *judicial activism* appears to have been coined by the American historian Arthur M. Schlesinger, Jr. in a 1947 article in *Fortune*.

JUDICIAL OVERREACH

- "Judicial overreach" occurs when a court acts beyond its jurisdiction and interferes in areas which fall within the executive and/or the legislature's mandate.
- It means the *Court has violated the doctrine of separation of powers* by taking on the functions such

as law enforcement, policy making or framing of laws or interfering in day to day activities of the executive.

- This is a situation where the court goes beyond its jurisdiction as stated in the constitution and other legal documents.
- The courts also encroach upon the role of the executive by taking executive decisions.
- Some examples of Judicial Overreach can be:
  - Judiciary can introduce policies which are the domain of the legislature.
  - Judiciary can lay down regulations which are the domain of the executive.
  - Court decisions can impose a fiscal burden on the state, in the form of expenditure incurred or revenue foregone, which is the domain of both the executive and the legislature.
  - Amending constitutional provisions.
  - Introducing new meanings to the constitutional or legal provisions which did not exist earlier.
  - Suggesting to add provisions in any legal statute.

IS JUDICIAL LEGISLATION OUT RIGHTLY UNCONSTITUTIONAL?

- The phrase "Judicial Legislation" implies usurpation of legislative power by the judiciary in the process of administration of justice. It is in this sense that "judicial legislation" is generally understood as antithetical of separation of power doctrine. It has frequently been remarked that the Indian Supreme Court through its activism has assumed the role of the Legislature thereby overstepping its constitutional mandate.
- Many proponents of judicial restraint have opined, that some remedies designed by the Supreme Court such as the 'continuous mandamus' demonstrate the failure of the judiciary to observe judicial restraint, and that is undesirable because it is a failure to accord respect to other co-equal branches of the government. No democracy and no constitution give absolute powers to the judiciary.
- In fact, it must be acknowledged that the consolidation of power by any one branch of government is anathematic to the very idea of democracy. Consequently, judicial creativity ought not to result in subverting the Constitution.

INSTANCES OF JUDICIAL ACTIVISM/OVERREACH OR JUDICIAL LEGISLATION

- Evolution of Basic Structure of Indian Constitution: In Kesavananda Bharati case (1973), the Supreme Court evolved the concept of "basic structure." It ruled that the Parliament has wide powers to amend the constitution, but this power could not be used in an unlimited way to abridge, abrogate or destroy the "basic structure" of the constitution. Hence, certain parts of the constitution considered as basic structure cannot be amended at all. Further, Supreme Court is at liberty to include more provisions or concepts as Basic Structure in near future
- Introduction of Due process of Law: In *Maneka Gandhi v /s Union of India case*, the SC introduced the concept of "Due Process of Law" in place of "Procedure established by Law". Under the "Due Process of Law", procedure which is established by the law must be just, fair and reasonable. Further, the court held that the 'Right to life' as embodied in Article 21 is not merely conned to animal existence or survival but it includes within its ambit the right to live with human dignity and all those aspects of life which go to make a man's life meaningful, complete and worth living.
- Imposition of Patriotism: In *Shyam Narayan Chouksey v. Union of India*, the Supreme Court made it mandatory for all the cinema halls to play National Anthem before the start of movie. This direction of the SC goes beyond the Prevention of Insults to National Honour Act, 1971. The act provides that no film, drama or show of any sort can have the National Anthem as part of the show.
- Ban on Liquor: Based on PIL, the SC banned the sale of liquor at retail outlets, hotels, and bars that are within 500m of any national or state highway. It was an administrative matter where the decision should rest with Executive. The court was not the appropriate authority for such decisions.
- Prevention of Sexual Offences against Women at workplace: In the case of *Vishakha v/s State of Rajasthan*, the court laid down guidelines for protection of women from sexual harassment at workplace.
- Collegium System of Appointment: The Collegium System is one where the CJI and a forum of four senior-most judges of the Supreme Court recommend appointment and transfer of judges of higher judiciary. The collegium system evolved through three different judgments which are collectively known as the Three Judges Cases.
- Declaring Right to Privacy as part of Fundamental Right under Article 21.

ADVANTAGES OF JUDICIAL ACTIVISM	PROBLEMS WITH JUDICIAL OVERREACH
• Addresses inaction on	• It destroys the spirit of

part of Legislature and Executive. • Makes the judiciary vibrant and pro-people. • Helps in the protection of the spirit of the constitution by giving a wider definition to various articles of the constitution such as: Article 14, article 19, article 21 and article 32 etc. • Promotes transparency and accountability in Governance. • Prevents arbitrary state action and curbing citizen's fundamental rights by state. • Ensures checks and balances on the Executive (Ex.: 2G Allocation, Coal Scam etc.)	the constitution as the democracy stands on the separation of powers between the organs. • It creates a conflict between the legislative and the judicial system. • It diminish trust of the people in public institutions which can be dangerous for democracy. • Results in tyranny of unelected as Judges assumes central role in day to day decision making. • Entertaining all PILs results in over burdening the Judiciary, which can otherwise be utilized for clearing the pending cases before courts.

WAY FORWARD

- In the recent times, the judiciary has been seen as overreaching and intruding in the space of the legislature and the executive.
- This can create unhealthy asymmetry in the delicate balance among institutions in the country as envisaged in the Constitution.
- Judiciary, for all purposes must act the guardian and interpreter of the Constitution and must observe judicial restraint wherever necessary, especially to avoid face off either with the legislature or the executive.

►COLLEGIUM SYSTEM IN APPOINTMENT OF JUDGES

The Centre has approved all nine names recommended by the Supreme Court Collegium for appointment to Supreme Court (SC). The list includes three women judges, of whom Justice Nagarathna could go on to become first woman Chief Justice of India.

WHAT IS A COLLEGIUM?

- The Collegium System is one where the CJI and a forum of four senior-most judges of the Supreme Court recommend appointment and transfer of judges of higher judiciary.
- The collegium system evolved through three different judgments which are collectively known as the Three Judges Cases.
- Now, recommendations of collegium have been made public on the website of Supreme Court including the reasons for appointment or transfer.

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 recommendation, CJI shall consult four senior most Judges of Supreme Court. This led to the emergence of 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 in the seniority list.

COLLEGIUM SYSTEM OF APPOINTMENT	
Merits of Collegium	**Demerits/Concerns of Collegium**

• **Ensures Independence of Judiciary as mandated in Article 50 –** from interference of the Executive.
• **Views of SC & HC Judges taken in writing.**
• **Prevalence of Majority Opinion** favours democratic process of appointment.
• **Reservations of even two Judges of Collegium taken seriously** and halts appointment process for doubtful candidates.
• **Allows talented lawyers from the bar to be appointed as Judges of HC/SC.**
	• **Lack of transparency and Accountability in the appointment process –** The decisions of the Collegium is published on website of Supreme Court ***but does not reveal:***
	  ○ methodology or reasons provided for transfer or promotion of judges;
	  ○ ground to select senior lawyers for appointment as Judges of SC or HC.
	• **Lack of Consensus among members of Collegium** results in delay or even reversal of decisions at times.
	• **Nepotism** – Accusations of favouritism and preferential treatment to members from judicial fraternity.
	• **Nepotism impacting Quality of Judgment** - especially in High Courts.
	• **Politicization of judiciary:** Lack of transparency in selection criteria especially for High Courts leads to politically motivated appointments.
	• **Absence of Permanent Commission:** Law Commission's 121st Report proposed to set up a National Judicial Service Commission for appointment of Judges. Even NCRWC in its 2002 Report highlighted the need for National Judicial Commission for the purpose of appointments to higher judiciary.
	• **SC declaring NJAC Act and Constitution 99th Amendment as unconstitutional.**

NJAC ACT DECLARED AS UNCONSTITUTIONAL

- Violation of Basic Structure - Five Judge Bench of Supreme Court [4:1] declared the Constitution 99th Amendment Act and the National Judicial Appointment Commission Act, 2014 as unconstitutional as it violated the Basic Structure of the Indian Constitution.
- Inclusion of Members of Executive - Constitution 99th Amendment introduced Article 124A which provided for the constitution and composition of the National Judicial Appointments Commission (NJAC) which apart from members of Judiciary also included Union Minister of Law & Justice and two Eminent Persons to be appointed by the Central Government.
- Violation of Independence of Judiciary - SC held that Article 124A was insufficient to preserve the primacy of the judiciary, in the matter of selection and appointment of Judges to the higher judiciary as inclusion of members of executed violated independence of judiciary and the aspect of separation of powers. Accordingly, Article 124A (a) to

(d) was set aside by the Constitution Bench as being ultra vires.

- Collegium System to Continue - The judgment officially allowed Collegium System for appointment and transfer to continue.

WAY FORWARD - Till the time government comes up with legislation for National Judicial Appointment Commission, appointment through Collegium system must be reformed by providing criteria for appointment of judges in the public domain. This will help to improve transparency and accountability in the system of Collegium based appointment for Judges.

►SC ALTERS MEMORANDUM OF PROCDURE TO CLEAR BACKLOG

Supreme Court has prescribed a judicially mandated timeline for the Union government to make appointment of judges in the High Courts. Thus, through its ruling, the Court has essentially altered the Memorandum of Procedure (MoP) and stated that the government must act on the names recommended for appointment within four months. So far, the MoP does not prescribe any time limit for the Centre to forward the recommendations for appointment.

IMPORTANCE OF MEMORANDUM OF PROCEDURE IN APPOINTING JUDGES OF SC & HC

- Memorandum of Procedure (MoP) became an important document especially for the centre after Supreme Court declared the Constitution 99th Amendment Act and the National Judicial Appointment Commission Act, 2014 as unconstitutional.
- Since, MoP does not prescribe for any fixed time line for appointment, hence it gives the central government certain leg room for appointment process. This also at times results in delay in the appointment process.
- There are also instances where despite vacancies, no recommendations are made by the Collegium of High Courts.
- In the present MoP, there is no law to bind the Chief Justice of High Court for the same. Even the Constitution of India does not prescribe for either the Collegium System of Appointment or the Memorandum of Procedure to be followed.
- Now, we have already gone through the collegium system of appointment in the first chapter. So, from our examination perspective, let us go through the Memorandum of Procedure (MoP) *for the appointment of judges of Supreme Court and respective High Courts.*

→SUPREME COURT

MOP FOR APPOINTMENT OF CHIEF JUSTICE OF INDIA

- Senior most Judge of SC - Appointment to the office of the Chief Justice of India should be of the senior most Judge of the Supreme Court considered fit to hold the office.
- Union Law Minister to seek recommendations of outgoing CJI - at the appropriate time for the appointment of the next CJI.
- Consultation with other Judges as per Article 124(2) in case of doubt - Whenever there is any doubt about the fitness of the senior most Judge to hold the office of the Chief Justice of India, consultation with other Judges as envisaged in Article 124 (2) of the Constitution would be made for appointment of the next Chief Justice of India.
- PM to advise the President on Appointment of CJI - After receipt of the recommendation of the Chief Justice of India, the Union Minister of Law, Justice and Company Affairs will put up the recommendation to the Prime Minister who will advise the President in the matter of appointment.

MOP FOR APPOINTMENT OF JUDGES OF SUPREME COURT

- CJI to initiate proposal in case of vacancy - Whenever a vacancy is expected to arise in the office of a Judge of the Supreme Court, the Chief Justice of India will initiate proposal and forward his recommendation to the Union Law Minister.
- Opinion of CJI must be in consultation with the Collegium – which comprises 5 senior most Judges of the Supreme Court including CJI.
- The CJI would ascertain the views of the senior most Judge in the Supreme Court who hails from the High Court from where the person recommended comes - but if he does not have any knowledge of his merits and demerits, the next senior most Judge in the Supreme Court from that High Court should be consulted.
- Opinion of Collegium to be given in Writing as part of Record to the Government - The opinion of members of the collegium in respect of each of the recommendations as well as the senior most Judge in the Supreme Court from the High Court, from which a prospective candidate comes, would be made in writing and the CJI, in all cases, must transmit his opinion as also the opinion of all concerned to the Government of India as part of record.

- Union Law Minister to put forward collegium's recommendation to the Prime Minister - who will then advise the President in the matter of appointment.
- Secretary, Department of Justice to obtain Certificate of Physical Fitness - As soon as the appointment is approved, the Secretary to 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.
- Issue of Gazette Notification for Appointment - As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will announce the appointment and issue the necessary notification in the Gazette of India.

MOP FOR APPOINTMENT OF ACTING CHIEF JUSTICE

- Appointment of acting Chief Justice is to be made by the President under Article 126 of the Constitution - Vacancy in the office of the Chief Justice must be filled whatever the period of vacancy.
- In such an eventuality, the senior most available Judge of the Supreme Court will be appointed to perform the duties of the office of the Chief Justice of India.
- As soon as the President has approved the appointment, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice of India or in his absence the Judge concerned of the Supreme Court, and will announce the appointment and issue the necessary notification in the Gazette of India.

→HIGH COURT (HC)

MOP FOR APPOINTMENT OF CHIEF JUSTICE OF HC

- The Government in consultation with the Chief Justice of India has decided as a matter of policy to appoint the Chief Justice of all High Courts from outside the state.
- In case of initial appointment of a Chief Justice of a High Court, the provisions of Article 217 will have to be followed.
- Transfer of Chief Justice from one High Court to another will be governed by the provision of Article 222.

Article 217 - Appointment and conditions of the office of a Judge of a High Court

(1) Every Judge of a High Court shall be appointed by the President by warrant under his hand and seal and shall hold office, in the case of an additional or acting Judge, as provided in article 224, and in any other case, until he attains the age of sixty-two years.

Article 222 - Transfer of a Judge from one High Court to another

(1) The President may transfer a Judge from one High Court to any other High Court.

- For purposes of elevation as Chief Justices - the inter-se seniority of puisne Judges will be reckoned based on their seniority in their own High Courts and they will be considered for appointment as Chief Justices in other High Courts when their turn would normally have come for being considered for such appointment in their own High Courts.
- A Judge in a High Court who has one year or less to retire when his turn for being considered for elevation as Chief Justice arrives, may be considered for appointment as Chief Justice in his own High Court if vacancy is to occur in the office of the Chief Justice in that High Court during that period.
- CJI to initiate appointment of CJ of HC - Initiation of the proposal for the appointment of Chief Justice of a High Court would be by the Chief Justice of India. The process of appointment must be initiated well in time to ensure the completion at least one month prior to the date of anticipated vacancy for the Chief Justice of the High Court.
- In Case of Transfer of Chief Justice of HC - The CJI must ensure that when a Chief Justice of HC is transferred to another HC, then simultaneous appointment of his successor in office should be made. Ordinarily, the arrangement of appointment of an acting Chief Justice should not be made for more than one month.
- CJI to consult with two senior most judges of SC - CJI would send his recommendation for the appointment of a Judge of the High Court as Chief Justice of that High Court or of another High Court, in consultation with the two senior most Judges of the Supreme Court.
- CJI would also ascertain the views of the senior most colleague in the Supreme Court who is conversant with the affairs of the High Court in which the recommended Judge has been functioning and whose opinion is likely to be significant in adjudging the suitability of the candidate.

- Views of Judges of SC to be sent by CJI to the Union Law Minister along with his proposal.
- Views to be obtained from State Government - After receiving CJI's recommendations, the Union Minister of Law, Justice and Company Affairs would obtain the views of the concerned State Government. After receipt of the views of the State Government, the Union Law Minister will submit proposals to the Prime Minister, who will then advise the President as to the selection of Chief Justice of High Court.
- Issue of Notification for Appointment - As soon as the appointment is approved by the President, the Department of Justice will announce the appointment and issue necessary notification in the Gazette of India.

MOP FOR APPOINTMENT OF ACTING CHIEF JUSTICE OF HC

- Appointment of Acting Chief Justices to be done by President under Article 223 of Constitution.
- Intimation from Chief Justice about his proceeding on leave or being unable to perform duties of Office of Chief Justice must be sent well in advance to make arrangement for appointment of Acting Chief Justice.
- When intimation (mentioned above) is received, Union Law Minister would send the proposal to appoint senior most judge of HC as Acting Chief Justice to President. Secretary of Union Department of Justice then informs the Chief Minister, announces the appointment, and issue the necessary notification in the Gazette of India.
- However, if it is proposed to appoint an Acting Chief Justice, other than the senior most puisne Judge, then the procedure for appointment of a regular Chief Justice as prescribed will have to be followed.

Article 223 - Appointment of acting Chief Justice

When the office of Chief Justice of a High Court is vacant or when any such 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.

MOP - APPOINTMENT OF PERMANENT JUDGES OF HC

- CJ to communicate his views to CM for appointment of Judge for HC at least 6 months before the date of occurrence of the vacancy.
- CJ to seek recommendations from two senior most Judges of HC - regarding the suitability of the names proposed.
- All consultation must be in writing and these opinions must be sent to the Chief Minister along with the recommendations.
- For Appointing an Additional Judge as a permanent Judge, certain information's needs to be furnished - the Chief Justice along with his recommendation must furnish statistics of month wise disposal of cases and judgments rendered by the Judge concerned as well as the number of cases reported in the Law Journal duly certified by him. The information would also be furnished regarding the total number of working days, the number of days he attended the court and the days of his absence from the Court during the period for which the disposal statistics are sent.
- In case CM recommends a name other than the name recommended by CJ - he should forward the same to the Chief Justice for his consideration.
- CJ's proposal must also be sent to the Governor, Chief Justice of India & Union Law Minister with full details - Since the Governor is bound by the advice of the Chief Minister heading the Council of Ministers, a copy of the Chief Justice's proposal, with full set of papers, should simultaneously be sent to the Governor to avoid delay. Similarly, a copy thereof may also be endorsed to the Chief Justice of India and the Union Minister of Law, Justice and Company Affairs to expedite consideration.
- Governor as advised by the Chief Minister should forward his recommendation along with the entire set of papers to the Union Law Minister as early as possible but 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 time frame, it should be presumed by the Union Minister of Law, Justice and Company Affairs that the Governor (i.e. Chief Minister) has nothing to add to the proposal and proceed accordingly.
- The Union Law Minister to consider other reports or recommendations available to the Government regarding names under consideration.
- The complete material would then be forwarded to the Chief Justice of India for his advice.
- The Chief Justice of India would, in consultation with the two senior most Judges of the Supreme Court, form his opinion in regard to a person to be recommended for appointment to the High Court.
- CJI + Collegium of 2 Judges of SC to consider views of - the Chief Justice of the High Court and of those Judges of the High Court who have been consulted by the Chief Justice as well as views of those Judges in the

Supreme Court who are conversant with the affairs of that High Court.

- After their consultations, the Chief Justice of India will in course of 4 weeks send his recommendation to the Union Law Minister.
- Consultation by the Chief Justice of India with his colleagues should be in writing.
- If names are referred, opinion of CJI must be obtained - Once the names have been considered and recommended by the CJI, they should not be referred to the State Constitutional authorities even if a change takes place in the incumbency of any post. However, where it is considered expedient to refer the names, the opinion or Chief Justice of India should be obtained.
- *The Union Law Minister would then preferably, within 3 weeks, put the recommendation of the CJI to the Prime Minister who will advise the President in the matter of appointment.*
- All correspondences between constitutional office holders must be in writing for record.
- Union Secretary in Dept. of Justice to inform Chief Justice of HC - who will obtain from the person selected (i) a certificate of physical fitness signed by a Civil Surgeon or District medical officer, and (ii) a certificate of date of birth. A copy of the communication will also be sent simultaneously to the Chief Minister of the State.
- CJ of HC to forward documents to central govt. When these documents are obtained, the Chief Justice will intimate the fact to the Secretary to the Government of India in the Department of Justice and forward these documents to him.
- Announcement of Appointment - As soon as the warrant of appointment is signed by the President, the Secretary to the Government of India in the Department of Justice will inform the Chief Justice and a copy of such communication will be sent to the Chief Minister. He will also announce the appointment and issue necessary notification in the Gazette of India.

CONCLUSION

- Law Commission in its 121st Report on Reforms for Judicial Appointments (Page 20) has highlighted that failure to fill in the vacancy is failure to perform a constitutional duty.
- It is the responsibility of the state not only to set up adequate number of courts but to provide manpower for its functioning. Disposal of cases among other things is directly proportionate to the number of judges in position. Unfilled vacancies are one of the prime causes for mounting arrears.
- Thus, the central government must complete the process of appointment for judges of various High Courts as more manpower will help to clear backlog of pending cases.

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

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

Article 224 – Additional & Acting Judges

- Appointment of Additional Judges- by the President- Article 224(1)
- Reason to Appoint Additional Judge – increasing arrears of work in High Court
- Appointment of Acting Judges- by the President- Article 224(2)
- Reason to Appoint Acting Judge – when permanent Judge of HC (other than Chief Justice) unable to perform their duties
- Appointment for Acting Judges for not less than three months unless there are special reasons for doing so.

For Both – Additional & Acting Judges

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

Article 224A – Ad Hoc Judges

- Appointment of retired Judges at sittings of High Courts by the President
- Criteria -person who has been High Court Judge
- Allowance –entitled to such allowances as the President may determine
- Shall have all the jurisdiction, powers and privileges of High Court Judge but shall not be deemed to be Judge of that High Court
- Consent -The retired judge must give his consent for appointment under Article 224A.
- Appointment under Article 224A does not constrain regular appointment process in High Courts.
- Ad hoc Judge would receive the same emoluments,

allowances and benefits as are admissible to the permanent/additional Judges.

- Emoluments paid to Ad Hoc Judges would be charged on Consolidated Fund of India.
- Constitution is silent on – [tenure of Ad Hoc Judges+ number of judges to be appointed] – under Article 224A

TRIGGER POINTS TO USE ARTICLE 224A FOR JUDICIAL APPOINTMENT: SC

1. If vacancies are more than 20% of sanctioned strength.
2. Cases in a particular category are pending for over five years.
3. More than 10% of backlog of pending cases is over five years old.
4. The percentage of rate of disposal is lower than institution of cases either in a particular subject matter or generally in the Court.
5. A situation of mounting arrears is likely to arise if rate of disposal is consistently lower than rate of filing over a period of a year or more.

►APPOINTMENT OF AD HOC JUDGES & RETIRED JUDGES AT SC

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 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

►CASE OF MISCONDUCT V 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).
- 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 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
  - Hearing cases of companies where Judge has personal investments in stocks
  - Speculating on stocks and indices
  - Involve himself to raise fund 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 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 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 most 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.

►ALL INDIA JUDICIAL SERVICE

Creation of All India Judicial Service (AIJS) common to Union and States was added in Article312 through Constitution 42nd Amendment way back in 1976. Even NITI Aayog in its Report - "StrategyforIndia@75", has supported constituting AIJS *to bring judicial reforms and improve the judicial administration. However, the service has not been created due to number of oppositions and hurdles.*

BENEFITS OF CREATING AIJS

- Timely Recruitment: In some of the states, the exams for the appointment for the appointment for the lower judiciary have not been held every year leading to huge vacancies. Once the AIJS is established, exams will be conducted annually to fill up regular vacancies.
- Uniformity in Judicial Administration: Conduct of judicial services examination is not uniform and this results in increasing vacancies and also increment in pending cases. A uniform All India Examination conducted periodically will help in solving both the issues as the candidates would be allocated to the different states based on vacancies. This will ensure uniformity in judicial administration.
- Improvement in Efficiency of Judicial Administration: AIJS would attract the best talent in the country and hence it would be able to maintain high standards of Judicial administration.
- Promote National Integration: AIJS would be able to promote all-India outlook and promote the national integration. This will allow the talented Judges of AIJS officers to function beyond their regional and linguistic interest.
- Beneficial to the states: Some of the states that are poor in human resources may not be able to find the best talent within their state for the recruitment of the judges at the lower judiciary. The AIJS would be able to solve this problem by conducting all India Exams and appointing the best talent from other states in such resource poor states.

CONCERNS – 116TH LAW COMMISSION REPORT

- Inadequate knowledge of regional language would corrode judicial efficiency both about understanding and appreciating evidence & pronouncing judgments as most of work of district and sessions courts in done in vernacular language.
- Promotional avenues of the members of State Judicial Service would be severely curtailed.
- Erosion of the control of the High Court over Subordinate judiciary would impair independence of judiciary.
- Stiff opposition from various state governments and their respective High Courts.
- Judiciary cannot be compared with the executive as far as service is concerned – on holding examination by UPSC.
- AIJS will bring the thin wedge of executive as the service will be brought under political control.

OTHER CONCERNS

- Goes against the Federalism: Presently, it is the responsibility of the state Governments to appoint the Judges at the lower Judiciary. Hence, any changes in the Judicial structure have to be approved by the State Legislatures. However, the AIJS can be established without any constitutional amendment wherein the prior approval of the State legislature is not needed.
- Problem of Promotional Avenues – When AIJS will be implemented, three category of judges will be appointed – 1. AIJS 2. State Judicial Service/High Courts (Lower & Higher Judiciary) and 3. Practicing Advocates appointed from the bar. There is a concern among these members that promotional avenues will reduce as much of the seats in higher judiciary will be manned by members of AIJS.
- Unequal Representation from States – As candidates will compete at an all-India level.
- Problem of Cadre Allocation – This problem arises from the language issue.
- Creation of National Judicial Appointment Commission to conduct AIJS Exam - Supreme Court has declared NJAC Act as unconstitutional. So, government again must bring fresh legislation in the Parliament whereby executive or legislative interference must be avoided in the functioning of judiciary.

WAY FORWARD - Creation of All India Judicial Services is the need of the hour and the government must try to solve the hurdles of language, promotional avenues, creating National Judicial Appointment Commission and others in creating AIJS for administration of Justice.

►ADDRESSING CHALLENGES OF INDIAN JUDICIARY

Despite Supreme Court's relentless efforts in safeguarding rights of citizens through landmark judgments, there are certain issues which must be addressed. Economic Survey and NITI Aayog in its various Reports (such as Strategy for New India @ 75, Three Years Action Agenda) have suggested important measures in addressing these challenges to improve access to justice for citizens.

IMPORTANT SUGGESTIONS TO ADDRESS CHALLENGE FACED BY JUDICIARY

1. Need to Reduce Disposal Time for Cases - Disposal time is measured as the time span between the date of filing and the date when the decision is passed.
2. Need to better Case Clearance Rate (CCR) - CCR is the ratio of the number of cases disposed of each year to the number of cases instituted in that year, expressed as a percentage. It is mainly used to understand the efficiency of the system in proportion to the inflow of cases.

   Both Disposal Time and CCR can be bettered by appointing more Judges in District & Subordinate Courts, High Courts and Supreme Court.
3. Streamline Judicial Appointments – by identifying vacancies across sections of lower and higher judiciary.
4. Shifting Court workloads through creating Special Courts (255th Law Commission) – based on specialised areas such as commercial cases can be transferred to the commercial division and the commercial appellate division of High Courts. Similarly Special Courts within High Courts can be set up to address litigations pertaining to land, crime, Traffic Challans etc.
5. Merge and rationalize tribunals to enhance efficiency - Appointments to tribunals must be streamlined either through a specialized agency or under the Department of Personnel and Training (DoPT).
6. Need to Create Separate Administrative Cadre in the judicial system – This will relieve the Judges who are also involved in administrative capabilities to take care of the day to day functioning of High Courts as well as Lower Courts under Article 227. Problem - Handling administrative responsibilities by Judges reduce time available for dispensing cases pending in the Courts.
7. Creating Indian Courts and Tribunal Services (ICTS) – It will focus on the administrative aspects of the legal system. The major roles to be played by ICTS will be provide administrative support functions needed by the judiciary; identify process inefficiencies and advise the judiciary on legal reforms
8. Creating All-India Judicial Services - merit based all India examination to appoint Judges for Higher Judiciary as per Article 312(3) which was added by the Constitution (Forty-second Amendment) Act, 1976.
9. Increase number of working days for judiciary to increase productivity – reducing length of summer and winter vacations in High Courts and Supreme Court.
10. Deployment of Technology to improve efficiency of Courts - One major effort in this direction is the eCourts Mission Mode Project that is being rolled out in phases by the Ministry of Law and Justice. This has allowed the creation of the National Judicial Data Grid (NJDG). The system is already able to capture most cases, their status and progress.
11. Appointing More Women Judges at all levels – will promote women empowerment and make judgments involving cases of women more gender sensitive.

►CJI BACKS 50% RESERVATION FOR WOMEN IN JUDICIARY

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

RESERVATION IN JUDICIARY

- Judiciary checks arbitrariness of the executive and legislature and functions as a sentinel to safeguard constitutional rights – liberty, freedom, life, speech and expression etc.
- Higher Judiciary unlike Legislature and Executive does not follow the principle of reservation.
- Union Law Minister said that there was no provision for reservation in the higher judiciary and hence it is not envisaged.
- However, the government keeps sensitising about the need for representation of minorities, SCs, STs and women.
- Thus, reservation in judiciary will -

  - bring constitutional balance between the legislature, executive and judiciary;
  - serve the cause of social justice and equity through equitable representation
  - first-hand experience of the problems faced by backward members of judiciary will help in sensitising the issue and dispensing justice.
- With the provision of reservation provided in National Law Schools and other law colleges, there are ample number of candidates to be selected for lower and higher judiciary.

DESIRABILITY OF GREATER WOMEN REPRESENTATION IN INDIAN JUDICIARY

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

RESERVATION FOR WOMEN IN JUDICIARY	
MERITS	**DEMERITS**
• Ensure equitable representation in Courts and bridge gender gap. • Help in gender sensitisation in judicial orders – specially for cases related to women – Ex. domestic violence, women right over property etc • Improve gender specific infrastructure within Court premises – separate toilets for women. • Improve gender sensitivity within Court premises • Will lead to women empowerment in judicial field • Encourage women to pursue law as a career choice – boost legal education • Help to improve ratio of women law graduates to that of women.	• Inadequacy of women reservation needs to be proved at state level, else reservation may violate the principles on which reservation is sought. • Chances of women reservation being utilised mostly from upper caste women as there are very few women from SC/ST/OBC community pursuing legal profession. • Appointments process for lower judiciary varies across states, hence it will be difficult to ensure uniformity in reservation for women across states.

SUGGESTION

- Providing reservation is a good move but should not be considered as the only move to improve women representation in Indian legal system.
- Women should be encouraged to take up law as a career choice and suitable reservation to women candidates must be provided at entry level.
- Further, within the set of reservation for women in higher judiciary, another subset of reservation must be provided to women from backward class including SC/ST women in higher judiciary.
- There is a need to bring at least one Judge in the Collegium of Supreme and High Court for equitable representation.
- State Governments must bring a law to provide reservation in lower judiciary to women and members of backward class.
- Create All India Judicial Service providing reservation to women, OBC, SC & ST Communities.

WAY FORWARD - Greater representation of women across judicial hierarchies will help to achieve constitutional goals of social and economic justice along with SDG-5 and 10 - gender equality and reduced inequalities.

►JUDICIAL PENDENCY

COVID-19 has impacted functioning of Courts including physical hearing and this has increased pendency. According to the National Judicial Data Grid (NJDG), backlog of cases in district courts saw a sharp increase of 18.2 per cent between December 31, 2019 and December 31, 2020. Presently as per NJDG, more than 3 crore cases pending in subordinate courts are more than 1 year old which accounts for 75.2% of such cases.

REASONS FOR INCREASING PENDENCY IN INDIA

"Subordinate Judiciary-Access to Justice 2016" Report of Supreme Court, capacity constraints are the main

reasons for high level of increasing pendency of lower Courts.

- Subordinate judiciary works under a severe shortage of courtrooms, secretarial and support staff including Judges.
- Number of hearings and time taken for disposing cases suggest that there is a serious problem of cases management in procedure law in India.
- These infrastructural issues adversely affect the effective functioning of Courts.
- Adjournments are granted too easily and freely and in the absence of a fixed timetable to dispose of cases leads to delays in disposing the case.
- Judicial manpower needs to be augmented according to increase in crime rate.
- Low judge to population ratio in India. India has only 20 judges per lakh population which is very low.
- Differences in collegium and law ministry has slowed down the appointment of judges to higher judiciary.
- Badly framed laws and ambiguities lead to over litigation.
- Failure on the part of executive to effectively fulfil its duties leads citizens to over-rely on judiciary and excessive litigation.
- Over litigation by state itself: State is the largest litigator in India. Issues which can be settled through prudent decisions are also litigated. (Ex. Commercial disputes).

STEPS TO REDUCE DELAY IN CASE DISPOSAL

- Filling judicial vacancies at all tiers of judiciary.
- Strengthening lower judiciary: State governments and respective CJIs need to work in tandem to ensure
- Diverting cases from courts to alternate dispute resolution forums such as Mediation, Lok Adalats and specialised Tribunals.
- Introduction of Fast-track Courts, jail-adalats, prison court and plea-bargaining.
- Reducing disposal time for cases: Can be done by improved access to technology and process reforms in both civil and criminal cases. For ex. Adjournments to be reduced, Use of forensics in criminal investigations, Use of AI in case management.
- Improve Case Clearance Rate (CCR): CCR is the ratio of number of cases disposed of each year to the number of cases instituted in that year, expressed as a percentage *(Both Disposal Time and CCR can be bettered by appointing more Judges in District & Subordinate Courts, High Courts and Supreme Court.)*
- Short and Long Term Goals: Reducing case pendency in the short term and achieving long term goal of reducing case life cycle between one and two years.
- Appointing retired judges to High Court and Supreme Court to reduce backlog. For this, Supreme Court has also altered the Memorandum of Procedure.
- Merger and rationalization of tribunals to enhance efficiency.
- Creating Indian courts and tribunal services to focus on administrative aspects of legal system by:
  (i) Provide administrative support functions needed by the judiciary.
  (ii) Identify process inefficiencies and advise judiciary on legal reforms.
- Improved productivity by increasing number of working days and hours of judiciary by reducing length of summer and winter vacations in Higher Judiciary.

►OFFICE OF CJI UNDER RTI – SC – JUDICIAL ACCOUNTABILITY

Supreme Court in an important judgment has held the office of Chief Justice of India is a public authority under Right to Information Act, 2005. However, the Court held that 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. While giving the judgment, Justice N.V. Ramana quoted the following: "In the domain of human rights, right to privacy and right to information have to be treated as coequals and none can take precedence over the other, rather a balance needs to be struck".

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 and High Courts are public authority under Section 2(h) of RTI Act - by virtue of being established by the Constitution.
- The office of CJI 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 Tool of Surveillance to scuttle effective functioning of judiciary.
- Seeking personal information must not breach or violate of 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 3rd 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

- The information sought to be disclosed shall strike a balance between right to 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 final outcome of collegium resolution, "input" relates to collegium deliberation.
- Thus in short 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 why 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.

►E-COURTS MISSION MODE PROJECT

The eCourts Project was conceptualized based on the "National Policy and Action Plan for Implementation of Information and Communication Technology (ICT) in the Indian Judiciary – 2005" submitted by e-Committee, Supreme Court of India with a vision to transform the Indian Judiciary by ICT enablement of Courts. The e-Committee was to assist in formulating a National Policy enabling the Indian judiciary to prepare itself for the digital age, to adapt and apply technologies and communication tools making the justice delivery system more efficient and thus benefitting its various stakeholders. The eCourts Mission Mode Project, is a Pan-India Project, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.

CORE PRINCIPLES

1. Technology must be harnessed to "Empower" and "Enable."
2. Ensuring Access to Justice to all.
3. Creating an efficient and responsive judicial system

THE E-COMMITTEE IS GUIDED BY THESE OBJECTIVES

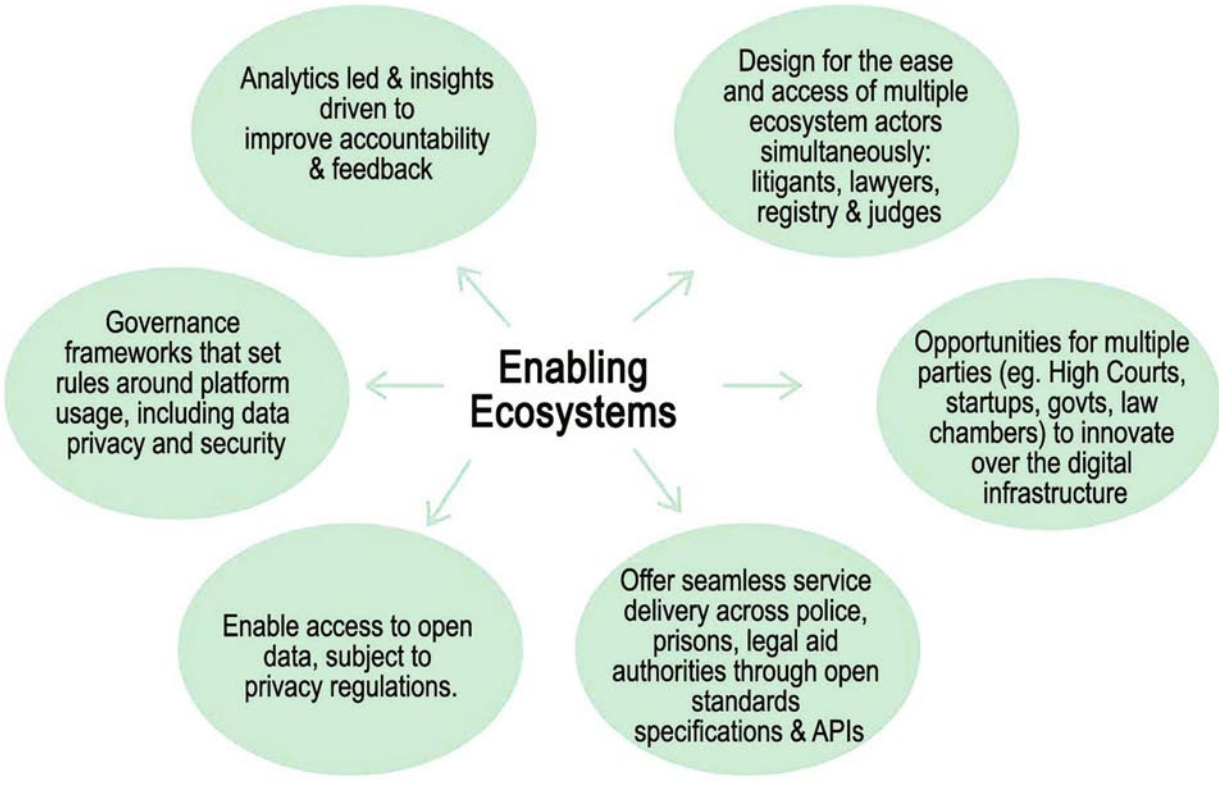
- Interlinking of all courts across the country
- ICT enablement of the Indian judicial system
- Enabling courts to enhance judicial productivity, both qualitatively and quantitatively.
- To make the justice delivery system accessible, cost-effective, transparent and accountable.

E-COURTS PROJECTS

- The e-Courts Integrated Mission Mode Project is one of the national e-Governance projects being implemented in High Courts and district/subordinate Courts of the Country. It is monitored and funded by Department of Justice, Ministry of Law and Justice.
- The project was conceptualized based on the *"National Policy and Action Plan for Implementation of Information and Communication Technology in the Indian Judiciary-2005"* by the e-Committee of the Supreme Court of India.
- The e-Committee was formed in 2004 to draw up an action plan for the ICT enablement of the Judiciary with the Patron in Chief-cum-Ad hoc Chairman as the Chief Justice of India.
- The objective of the e-Courts project is
  - To provide efficient & time-bound citizen centric services delivery as detailed in eCourt Project Litigant's Charter.
  - To develop, install & implement decision support systems in courts.
  - To automate the processes to provide transparency in accessibility of information to its stakeholders.
  - To enhance judicial productivity, both qualitatively & quantitatively, to make the justice delivery system affordable, accessible, cost effective, predictable, reliable and transparent.

IMPORTANT HIGHLIGHTS OF PHASE III OF THE E-COURTS PROJECT

- Phase III of the eCourts project envisions a judicial system that is more accessible, efficient and equitable for every individual who seeks justice, or is part of the delivery of justice, in India.
- Phase III of the project seeks to adopt an 'ECOSYSTEM' APPROACH" where systems interact with each other.



- It suggests a "seamless exchange of information" between various branches of the State, such as between the judiciary, the police and the prison systems through the Interoperable Criminal Justice System (ICJS). ICJS functions under Ministry of Home Affairs (MHA).
- 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.
- ICJS is 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. Consumption of data between pillars is also being enabled.

KEY BUILDING BLOCKS OF PHASE III

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

1. SIMPLIFYING PROCEDURE
2. CREATING A FOUNDATIONAL DIGITAL INFRASTRUCTURE – to enable interactions and exchange of data, co-creation of services by different ecosystem actors and improve the efficiency and intelligence of the system. It will design platforms for e-filing, summons delivery, digital hearings, virtual courtrooms, amongst others in a modular way that will enable agility to change elements constantly based on feedback or availability of newer technologies.
3. PUTTING IN PLACE A NEW INSTITUTIONAL AND GOVERNANCE FRAMEWORK - Phase III aims to set up a Digital Courts Technology Office in the short term (which will evolve to a National Judicial Technology Council in the longer term) that will focus on designing the Digital Infrastructure based on consultations with all necessary stakeholders.
4. DIGITAL COURTS (i.e., courts equipped with a foundational Digital Infrastructure platform combined with simplified and re-engineered administrative procedural design) can lay the foundation of a future in which digital services are widely adopted. Such adoption will be an outcome of an evolving and open technology infrastructure that enables the creation of solutions specifically catered to the diverse and unique needs of lawyers, citizens, government institutions, companies, court employees and judges.

CHALLENGES IN PROJECT'S IMPLEMENTATION

1. CASTE & CLASS INEQUITIES - ICJS will likely exacerbate existing class and caste inequalities that characterise the police and prison system because the exercise of data creation happens at local police stations.
2. MISUTILISATION OF DATA - Data collected through ICJS will be shared and collated through the e-Courts

project will be housed within the Home Ministry under the ICJS. Thus, there are greater chances of profiling of communities and castes or other misutilisation of data collected.

3. CREATING 360 DEGREE PROFILE - There has been a dangerous trend towards creating a 360-degree profile of each person by integrating all their interactions with government agencies into a unified database. Government can categorise a person who is interacting with the government at various levels such as filing RTI on sensitive matters, tracking a person's criminal record to use it for political ends, targeting corporates for government benefits etc.
4. INTEGRATION OF DATA COLLECTED WITH OTHER AGENCIES INCLUDING POLICE, PRISON & COURTS – This has the potential to violate data privacy rights and rights to privacy (K.S. Puttaswamy Judgment).
5. INCREASED STATE SPONSORED SURVEILLANCE & PROFILING – Above mentioned activities will increase chances of surveillance by various State authorities. Further, no clear explanation has been offered for why the Home Ministry needs access to court data that may have absolutely no relation to criminal law. This process serves no purpose other than profiling and surveillance.

WAY FORWARD -Despite the concerns highlighted, objective of the e-Courts Project can be achieved within the framework of our fundamental rights and for this the e-Courts must move towards localisation of data instead of data centralisation.

►LEGAL AID

The introduction of Lok Adalats through Legal Services Authorities Act, 1987 provides justice to the vulnerable sections and has provided an alternative forum to settle disputes. This system is based on Gandhian principles as it promotes justice based on equal opportunity by providing free legal aid as per Article 39A of the Indian Constitution.

ABOUT LEGAL SERVICES AUTHORITY ACT, 1987

- Constitutes Legal Services Authorities at National and respective State level to provide free and competent legal services to the weaker sections of the society.
- Provides Opportunities to Secure Justice – to citizens despite economic or other disabilities.
- Organises Lok Adalats and other Alternate Dispute Resolution mechanisms - to provide quick, inexpensive and effective resolution of disputes and promote justice on a basis of equal opportunity as per Article 14.
- Minimises Load on Regular Courts by settling disputes at ground level.
- The Act authorises the formation of Supreme Court Legal Services Committee, High Court Legal Services Committee and Taluk Legal Services Committee.

FUNCTIONS OF NATIONAL LEGAL SERVICES AUTHORITY

- Frames effective and economical schemes - to make legal services available to the weaker sections of the society.
- Take necessary steps towards Social Justice Litigation - consumer protection, environmental protection or any other matter of concern to the weaker sections of the society.
- Train 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.
- Monitor and Evaluate implementation of the legal aid programs and schemes at periodic intervals and provide for their independent evaluation.
- Provides Grants-in-aid for specific schemes to various voluntary social service institutions and the State and District Authorities.
- Develop Programs for Clinical Legal Education with the help of Bar Council of India and promote guidance and supervise the establishment and working of legal services clinics in universities, law colleges and other institutions.
- Enlist 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.

LEGAL SERVICES & FREE LEGAL AID

- As per Legal Services Authorities Act, "legal services" includes any service in the conduct of any case or other legal proceeding before any court or other authority or tribunal and the giving of advice on any legal matter.
- Free legal aid is the provision of free legal services in civil and criminal matters for those poor and marginalized people who cannot afford the services

of a lawyer for the conduct of a case or a legal proceeding in any Court, Tribunal or Authority.

- These services are governed by Legal Services Authorities Act, 1987 and headed by the National Legal Services Authority (NALSA).
- Provision of free legal aid may include:
  - Representation by an Advocate in legal proceedings.
  - Payment of process fees, expenses of witnesses and all other charges payable or incurred in connection with any legal proceedings in appropriate cases.
  - Preparation of pleadings, memo of appeal, paper book including printing and translation of documents in legal proceedings.
  - Drafting of legal documents, special leave petition etc.
  - Supply of certified copies of judgments, orders, notes of evidence and other documents in legal proceedings.
  - Free Legal Services also include provision of aid and advice to the beneficiaries to access the benefits under the welfare statutes and schemes framed by the Central Government or the State Government and to ensure access to justice in any other manner.

ELIGIBLE PEOPLE UNDER SECTION 12 OF LEGAL SERVICES AUTHORITIES ACT ENTITLED FOR FREE LEGAL SERVICES ARE:

- A member of a Scheduled Caste or Scheduled Tribe.
- A victim of trafficking in human beings or begar as referred to in Article 23 of the Constitution.
- A woman or a child.
- A mentally ill or otherwise disabled person.
- A person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- An industrial workman; or
- In custody, including custody in a protective home within the meaning of clause (g) of Section 2 of the Immoral Traffic (Prevention) Act, 1956(104 of 1956); or in a juvenile home within the meaning of clause(j) of Section 2 of the Juvenile Justice Act, 1986 (53 of 1986); or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of Section 2 of the Mental Health Act, 1987(14 of 1987);or
- A person in receipt of annual income less than the amount mentioned in the following schedule (or any other higher amount as may be prescribed by the State Government), if the case is before a Court other than the Supreme Court, and less than Rs 5 Lakh, if the case is before the Supreme Court

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
  a) any case pending before or
  b) 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. Ex. *State of Karnataka vs XYZD.*
- Under a Non-Compoundable offense, full trail is held which ends with the acquittal or conviction of the offender, based on the evidence presented in a Court of Law.

FUNCTIONS OF LOK ADALAT

- Lok Adalat while hearing a case can summon and enforce the attendance of any witness and examine him/her on oath, can make discovery of documents, can receive evidence, can ask for requisitioning of any public record or document or copy of such record or document from any court or office.
- Lok Adalat can specify its own procedure for the determination of any dispute. All the proceedings before a Lok Adalat shall be deemed to be judicial proceedings.

AWARDS OF LOK ADALAT

- Every award of the Lok Adalat shall be deemed to be a decree of a civil court or an order of any other court and where a compromise or settlement has been arrived at.

- Every award made by a Lok Adalat shall be final and binding on all the parties to the dispute, and no appeal shall lie to any court against the award.

PERMANENT LOK ADALAT

- Permanent Lok Adalat (PLA) is organized under Section 22-B of The Legal Services Authorities Act, 1987.
- PLA has a Chairman and two members to provide compulsory pre-litigative mechanism for conciliation and settlement of cases relating to Public Utility Services like transport, postal, telegraph etc.
- Here, even if the parties fail to reach to a settlement, the Permanent Lok Adalat gets jurisdiction to decide the dispute, provided, the dispute does not relate to any offence.
- The Award of the Permanent Lok Adalat is final and binding on all the parties. The jurisdiction of the Permanent Lok Adalats is up to Rs. 1 Crore.
- The Lok Adalat may conduct the proceedings in such a manner as it considers appropriate, considering the circumstances of the case, wishes of the parties like requests to hear oral statements, speedy settlement of dispute etc.

DEMERITS OF USE OF LOK ADALATS

- No right to appeal from judgments of Lok Adalat goes against judicial norms as right to appeal is one of the most basic features of any sound legal system.
- Lok Adalat passes awards only when both sides agree to settle their dispute and this also prevents both parties from appealing against the judgment.
- Settling an award based on compromise might not be in the best interest of justice.
- Discretion provided to Permanent Lok Adalat may not be useful in solving disputes of public at ground level.
- Speedy disposal of cases also compromises quality of judgment.
- Lawyers are reluctant to refer cases to Lok Adalats as they prefer regular Courts.

WAY FORWARD - Despite the demerits and challenges, Lok Adalats at grassroot level has helped to address legal problems of the weaker and vulnerable section thereby fulfilling the mandate of Article 39A to provide free legal aid to the needy.

►TRIBUNALS IN INDIA

Tribunals are quasi-judicial bodies constituted either through an Act of Parliament or through an Executive Order of the Government. They provide a platform for faster adjudication as compared to traditional courts, as well as expertise on certain subject matters. Tribunals by faster adjudication reduce courts' workload, expedite decision making and provide an alternate judicial forum manned by lawyers and experts.

HOW TRIBUNALS BECAME PART OF INDIAN CONSTITUTION?

- Swaran Singh Committee acknowledged the mounting arrears in the High Courts and inserted Article 323A & 323B by the Constitution (Forty-Second Amendment) Act, 1976.
- There is a distinction between Article 323-A and 323-B as Article 323A gives exclusive power to the Parliament and Article 323B gives power to the concerned State Legislature and Parliament.
- Based on the Constitution 42nd Amendment, Parliament enacted The Administrative Tribunals Act, 1985 under which Central and State Administrative Tribunals have been constituted.
- Supreme Court has clarified that the subject matters under Article 323B are not exclusive, and legislatures are empowered to create tribunals on any subject matters under their purview as specified in the Seventh Schedule of the Constitution.

ESSENTIALS OF TRIBUNAL	TRAPPINGS OF COURT
• It should be a quasi-judicial body • It should be under an obligation to act judicially • It should have some "trappings of a court" • It should be constituted by the state • State should confer on it the power to adjudicate upon disputes ***These criteria are not exhaustive but illustrative.***	• Authority to determine cases initiated by parties • Sitting in public • Power to compel attendance of witnesses • to examine the witnesses on oath • duty to follow fundamental rules of evidence (though not strict rules of Evidence Act) • provisions for imposing sanctions by way of imprisonment, fine, damages • give prohibitory or mandatory orders to enforce obedience

CONSTITUTIONALITY OF TRIBUNALS

- Constitution 42nd Amendment added PART XIVA – TRIBUNALS – Article 323A & 323B.
- This led to enactment of The Administrative Tribunals Act, 1985.
- Administrative Tribunals Act provides for exclusion of jurisdiction of Courts except Supreme Court under Article 136.
- Sampath Kumar case: Constitution bench of Supreme Court had to determine the constitutionality of *the above provision:*
  - Court held that creation of 'alternative institutional mechanisms', which were as competent as High Courts, would not violate basic structure of Constitution.
  - Passed directions about qualifications of tribunal members, manner of appointment, etc.
  - For appointment process, recommendations of *High Powered Selection Committee (chaired by Chief Justice of India or his/her designate) must be ordinarily followed*, unless reasons for not following them are furnished.
- Different Opinions also prevailed
  - Sakinala Harinath v State of Andhra Pradesh - Andhra Pradesh High Court stated that removing powers of judicial review of High Courts and Supreme Court, would be violative of the basic structure doctrine.
- R.K. Jain v Union of India - Supreme Court also criticised the rationale behind the decision in Sampath Kumar and emphasized that the power of judicial review of the High Court under Article 226 cannot be excluded even by a constitutional amendment.

L. Chandra Kumar v Union of India

- Seven Judge Constitution Bench conclusively held that the *power of the High Courts under Article 226 and 227 to exercise judicial superintendence over the decisions of all courts and tribunals, is a part of the basic structure of the Constitution.*
- All decisions of Tribunals, whether created pursuant to Article 323A or Article 323B of the Constitution, *will be subject to the writ jurisdiction of the High Court under Articles 226/227 of the Constitution, before a Division Bench of the High Court within whose territorial jurisdiction the particular tribunal falls.*
- The court also suggested *remedying the issue of malfunctioning of tribunals by setting up an INDEPENDENT AGENCY for their administration, preferably in the form of a single nodal ministry.*

EXECUTIVE DOMINANCE IN SELECTION COMMITTEE

SC Judgment - Rojer Mathew vs South Indian Bank and Others (2019) – Constraints

- Selection Committee to pick members of Tribunals filled entirely by persons nominated by Central Government.
- Deliberate Attempt to keep Judiciary Away from Search-cum-Selection Committee from the process of selection and appointment of members, vice-chairman and chairman of tribunals.
- Results in violation of Judicial Independence.
- Dominance by Executive reflects bias as government is a litigating party in most Tribunals.
- Most Selection Committee having only one Judge and two Members from Executive
- Results in Denial of Equality & Executive Dominance
- Against Separation of Powers
- Non-Judicial Member becoming President Chairman or Chairperson makes Judicial Members a minority.

Madras Bar Association Series Case – Independence of Tribunal – (Suggestion)

- Constitution Bench dealing with the validity and appointment of members to the National Company Law Tribunal (NCLT) under the Companies Act, 1956, held that the selection committee should comprise:
  - Chief Justice of India or his nominee (as chairperson, with a casting vote),
  - A senior Judge of the Supreme Court or Chief Justice of the High Court, and
  - Two Secretaries in the Ministry of Finance and Ministry of Law and Justice respectively.
- Subsequent Constitution Bench decisions in Madras Bar Association (2014), Rojer Mathew (2019) and the decision of the Madras High Court in Shamnad Basheer have repeatedly held that principles of the Madras Bar Association (2010) are applicable to the selection process and constitution of all tribunals in India.

POST SC JUDGMENT, GOVERNMENT FRAMED NEW RULES

- After the Judgment, the Finance Ministry notified - '*Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020.*

THE PROBLEM WITH 2020 RULES FOR TRIBUNALS

- Denial of Equality - The judiciary does not have an equal say as there is only one judicial member and two executive members.
- To deny executive an upper hand in appointments of members of tribunals, The Court in Madras Bar Association series case (2010) ordered to have two judges of the Supreme Court to be a part of the four-member selection committee.
- Executive Dominance – Earlier, the Search-cum-Selection Committees for Tribunals were dominated by bureaucrats and nominees of Central Government, with a nominal representation to the Chief Justice of India. The Court observed that lack of judicial dominance in the Search-cum-Selection Committee is in direct contravention of the doctrine of separation of powers and is an encroachment on the judicial domain.
- Non-Judicial Member can become President Chairman or Chairperson - This makes Supreme Court Judge a minority in selection committee as even members are from executive branch of the government.

NEED TO RATIONALISE TRIBUNALS

- The Tribunals Reforms (Rationalisation and Conditions of Service) Bill, 2021 – has scrapped number of Tribunals as part of government's policy to rationalise tribunals in phases.
- Data Collected from Finance Ministry Highlights
  - Tribunals neither contribute in reduction of workload for the High Courts,
  - Nor does the Tribunals provide faster justice delivery and
  - Overall Tribunals come at an expense to the exchequer.
- The term of office for the Chairperson and members of Tribunals will be 4 years, subject to an upper age limit of 70 years for the Chairperson, and 67 years for other members.
- A person should be at least 50 years of age to be eligible for appointment as a Chairperson or member.

PROBLEMS WITH RATIONALISATION OF TRIBUNALS

- Decreased number of Tribunals and Appellate Tribunals for specific sectors will lead to increased work load.
- This may increase disposal time for new cases due to increased pendency.
- Non-appointment of members to many tribunals may delay the adjudication process.
- Executive Dominance in Tribunals Appointment Committee may impact quality of judgment
- Minimum Age for Members or Chairpersons of Tribunals to be at least 50 years – this may discourage young talent.
- Supreme Court had earlier directed that advocates with 10 years of experience be made eligible to be appointed as a judicial member.

►CENTRAL ADMINISTRATIVE TRIBUNAL

Parliamentary Standing Committee has stated that even after 30 years of establishment of Central Administrative Tribunal (CAT), it lacks human as well as physical infrastructure. Pursuant to Article 323A, Parliament enacted Administrative Tribunals Act, 1985 which provides for establishment of Central Administrative Tribunal; State Administrative Tribunal and Joint Administrative Tribunal. The Joint Administrative Tribunal may be constituted for two or more States. It shall exercise all the jurisdiction, powers and authority exercisable by the Administrative Tribunals for such States.

JURISDICTION, POWERS AND AUTHORITY OF THE CENTRAL ADMINISTRATIVE TRIBUNAL

The Central Administrative Tribunal shall exercise all the jurisdiction, powers and authority in relation to:

- Matters concerning recruitment to any All-India Service or to any civil service of the Union or a civil post under the Union or to a post connected with defence or in the defence services.
- All service matters concerning:
  - A member of any All-India Service; or
  - A person appointed to any civil service of the Union or any civil post under the Union.
  - A civilian appointed to any defence services or a post connected with defence.

CAT FUNCTIONING AS AN INDEPENDENT JUDICIAL AUTHORITY

- The Delhi High Court has held that the Central Administrative Tribunal (CAT), which adjudicates service matters, can exercise the same jurisdiction and powers, as a High Court, in respect of its contempt proceedings.
- Under Section 17 of the Administrative Tribunal Act, 1985, the Tribunal has been conferred with the power to exercise the same jurisdiction and authority in respect of contempt of itself as a High Court.

- CAT has also framed the Contempt of Courts Rules, 1992, which provide the procedure for initiation of criminal contempt and Suo motu contempt proceedings, respectively.
- CAT is guided by the principles of natural justice in deciding cases and is not bound by the procedure, prescribed by the Civil Procedure Code. The Central Administrative Tribunal is empowered to frame its own rules of procedure and practice.
- Initially the decision of the Tribunal could be challenged before Hon'ble Supreme Court by filing Special Leave Petition. However, after the Supreme Court's decision in L. Chandra Kumar's case, the orders of Central Administrative Tribunal are now being challenged by way of Writ Petition under Article 226/227 of the Constitution before respective High Court in whose territorial jurisdiction the Bench of the Tribunal is situated.

►NEED FOR NATIONAL TRIBUNALS COMMISSION

Centre is yet to constitute a National Tribunals Commission (NTC), an independent umbrella body to supervise the functioning of tribunals, appointment of and disciplinary proceedings against members, and to take care of administrative and infrastructural needs of the tribunals as per Supreme Court judgment in L. Chandra Kumar v Union of India.

WHY NATIONAL TRIBUNALS COMMISSION (NTC) NEEDS TO BE ESTABLISHED?

- Executive interference in the functioning of tribunals is often seen in matters of appointment and removal of tribunal members, as well as in provision of finances, infrastructure, personnel and other resources required for day-to-day functioning of the tribunals.
- NTC to be a constitutional or statutory body - Therefore, the NTC must be established vide a constitutional amendment or be backed by a statute that guarantees it functional, operational and financial independence.
- Uniform Authority for all Tribunals - Establishment of NTC will provide an authority to support uniform administration across all tribunals.
- Separation of Function - The NTC could therefore pave the way for the separation of the administrative and judicial functions carried out by various tribunals.
- Corporatized' structure of NTC with a Board, a CEO and a Secretariat will allow it to scale up its services and provide requisite administrative support to all tribunals across the country.
- Financial Independence – A separate secretariat having powers of appointments and transfer of staffs along with separate budget for NTC will improve its financial and administrative autonomy.

DUTIES WHICH NTC CAN TAKE UP?

- Administration & Oversight - The NTC would ideally take on some duties relating to administration and oversight. It could set performance standards for the efficiency of tribunals and their own administrative processes.
- Recruitment - NTC can function as an independent recruitment body to develop and operationalise the procedure for disciplinary proceedings and appointment of tribunal members.
- Salaries & Allowances - Giving the NTC the authority to set members' salaries, allowances, and other service conditions, subject to regulations, would help maintain tribunals' independence.
- Administrative roles for NTC include providing support services to tribunal members, litigants, and their lawyers. For this purpose, it would need to be able to hire and supervise administrative staff, and to consolidate, improve, and modernise tribunals' infrastructure.

WAY FORWARD - Until the NTC is constituted, Ministry of Finance should come up with a transition plan. The way to reform the tribunal system is to look at solutions from a systemic perspective supported by evidence. Establishing the NTC will definitely entail overall restructuring of the present tribunals system.

►IMPLEMENTING NATIONAL LITIGATION POLICY

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

SALIENT FEATURES OF DRAFT NATIONAL LITIGATION POLICY

- Take preventive measures for reducing the new filing of cases by prescribing a procedure for proper dealing of the cases by addressing all three stages of disputes – pre-litigation, litigation and post litigation stage.

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

Article 136 - Special leave to appeal by the Supreme Court

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

►AMENDMENT TO SC JUDGES (SALARIES & 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 amendment provides for additional quantum of pension or family pension for judges of High Courts and Supreme Court.

COMPENSATION OF SUPREME COURT JUDGE:

- According to Article 125, Judges of Supreme Court shall be paid such salaries, pensions and allowances which will be determined by Parliament by law. Allowances of a Judge, his leaves and pensions cannot be varied to his disadvantage after his appointment.
- According to Article 112
  - Salary of Supreme Court Judge is charged on the Consolidated Fund of India.
  - Pension and other allowances of Judges of Supreme Court is also charged on the Consolidated Fund of India

COMPENSATION OF HIGH COURT JUDGE

- Article 221: Judges of each High Court shall be paid 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.

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

(a) the emoluments and allowances of the President and other expenditure relating to his office

(b) the salaries and allowances of the Chairman and the Deputy Chairman of the Council of States and the Speaker and the Deputy Speaker of the House of the People

(c) debt charges for which the Government of India is liable including interest, sinking fund charges and redemption charges, and other expenditure relating to the raising of loans and the service and redemption of debt

(d) The salaries, allowances and pensions payable to or in respect of Judges of the Supreme Court; pensions payable to or in respect of Judges of the Federal Court; pensions payable to or in respect of Judges of any High Court

(e) The salary, allowances and pension payable to or in respect of the Comptroller and Auditor- General of India

(f) Any sums required to satisfy any judgment, decree or award of any court or arbitral tribunal

(g) Any other expenditure declared by this Constitution or by Parliament by law to be so charged.

►CONTEMPT OF COURT

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

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

CONSTITUTIONAL PROVISIONS

- Article 129: Grants SC power to punish for contempt of itself.
- Article 142(2): Enables SC to investigate and punish any person for its contempt.
- Article 215: Grants every HC power to punish for contempt of itself.

INSTANCES WHICH CANNOT BE SAID TO BE CONTEMPT OF COURT

- Innocent publication or distribution of matter
- Fair and accurate report of judicial proceedings
- Fair criticism of judicial act upon merits of any case
- When a person makes any statement in good faith concerning presiding officer of any subordinate court to any other subordinate court or to High Court.
- A person shall not be guilty of contempt of court for publishing a fair and accurate report of a judicial proceeding before any court sitting in chambers or in camera *except in the following cases:*

(a) where the publication is contrary to the provisions of any enactment for the time being in force.

(b) where the court, on grounds of public policy or in exercise of any power vested in it, expressly prohibits the publication of all information relating to the proceeding or of information of the description, which is published,

(c) where the court sits in chambers or in camera for reasons connected with public order or the security of the State, the publication of information relating to those proceedings.

(d) where the information relates to a secret process, discovery or invention which is an issue in proceedings.

CONTEMPT OF COURT VS FREEDOM OF EXPRESSION

- Contempt of Court acts as a reasonable restriction imposed on freedom of speech and expression under Article 19(2) to safeguard unwarranted attacks on judiciary and its members. (Essential for Judicial Independence).
- Constitution empowers SC (Article 129 & 142) and HC (Article 215) to punish for its contempt.
- 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 wilful disobedience to judgment or wilful 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.

Despite several accusations against judiciary by different citizens, constitutional courts on contempt cases (imposing 1 Rupee fine on Prashant Bhushan) have tried to seek a balance between freedom of speech and expression and integrity and authority of Court's orders.

ELECTION ISSUES

Previous Year Questions

YEAR	UPSC QUESTIONS
2020	"There is a need for simplification of procedure for disqualification of persons found guilty of corrupt practices under the Representation of Peoples Act" Comment.
2019	On what grounds a people's representative can be disqualified under the Representation of People Act, 1951? Also mention the remedies available to such person against his disqualification.
2018	In the light of recent controversy regarding the use of Electronic Voting Machines (EVM), what are the challenges before the Election Commission of India to ensure the trustworthiness of elections in India?
2017	Simultaneous election to the Lok Sabha and the State Assemblies will limit the amount of time and money spent in electioneering but it will reduce the government's accountability to the people' Discuss.
2017	To enhance the quality of democracy in India the Election Commission of India has proposed electoral reforms in 2016. What are the suggested reforms and how far are they significant to make democracy successful?
2016	The Indian party system is passing through a phase of transition which looks to be full of contradictions and paradoxes." Discuss.

RECENT CURRENT EVENTS

►THE ELECTION LAWS (AMENDMENT ACT) 2021

The Election Laws (Amendment Act) 2021 allows Electoral Registration Officer to use Aadhaar to verify authenticity of the voter by amending both Representation of People Act 1950 and 1951. In 2020, the government notified the Aadhaar Authentication for Good Governance (Social Welfare, Innovation, Knowledge) Rules, 2020 (Good Governance Rules) to broaden the scope of Aadhaar authentication.

CHANGES INTRODUCED – RPA, 1950 & 1951

1. Empowering Electoral Registration Officer	
Previous Law	**Amendment Introduced**
• Section 23 of Representation of People Act, 1950 provides that a person may apply to the electoral registration officer for inclusion of their name in the electoral roll of a constituency.	• the Electoral Registration Officer may ask for Aadhaar Number of a person - ○ to verify and establish the identity of the person ○ to authenticate entry in electoral roll and ○ to weed out multiple enrolment of the same person in same or different

	constituencies Note: Application for inclusion of name in the electoral roll shall not be denied or name from the electoral roll shall not be deleted if an individual does not furnish Aadhaar Number but furnishes other details as prescribed by Election Commission.

2. Qualifying date for enrolment in Electoral Roll	
Previous Law	**Amendment Introduced**
• RPA 1950 prescribes 1st January of the year in which the roll is prepared or revised as the qualifying date. This makes it difficult for new voters turning 18 as they have to wait out for another year or the year in which electoral roll are prepared.	• The Bill provides four qualifying dates for registration of name in the electoral rolls in a calendar year, which will be the first day of January, April, July and October.

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

4. Gender Neutral Provisions	
Previous Law	**Amendment Introduced**
• As per RPA, 1950, Wives of persons holding service qualifications are also deemed to be ordinarily residing in the same constituency of their husband. • The 1951 Act enables the wife of a person holding a service qualification to vote either in person or by postal ballot.	• The Bill replaces the term 'wife' with 'spouse' in both the Acts.

Linking of Aadhaar with Voter ID	
Merits	**Concerns**
• Curb the menace of multiple enrolment of same person in different places • Reducing voting fraud - checking the entry of repeat, multiple, illegal, invalid or false voters • Improved accessibility of voting - Improve Voter Participation – migrant workers • Makes it easier for new voters as it provides for four qualifying dates within a year. • Makes Authentication easier for government authorities.	• In absence of data protection law, such integration can undermine integrity of electoral roll. • Possibility of disenfranchisement of voters due to integration leading to violation of universal suffrage under Article 326 – as was witnessed in Andhra and Telangana • Use of demographic information by the government for targeted advertising or possible deletion from electoral rolls • Given the reported scope for fraud with Aadhaar, this process could undermine the sanctity of the voter roll. • Linking of Aadhaar must also pass the test of right to privacy under Article 21 based on triple test *(Legality, Need and Proportionality)* highlighted in K.S. Puttaswamy Judgment. • Synchronization of Aadhaar (Residents) with EPIC (Citizens) - may allow

	voting rights to non-citizens as Aadhaar is issued to residents whereas EPIC is issued only to citizens.

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

- Purposes for Aadhaar authentication - Central Government may allow Aadhaar authentication by requesting entities in the interest of good governance, preventing leakage of public funds, promoting ease of living of residents and enabling better access to services for them, for the following purposes, namely:
  - *usage of digital platforms to ensure good governance*
  - *prevention of dissipation of social welfare benefits; and*
  - *enablement of innovation and the spread of knowledge*
- Aadhaar authentication shall be done on a VOLUNTARY BASIS
- On receipt of proposal of Aadhaar Authentication, if UIDAI is satisfied, then it shall inform the Central Government that the requesting entity may be allowed to perform Aadhaar authentication
- Thereafter, the Ministry or the Department of the Government of India or the State Government may be authorised by the Central Government to allow for Aadhaar authentication.

WAY FORWARD

Election Laws (Amendment Act) 2021 is a welcome step but Election Commission must ensure that linking of EPIC with Aadhaar does not result in disenfranchisement or voters as it will be violative of constitutional and legal provisions.

►LIMIT ON ELECTION EXPENSE ENHANCED

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

EARLIER DECISIONS ON ENHANCING EXPENDITURE LIMIT FOR INDIVIDUAL CANDIDATES

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

ELECTORAL LAWS

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

COMMITTEE CONSTITUTED BY EC IN 2020

- Election Commission had constituted a committee comprising to examine the issues concerning expenditure limit for a candidate in view of increase in number of electors and rise in Cost Inflation Index.

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

LAWS ON ELECTION EXPENSE DISCLOSURE

Representation of People Act, 1951	Conduct of Election Rules, 1961
Section 77 • 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. **Section 78** • mandates every contesting candidates § who has won the election • to lodge with the District Election Officer their account of election expense • within 30 days of winning the election • Such election expense account shall be a true copy of the account kept by the candidate or by his election agent under section 77. **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.	**Rule 86 – Particulars of account of election expenses (under sec 77 of RPA, 1951)** • Date and nature of expenditure – Ex. 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.

►DISQUALIFICATION UNDER SEC 9A – RPA, 1951

Jharkhand Chief Minister Hemant Soren has sought more time from the Election Commission to appear before it over alleged irregularities in granting mining leases under Section 9A of Representation of the People Act, 1951 (RPA 1951).

Why did Election Commission asked Mr. Soren to Appear?

- In May, the poll panel had issued a notice to Mr. Soren citing Section 9A of the Representation of the People Act, which deals with the disqualification of a lawmaker for government contracts.
- The panel prima facie found that he violated provisions of Section 9A.
- While hearing such cases, the EC functions like a quasi-judicial body.

RPA, 1951 - Section 9A - Disqualification for Government contracts - A person shall be disqualified if, and for so long as, there subsists a contract entered by him during his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken

by, that Government.

DISQUALIFICATIONS UNDER RPA 1951

CHAPTER III - DISQUALIFICATIONS FOR MEMBERSHIP OF PARLIAMENT AND STATE LEGISLATURES

Section 8 - Disqualification for various criminal offences

shall be disqualified, where the convicted person is sentenced to

i. **only fine -** for a period of 6 years from the date of such conviction

ii. **imprisonment -** from the date of such conviction and shall continue to be disqualified for a further period of six years since his release.

Section 8A - Disqualification on ground of corrupt practices

- Question of disqualification to be submitted to the President
- Period of Disqualification – shall not exceed 6 years
- Before giving any opinion – President shall take the opinion of the Election Commission and act accordingly

Section 9 - Disqualification for dismissal for corruption or disloyalty

- A person who having held an office under the Government of India or under the Government of any State has been dismissed for corruption or for disloyalty to the State shall be disqualified for a period of 5 years from the date of such dismissal.
- A candidate dismissed from government service within the last five years must produce a certificate from ECI that he was not dismissed for corruption or disloyalty. Such certificate to be filed with Nomination Paper.

Section 9A - Disqualification for Government contracts

- A person shall be disqualified if, and for so long as, there subsist a contract entered by him during his trade or business with the appropriate Government for the supply of goods to, or for the execution of any works undertaken by, that Government.

Section 10 - Disqualification for office under Government company

- A person shall be disqualified if, and for so long as, he is a managing agent, manager or secretary of any company or corporation (other than a cooperative society) in the capital of which the appropriate Government has not less than 25% share.

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

- If the Election Commission is satisfied that a person –

  (a) *has failed to lodge an account of election expenses within the time and in the manner required by or under this Act; and*

  (b) *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.

►PLEA ON VOTING FOR UNDERTRIALS

Maharashtra's former Home Minister Anil Deshmukh in his petition to Bombay High Court sought release for one day to cast his vote in the State Legislative Council elections on June 20. Earlier, the Enforcement Directorate (ED) had opposed Mr. Deshmukh being released for a day to cast his vote in the Rajya Sabha elections before the special court. ED stated that prisoners do not have voting rights under Section 62 of the Representation of People (RP) Act, 1951.

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.
- Thus, constitution itself provides for certain grounds of disqualification for the purpose of voting. Such disqualifications are further elaborated under Section 62 of RPA, 1951.

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.

SECTION16 - DISQUALIFICATIONS FOR REGISTRATION IN AN ELECTORAL ROLL (RPA-1950)

1) 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.
2) 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.*

JUDICIAL DECISIONS - RIGHTS OF UNDERTRIALS TO VOTE

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.

ANUKUL CHANDRA PRADHAN, ADVOCATE SUPREME COURT V. UNION OF INDIA

While speaking towards the validity of the section stated that it is a settled principle that Article 14 permits reasonable classification which has a rational nexus with the object of classification. This provision made in the election law excluding persons with a criminal background was to further the objective of preventing criminalization of politics and maintaining probity in elections.

Reasons given by SC

- Criminalization of politics is the bane of society and negation of democracy. It is subversive of free and fair elections which is a basic feature of the Constitution.
- Need for more Security - to conduct free, fair and orderly elections, there is a need to deploy considerable police force. Permitting every person in prison also to vote would require the deployment of a much larger police force and much greater security arrangements in the conduct of elections.
- Availability of Police - Apart from the resource crunch, the other constraints relating to availability of more police force and infrastructure facilities are additional factors to justify the restrictions imposed by sub-section (5) of Section 62.
- Prisoners deprived of Liberty - A person who is in prison because of his own conduct and is, therefore, deprived of his liberty during the period of his imprisonment cannot claim equal freedom of movement, speech and expression with the others who are not in prison.
- Does not violate Article 14 - The classification of persons in and out of prison separately is reasonable. Moreover, if the object is to keep persons with criminal background away from the election scene, a provision imposing a restriction on a prisoner to vote cannot be called unreasonable.

IMPORTANT CORE PART

►IMPORTANCE OF CONDUCTING ELECTIONS FOR A DEMOCRATIC NATION

- In a country practicing democracy, conduct of regular elections is most visible symbol of democratic process.
- In India, Art. 324 of Constitution empowers 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.

►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.

►RESPONSIBILITIES OF RETURNING OFFICER

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

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

►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) provide a level playing field for all political parties, keep the campaign fair and healthy, avoid clashes and conflicts between parties, and ensure peace and order. The Election Commission ensures observance of MCC by political parties in power to ensure electoral process is not misused by the ruling party.

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

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

NEW GUIDELINES ON ELECTION MANIFESTO

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

WHAT CAN AND CANNOT BE DONE AFTER ANNOUNCEMENT OF MCC

- Combining Election & Official Work for Minister – excluding the Prime Minister.
- Government Transport not to be used - including official aircrafts, 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.

CHALLENGES - MCC

- Cannot be legally enforced and this increases its non-compliance
- Regulating Fake News and Hate Speech at election rallies
- Mere warnings by EC do provide deterrent effect to continue corrupt practice as defined under RPA, 1951.
- Regulating political advertisements on digital and social media by political proxies.

WHAT IF MCC IS MADE LEGALLY ENFORCEABLE?

BENEFITS	CONCERNS
• Ensure independence of EC in handling cases of non-compliance. • This will improve EC's credibility and conducting fair and transparent elections. • It will ensure political neutrality especially for the ruling party at centre and states	• It will delay the conduct of elections as number of cases will be filed in Courts against decisions of EC and its officers. • Results in filing of frivolous cases as part of political vendetta against rival candidates. • Unnecessarily burden the judiciary during elections and may hamper the entire electoral process. • Taking actions by officers may result in their untimely transfer or suspension due to political pressure.

►DECRIMINALIZATION OF POLITICS

- The Decriminalisation of politics means prevention of people having a criminal background or those involved in criminal offences to enter political arena.
- Supreme Court in the case of *Rambabu Singh Thakur v Sunil Arora and Others* raised the alarm regarding rise of people facing serious criminal charges like rape, murder, rioting etc. entering the arena of law making.

STEPS TO CHECK DECRIMINALISATION OF POLITICS

Supreme Court issued these mandatory guidelines for Political Parties under Article 129 & 142.

- Mandatorily upload criminal history of candidates on their websites including pending criminal cases along with charges framed.
- Reasons to be provided for selecting such tainted candidates including their qualifications, achievements and merits but not the chance of winning of polls.
- Above information to be published in local and national newspaper and official social media platform of political parties – Ex. Twitter, Facebook etc.
- Timing of Publication – details to be published within 48 hours of the selection of the candidate or not less than two weeks before the first date for filing of nominations.
- Political Party to submit Compliance Report to EC within 72 hours of candidate's selection.
- Non-submission of report to EC within 72 hours will amount to Contempt and EC will inform the Supreme Court of such non-compliance.

IMPORTANT LANDMARK JUDGMENTS TO PREVENT CRIMINALISATION IN POLITICS (CAN BE USED IN ANSWERS)

- *2002, Union of India v Association for Democratic reforms and Another* - directed the Election Commission to call for information on affidavit under Article 324 on criminal background including previous conviction, acquittal or discharge along with fine; declaration of assets of the candidate and his/her spouse along with number of dependants; liabilities including debts owed to any financial institution or otherwise ; and educational qualification of the candidate.
- 2005, Ramesh Dalal vs. Union of India - sitting MP or MLA shall also be subject to disqualification from contesting elections if they are convicted and sentenced to not less than 2 years of imprisonment by court of law. These judgments effectively disallowed people having criminal background to enter political field.
- Public Interest Foundation Vs. Union of India and Another requested the Law Commission to expedite recommendation on the following issue:
  1. Whether disqualification should be triggered upon conviction or upon framing of charges by the court or upon the presentation of the report by the Investigating Officer.
  2. Whether filing of false affidavits under Section 125A of the Representation of the People Act, 1951 (RPA) should be a ground for disqualification.

IMPACT OF CRIMINALISATION OF POLITICS

- NCRWC- when law breakers becomes law makers it impacts the overall quality of law making and halts important reforms towards cleansing of politics from criminalisation.
- Politicization and criminalization of police force as political power is used to suppress low enforcement.
- Such people control law enforcement agencies and they can influence and interfere with their own criminal cases where they are implicated.
- It increases money and muscle power during elections and this increases the bargaining capacity of such candidates to the extent of buying votes.
- It increases caste-based politics as such people can mobilise voters from their specific community to vote for them.
- Criminalisation of politics erodes trust of people in democratic process in India.

►ELECTION COMMISSION SEEKS MORE AUTONOMY

The Election Commission in its 2004 Report expressly opined that the current wording of Article 324(5) was "inadequate" and required an amendment to bring the removal procedures of Election Commissioners on par with the Chief Election Commissioner (CEC). This will provide Election Commissioners (EC) with the "same protection and safeguards" as the CEC and will strengthen EC.

CEC & EC EQUAL ON MATTERS OF SALARY & CONDITIONS OF SERVICE

- In 1991, the Parliament enacted *The Chief Election Commissioner and other Election Commissioners (Conditions of Service) Act 1991* – fixed retirement age of:
  - CEC at 65 years – equivalent to SC Judge
  - Other EC at 62 years - equivalent to HC Judge
- The 1991 legislation was amended in 1993 and the CEC and other EC were placed on par on matters of retirement age, salaries and other benefits. So, now post Amendment
  - Both CEC & EC's salary is equal to the salary of a Judge of the Supreme Court.
  - Both CEC & EC to hold office for 6 years or up to the age of 65 years.

NEED FOR AUTONOMY (RECOMMENDATIONS OF 255TH LAW COMMISSION AND GOSWAMI COMMITTEE)

- Need for Parity - Currently, only the CEC can be removed through impeachment whereas the other two Election Commissioners can be removed as per CEC's recommendations.
- EC's Expense to be charged on Consolidated Fund of India – This will ensure financial autonomy. As per the current practice, EC's expense is voted and approved by Parliament thereby giving financial discretion to the Parliament.
- Separate and Independent Secretariat – having powers to appoint, transfer and promote its staffs and officers. This will insulate personnel from executive and political interference.
- Independent Secretariat would insulate EC from Executive's interference on the issues of appointments, promotions etc.
- Collegium Based Appointment - The appointment of all the Election Commissioners, including the CEC, should be made by the President in consultation with a three-member collegium or selection committee, consisting of the Prime Minister; the Leader of the Opposition of the Lok Sabha (or the leader of the largest opposition party in the Lok Sabha in terms of numerical strength) and the Chief Justice of India.
- Elevation of an Election Commissioner should be based on seniority - unless the three-member collegium/committee, for reasons to be recorded in writing, finds such Commissioner unfit.
- Common Electoral Roll for Parliament, Assembly and Local Elections – This will avoid duplicity of effort and resources by EC and SEC.
- Filing of false affidavits to be made corrupt practice - Increase punishment from 6 months to 2 years imprisonment without fine.
- As per EC, filing false affidavit
  - Be classified as *corrupt practice* under RPA, 1951
  - must be a *ground to challenge elections*
- In case of Bribery - postpone or declare elections void
- Candidate must contest only from 1 constituency
- Debar Persons charged with Cognisable Offences
  - at the stage of framing charges by Court
  - if punishment of offence is 5 years or more
  - case filed 6 months prior to the election
- Misusing Religious Sentiments during elections to be made punishable offence
- Bribery during Election to be made cognizable offence and enhance punishment up to two years.
- EC must have power to de-register political parties – suggested by Law Commission in its255th Report on Electoral Reforms.

►REASON FOR INCREASED VOTER TURNOUT IN 2019 LOK SABHA ELECTION

The 2019 Lok Sabha Elections saw highest voter participation of 67% in Indian Electoral history. To large extent it was on account of introduction of innovative measures by ECI like

- Systematic Voter's Education and Electoral participation (SVEEP) program - to inform and educate people to vote
- C-vigil app – to empower citizens to report electoral malpractices
- Dedicated transport facilities to persons with disabilities (PwD) and senior citizens
- Creation of voluntary code of Ethics for the social media during elections etc.
- Media Certification and Monitoring Committee
- Using ICT applications for ease of processes
- Creating unique Voluntary Code of Ethics for use of social media during elections
- Use of Electronically Transmitted Postal Ballot System (ETPBS) for Service Voters

►RECOMMENDATIONS OF ELECTION COMMISSION'S NINE WORKING GROUP

Boosted by high electoral participation in 2019 Lok Sabha Elections, Election Commission constituted "Nine Working Groups" to provide for recommendations to improve electoral administration in India.

IMPORTANT RECOMMENDATIONS OF NINE WORKING GROUP

1. Single simplified Form for all services to voters Ex. Registration, change of address, deletion of names etc.
2. Expanding the network and Electoral Service Centres (ESCs)/ Voter Facilitation Centres (VFCs) to streamline Electoral Services to citizens for better delivery.

3. Door-step electoral services to Persons with Disability (PwDs) and Senior citizens (80+ years) - to maximise voting percentage
4. Online registration of prospective voters at age of 17 years – registration facilities to be provided in schools and colleges.
5. Preparing Electoral Roll of Graduates' and Teachers' Constituency through online platforms of ERO Net
6. Revamping Booth Level Officer (BLO) System and appointing full time tech savvy BLOs in a phased manner for services through handheld digital devices.
7. Provision of electronic version of EPIC for voters
8. Quarterly/six monthly qualifying date for voter registration instead of one annual date (1st January) as qualifying date.
9. Modern online Election Planning Portal for ECI, State/UT or district levels – to help in real time data handling for electoral planning.
10. Accessibility portal for providing speedy services to PwDs or Senior Citizens.
11. Improving Voter Awareness

- GIS based Electoral Atlas for mapping of Parliamentary Constituencies, Assembly Constituencies or Polling Stations for public information.
- Creating Digital Platform for election calendar and election schedule
- Partnership with Govt. organizations, PSUs and Private Trade or Industrial Org.
- Setting up Electoral Literacy Clubs in all schools and colleges.
- Setting up voter awareness forums in all Govt. and private organizations.
- Setting up Chunav Pathshala in all Polling Stations.
- Inclusion of voter education in school curriculum.

12. New Outreach Media

- Pro-active use of New Media Technology
- Setting up Web TV and Web radio for education of voters and other stakeholders.
- Starting a weekly program on Doordarshan or Radio for voters.
- Setting up Community Radio Stations for voter education.
- Periodic SVEEP Talk program.

13. Exploring New Voting Methods using blockchain technology
14. Online nomination - Creating online facility for filing nomination will help in avoiding errors and will ease the process of filing nomination.
15. Putting limits on Expense of Political Party during elections
16. Integration of Citizen-facing services - voter registration process with Citizen-facing services such as Digi-Locker and UMANG. Linkage will help in early upload/connect of necessary documents for the purposes of registration.

►CJI ASSURES PTO HEAR PENDING PLEA ON ELECTORAL BONDS

Chief Justice of India has assured petitioners that Supreme Court will take up for hearing a pending petition of 2018 which has challenged Electoral Bond Scheme.

CENTRAL INFORMATION COMMISSION VIEWS ON ELECTORAL BOND

CIC has held that disclosure of identity of electoral bond scheme donors will not serve any larger public interest and will violate provisions of the Right to Information Act itself. Section 8(1)(e) of the RTI Act has been used as shield to withheld information by the CIC.

SECTION 8(1)(E) OF RTI ACT

- There shall be no obligation to give any citizen - information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information.
- So, CPIO has the discretionary power to realise or understand whether larger public interest is served or not on disclosure of such information.
- Thus, the concerned CPIO declined the request, stating that the names of donors being third party information and relating to their customers were held by the bank in fiduciary capacity.
- Therefore, the information was exempted under provisions of section 8 (1) (e) and (j) of RTI Act.

WHAT ARE ELECTORAL BONDS?

- Electoral Bonds are bearer instrument, sort of a Promissory Note and are an interest free banking instrument.
- Electoral Bond shall be issued for any value, in multiples of Rs 1000, Rs 10,000, Rs 1 lakh, Rs 10 lakh and Rs 1 crore from the Specified Branches of the State Bank of India (SBI).

- The purchaser would be allowed to buy Electoral Bonds only on due fulfilment of all the extant KYC norms and by making payment from a bank account. It will not carry the name of payee.
- The Electoral Bonds would have a life of only 15 days during which it can be used for making donation only to political parties which has secured not less than one per cent of the votes polled in the last general election to the House of the People or to Legislative Assembly.
- Every political party in its returns will have to disclose the amount of donations it has received through electoral bonds to the Election Commission.

DEMERITS OF ELECTORAL BONDS

- Identity of Donor Unknown
- Goes against transparency of electoral funding
- No Upper Limit for Donation
- Increases Corruption and red tapism through undisclosed identity
- Exemption allowed under RTI Act – Section 8(1)(e)
- Results in Frivolous Donations from unaccounted source
- Strengthen Corporate-Political Nexus and results in quid pro quo scenario post elections
- Prohibition of donation to be provided by companies older than 3 years removed
- This will lead to formation of Shell Companies to route funds as part of electoral finance
- Restrictions on corporates for donating more than 7.5% of their average net profit over the previous 3 years to the Political parties removed.
- FCRA Amendment enables political parties to accept donations from foreign companies – Indian elections may have foreign influence.

►SALIENT FEATURES OF RPA, 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
• Allocation of seats in the House of the People – First Schedule • Filling of seats in the House of the People and Parliamentary Constituencies – direct elections • Total number of seats in Legislative Assemblies and Assembly Constituencies – Second Schedule • Qualification of voters. • Preparation of electoral rolls – Parliamentary, Assembly & Council Constituencies • Delimitation of constituencies. • Power of Election Commission to maintain Delimitation Order up-to-date • Allocation of seats in the Legislative Councils – Third Schedule • Delimitation of Council Constituencies • Constitution of electoral colleges for the filling of seats in the Council of States allotted to Union territories	• 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 • 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

►DELIMITATION COMMISSION FINALISES ORDER FOR J&K

The Delimitation Commission headed by Justice Ranjana Prakash Desai, (retired Judge of the Supreme Court of India), Sh. Sushil Chandra, (Chief Election Commissioner) and Sh. K. K. Sharma, (State Election Commissioner, Union Territory of Jammu and Kashmir), as Ex-Officio members of the Delimitation Commission finalised the Delimitation Order

for the Union Territory of Jammu & Kashmir. The order has been notified in the official Gazette.

DELIMITATION COMMISSION FOR J&K

- The Jammu and Kashmir Reorganisation Act, 2019 provided for delimiting Parliamentary and Assembly Constituencies of Jammu & Kashmir based on the Delimitation Act of 2002.
- Five Members of Lok Sabha – who are elected from the UT of Jammu and Kashmir were associated in the work of the Delimitation Commission and were nominated by the Speaker of Lok Sabha.
- Delimiting the Assembly and Parliamentary Constituencies - in the UT of Jammu and Kashmir based on 2011 Census and in accordance with the provisions of Part-V of the Jammu and Kashmir Reorganisation Act, 2019 and the provisions of Delimitation Act, 2002.
- Reservation of Seats for SC/ST – Based on 2011 census and as per Section 14 of the Jammu and Kashmir Reorganisation Act 2019 – 7 seats were reserved for SCs and 9 Seats are reserved for STs.
- Note* - Constitution of erstwhile Jammu and Kashmir State did not provide for reservation of seats for the Scheduled Tribes in the Legislative Assembly.
- Categorisation of Constituencies - All 20 districts were categorised by the Commission into three broad categories i.e. A) Districts having predominantly hilly and difficult areas, B) Districts with Hill & Flat areas and C) Districts with predominantly Flat Area.

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 criteria.
- Division on grounds of Difficult Terrain Challenged.

ABOUT DELIMITATION COMMISSION

- The Delimitation Commission is empowered by Parliament under Article 82 to determine allocation of seats in the House of the People to the States (1971 Census) and divide states into territorial constituencies based 2001 Census.
- Delimitation means the act or process of fixing limits or boundaries of territorial constituencies in a country or a province having a legislative body. In India, the job of delimitation has been assigned to a high power body known as Delimitation Commission or Boundary Commission.
- In the Past – 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.

CONSTITUTION OF DELIMITATION COMMISSION - AS PER DELIMITATION ACT, 2002

- The Central Government shall constitute a Commission to be called the Delimitation Commission which shall consist of three members as follows:
  (a) *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;
  (b) *the Chief Election Commissioner or an Election Commissioner nominated by the Chief Election Commissioner,* ex officio:
  (c) *the 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.

ROLE PLAYED BY DELIMITATION COMMISSION

- Balance of representation to achieve the ideals of 'One Vote One Value'
- Ensure adequate representation to vulnerable sections including SC/ST.
- Fair division of geographical areas for adequate representation of diverse communities.

CHALLENGES

- Delimitation exercise is restricted by Constitution 84th and 87th Amendment.

- This has frozen the seats in Lok Sabha and State Assemblies till 2026.
- Seats reserved for SC and ST population also remains frozen and increasing population of vulnerable section is not accounted for.
- Present delimitation exercise carried in Jammu and Kashmir despite the constitutional ban till 2026.

Thus the need of the hour is to develop a National consensus exercise for undertaking delimitation along with 2031 census to ensure adequate representation of states and vulnerable sections of India.

►GOVT. CONTEMPLATING ONLINE VOTING FOR NRI

The Government of India is exploring the possibility of allowing online voting for non-resident Indians (NRIs). Earlier the government was also contemplating to extend the facility of postal ballots to (eligible) overseas and non-resident Indians (NRIs). However, so far, such facilities have not been extended.

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 must 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 enrolment.

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 in 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.

BENEFITS	CONCERNS
• It will increase voter participation • It will cater to the vast Indian diaspora living abroad • Remove compulsions on part of Indians to travel to India especially for voting • It will fulfil the mandate of Article 326 and Section 62 of RPA, 1951 – which mandates right to vote for every citizen registered in the electoral roll	• Amendment of Electoral laws and Conduct of Election Rules. • Logistics and cost-benefit ratio to allow voting for overseas Indians. • It may impact several rights (employment, residence etc.) of such NRIs who intend to settle permanently in foreign countries.

WHAT NEEDS TO BE DONE TO ALLOW ONLINE VOTING FOR NRI

- Thus, if online voting is allowed by the government, then Section 20A of Representation of People Act, 1950 needs to be amended to allow online voting by NRIs even from outside India.
- So far, the government of India is planning to allow online voting for NRIs and no amendment has taken place for the purpose either in RPA, 1951 or RPA, 1950.

►ELECTION PETITION

An Election petition is a process to inquire into validity of election results conducted by Election Commission. Election petitions are filed in High Court of the state in which the election was conducted as per Representation of People Act, 1951. Thus, only High Courts have original jurisdiction on deciding on election petitions.

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 material facts stating the claim of 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 on the part of the candidate or his agent or by any other person with the consent of the candidate.
  - Appeal on the grounds of his religion, race, caste, community or language.

- Appeal to religious symbols or national symbols, such as the national flag or the national emblem to enhance one's prospect at rival's cost.
- Promoting feelings of enmity or hatred between different classes of the citizens of India on grounds of religion, race, caste, community, or language
- Propagating or glorification of the practice of sati to enhance electoral 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 FOR CORRUPT PRACTICE

- 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.

GROUNDS OF DECLARING ELECTION TO BE VOID

- Candidate Not Qualified to contest elections as per law.
- Any Corrupt Practice committed by the candidate or his election agent or by any other person with the consent of the candidate.
- When nomination of candidate is improperly rejected by the Returning Officer.
- If the result of the election has been materially affected –
  - By the improper acceptance or any nomination of candidate
  - By any corrupt practice committed in the interests of the returned candidate by an agent other than his election agent.
  - By the improper reception, refusal or rejection of any vote or the reception of any vote which is void.
  - By any non-compliance with the provisions of the Constitution or of this Act or of any rules or orders made under this Act.

►RECOGNITION OF POLITICAL PARTIES

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.

TYPES OF POLITICAL PARTIES

According to the Election Symbols Order, political parties are either recognised political parties or unrecognised political parties. A recognised political party shall either be a National party or a State party.

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 won 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"
  - Carry out lawful directions and instructions of EC to ensure conduct of free, fair and peaceful elections or safeguarding the interests of the 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.

►LACK OF INNER PARTY DEMOCRACY IN INDIA

National Commission to Review the Working of the Constitution (NCRWC) in its Report on Electoral Processes and Political Parties appropriately recognised that "no electoral reforms can be effective without reforms in the political party system" and it recognised the following areas of immediate concern:

1. Structural and organisational reforms – party organisations - National, State and local levels - inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, research, thinking and policy planning activities of the party.
2. Party system and governance – Mechanisms to make parties viable instruments of good governance
3. Institutionalization of political parties – need for a comprehensive legislation to regulate party activities, criteria for registration as a national or State party - de-recognition of parties.

ISSUE OF OVER-CENTRALISATION WITH POLITICAL PARTIES HIGHLIGHTED BY VARIOUS REPORTS

- The 170th Law Commission Report – recommended introducing regulatory framework governing the internal structures and inner democracy of parties, financial transparency, and accountability before attempting state funding of elections. Accordingly asked to insert Sections 11A-I in the RPA, 1951 dealing with the *"Organisation of Political Parties"* on the premise that a *political party "cannot be a dictatorship internally, and democratic in its functioning outside."*
- NCRWC recommended that rules and by-laws of the parties seeking registration should include provisions for declaration of adherence to democratic values and norms of the Constitution in their inner party organisations.
- 2nd ARC on Ethics and Governance highlighting the importance of inner party democracy noted that corruption is caused by over-centralisation since *"the more remotely power is exercised from the people, the greater is the distance between authority and accountability.*

LAWS REGULATING INNER PARTY DEMOCRACY IN INDIA

- Currently, there is no express provision for internal democratic regulation of political parties in India other than Section 29A of the RPA, 1951, which provides for *registration of political parties with the Election Commission of India.*
- Section 29A(5) provides for every application to the ECI to be accompanied by a copy of the party memorandum or regulations, with a specific provision *"that the association or body shall bear true faith and allegiance to the Constitution of India as by law established, and to the principles of socialism, secularism and democracy, and would uphold the sovereignty, unity and integrity of India."*
- However, RPA, 1951 is silent on the role of Election Commission in regulating the internal functioning of political parties to conduct their internal elections and provide criteria to select candidate.
- Consequently, there is no mechanism to review a party's practice against the principles enshrined in the Constitution or against the requirements of the ECI's Guidelines and Application Format for the Registration of Political Parties under Section 29A.

REASON FOR LACK OF INNER PARTY DEMOCRACY

Lack of democratic functioning of the parties is mainly manifested in two fundamental aspects:

- First, procedure for determining leadership and composition of the parties is not open and inclusive.
  - It has been observed that the leadership is mostly decided by a coterie of party functionaries who holds sway over the party administration.

  - Most of the times, the elections to leadership positions are uncontested and unanimously decided.
  - This adversely impacts the constitutional right of all citizens to equal political opportunity to participate in politics and contest elections.
- Second, the centralised mode of functioning of the political parties and the stringent anti-defection law of 1985 deters party legislators from voting in the national and state legislatures according to their individual preferences.
  - This compels them to adhere to the directives of their party high command in the legislature.
  - Therefore, the discretional autonomy of the legislators becomes hostage to the whims of the party leadership".
  - Hence, the elected representatives are likely to remain accountable and answerable to their party leadership and its authority rather than to the electoral constituency which has elected the candidate to the legislature.
- There are several suggestions on electoral reforms that has been put forward "by several government constituted committees like Dinesh Goswami Committee, Tarkunde Committee and Indrajit Gupta Committee, which strongly argued for more transparent working of the political parties in the country.
- Political parties control the levers of governance in a democracy. So only strong political will emanating from irrefutable electoral demands for inner-party democracy can only lead India towards the process of democratising its political parties.

WHAT DOES PAST PRECEDENT REFLECTS ON POWERS OF EC?

- EC noticed that many political parties had failed to hold elections for years and were functioning on an adhoc basis.
- In 1996, EC in a bold move issued notice to state, national and unrecognised political parties that they must hold regular elections in accordance with their respective constitutions and asked them to submit latest report.
- Thus, past precedent highlights that Election Commission under *Election Symbols (Reservation and Allotment) Order* has sufficient powers to take appropriate actions against political parties not following the provisions of Representation of People Act, Conduct of Election Rules and Election Symbols (Reservation and Allotment) Order even though it does not have power to de-register political parties.

RECOMMENDATIONS OF 255TH LAW COMMISSION REPORT

- Introducing internal democracy and transparency within political parties is important to promote financial and electoral accountability, reduce corruption, and improve democratic functioning of the country.
- EC should be given the power to de-register such political parties who avails the benefit of income tax exemption under Section 13A, Income Tax Act, but have not contested any Parliamentary or State elections in ten years consecutive years.
- Powers to the ECI should extend to the regulation of action and not ideology of political parties, given the complex socio religious-political fabric of the country, its diversity, and secular principles. German Constitution facilitates the regulation of the ideology and activities of political parties.
- Amend Section 29A(5) of the RPA, 1951 to require parties to insert a specific provision in their memorandum to "shun violence for political gains, and avoid discrimination or distinction based on race, caste, creed, language or place of residence".
- New Part IVB titled "Regulation of Political Parties", starting from section 29J should be added to RPA, 1951.

►ECI DELETES REGISTERED UNRECOGNISED POLITICAL PARTIES

Election Commission has decided to delete (87+111) Registered Unrecognised Political Parties (RUPPs) as they have failed to comply with provisions of sections 29A and 29C of RP Act 1951. EC has also asked Department of Revenue to take necessary legal & criminal action against 3 RUPPs (Manav Adhikar National Party from Gujarat, Apna Desh Party from UP & Kisan Party of India from Bihar) involved in serious financial impropriety including round tripping of money. EC highlighted the unprecedented growth of RUPPs (300%) from 694 in 2001 to 2796 in 2021. Evidence suggests that there is a spurt in registration before general election of Lok Sabha/Vidhan Sabha.

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 the 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 more than 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.

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"
  - Carry out lawful directions and instructions of EC to ensure conduct of free, fair and peaceful elections or safeguarding the interests of the 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.

REASONS GIVEN BY EC TO DELETE RUPPS

- Not Participating in Elections - According to EC, out of the total 2796 RUPPs, a large number is neither taking part in electoral process nor adhering to the one or many of the above requirements including
  - submission of Contribution Reports;
  - Annual Audit Statement: Election Expenditure Statement; and
  - Contesting Elections, etc.
- This non-compliance are not only violative of statutory requirements and extant guidelines but also defeats the purpose of clean electoral ecosystem.
- 87 such RUPPs are not found in existence at their notified addresses as per the field verification reports received from the concerned Chief Electoral Officers.
- Non-Contesting of Elections - In General Elections 2019, out of total 2354 RUPPs parties at that time, only 623 RUPPs contested elections. Thus, 70% registered unrecognised parties did not contest elections.
- Failure to furnish Election Expenditure Statements after the contest of election.
- Income Tax Act Exemptions Claimed – As per CBDT, 199 RUPPs claimed Rs. 445 Cr exemption in 2018- 19. In 2019-20, 219 RUPPs claimed Rs 608 Cr exemption from Income Tax. 66 RUPPs, which have claimed Rs 385 Cr exemptions in 2019-20, have not submitted contribution reports mandated under section 29C of RPA, 1951. Few RUPPs have claimed income tax exemption even to the tune of Rs 100 to150 crores each without complying with statutory compliances, including submission of contribution report under Section 29 C of the RPA, 1951.
- Non-filing of Contribution Report by many RUPP at all or in time, hence violating statutory provisions.
- RUPPs indulging in serious financial impropriety - such as incriminating documents related to bogus donation receipts, formation of shell entities, bogus and non-genuine purchases, facilitating accommodation entries, etc. It amounts to fraudulent use of privileges and public trust.
- Opaqueness & Lack of Accountability - Failure in complying statutory requirements blocks information about RUPPs to the citizens and impacts constitutional mandate of EC in conducting free, fair and transparent elections.

WHAT CAN THE RUPPS DO?

- Any aggrieved RUPP may approach the concerned Chief Electoral Officer/Election Commission within 30 days of along with all evidences of existence, other legal and regulatory compliances including year wise annual audited accounts, contribution report, expenditure report, updation of office bearers

including authorized signatories for financial transactions (including bank account).

►ONLINE VOTING & CHALLENGES

Telangana Government has initiated dry run of India's first smartphone based e-voting system with a dummy election. However, former Chief Election Commissioners have raised a range of concerns from maintaining secrecy of ballots to bringing political parties on board around the idea of online voting and remote voting.

STEPS TAKEN TO ENHANCE SECURITY BY TELANGANA SEC

- TSEC e-Vote Android App is a security-hardened mobile application to prevent tampering and binds a device ID and phone number to a specific citizen registration process such that only the same device can be used during voting, thereby enhancing security by design itself.
- The entire process can be monitored and controlled by the admin using a web portal, wherein the generation/access of results is further protected with the requirement of a physical security token-based decryption.
- Additionally, the entire data will be stored in the state data centres (SDCs) as an added security consideration.

KEY CONCERNS ON E-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

WAY FORWARD – COVID-19 has pushed Election Commission and State Election Commission to increase voter turnout in elections and in the process technology is being used as a tool to facilitate voting. However, concerns regarding verification of voter identification, maintaining a free voting environment and secrecy of ballots must be addressed to ensure free, fair and transparent elections in India along with improving trust of voters in the election process conducted by constitutionally mandated Election Commission and State Election Commissions.

►SIMULTANEOUS ELECTIONS IN INDIA

President while addressing both houses of Parliament said," *'One Nation – Simultaneous Elections' is the need of the hour, which would facilitate accelerated development, thereby benefitting our countrymen. With such a system in place, all political parties, according to their respective ideologies, will be able to better utilise their energy towards development and public welfare. Therefore, I urge all Members of Parliament to seriously ponder over this development oriented proposal of 'One Nation - Simultaneous Elections'.*"

MERITS OF HOLDING SIMULTANEOUS ELECTIONS

- More focus on long term development & growth - Cycle of continuous elections affects developmental process and good governance and also forces political class to typically think in terms of immediate electoral gains rather than focus on long-term programs and policies for the overall progress of the nation and its people. A period of election free years will allow political class and government members in states and centre to focus more on long term development process.
- Lesser period for imposition of MCC: Imposition of Model Code of Conduct (MCC) puts on hold the entire development program and activities of the Union and State Governments in the poll bound State. It even affects the normal governance. Frequent elections lead to imposition of MCC over prolonged periods of time. This often leads to policy paralysis and governance deficit". Thus, periodic elections will help government to focus more on developmental works.
- Reduce massive expenditure on elections - Elections lead to huge expenditures by various stakeholders. Every year, Union and State Government bear expenditures on account of conduct, control and supervision of elections. Besides the Government, candidates contesting elections and political parties also incur huge expenditures. The candidates normally incur expenditures on account of various necessary aspects such as travel to constituencies, general publicity, organizing outreach events for electorates etc. while the political parties incur expenditures to run the party's electoral machinery during elections, campaigning by star leaders and so

on. Thus, holding simultaneous elections will help in reducing cost significantly.

- Will decrease Corruption & Black Money Expenditure during elections - Candidates and political parties in their bid to win elections end up spending significantly more than the prescribed expenditure limits. The urge to spend more than prescribed limits to win elections, is consequently blamed as one of the key drivers for corruption and black-money in the country. Dr. S. Y. Quraishi, former Chief Election Commissioner, remarked, *"elections have become the root cause of corruption in the country. After winning elections, the politician-bureaucrat nexus indulges in recovering the investment" and that is where corruption begins".* Thus, holding simultaneous elections will provide less opportunity to politicians to use unaccounted money for bribe and corruption.
- Manpower can be better utilised - The Election Commission of India takes help of a significant number of polling officials as well as armed forces to ensure smooth, peaceful and impartial polls. While conducting elections to the 16th Lok Sabha, the ECI took the help of approximately 10 million personnel as polling officials for running and supervising the election process across 9,30,000 Polling Stations of the country. For providing the required security arrangements, the Election Commission generally involves Central Armed Police Forces (CAPF). As the demand for CAPF is typically higher than the supply, police forces such as State Armed Police, Home Guards, District Police etc. are often deployed as well to complement security arrangements. The role of such security forces starts much before polling and ends only after the counting of votes and declaration of results effectively covering the entire duration of the elections. These security officials are also deployed during state elections. Thus, holding simultaneous elections will allow better utilisation of central and state security forces.
- Disruptions to public life and essential services will be limited for a fixed period - Frequent elections disrupt normal public life. *frequent elections lead to disruption of normal public life and impact the functioning of essential services. Holding of political rallies disrupts road traffic and leads to noise pollution.* If simultaneous elections are held, this period of disruption would be limited to a certain pre-determined period of time".
- *Lesser disruptions because of polarisations taking place during elections - Elections are polarising events which have accentuated casteism, communalism, corruption and crony capitalism. If the country is perpetually on election mode, there is no respite from these evils. Holding simultaneous elections would certainly help in this context".* Thus, holding elections every five years will lead to greater period of peace without unnecessary polarisation.

DEMERITS OF HOLDING SIMULTANEOUS ELECTIONS

- National Issues overriding Regional Issues - Assembly elections are fought on local state issues and, in the true spirit of federalism, parties and leaders are judged in the context of their work done in the state. Clubbing them with the general election could lead to a situation where the national narrative submerges the regional problems and issues.
- Difficult for Voters to decide on national & regional lines - India has a federal structure and a multi-party democracy where elections are held for State Assemblies and Lok Sabha separately. The voters are better placed to express their voting choices keeping in mind the two different governments which they would be electing by exercising their franchise. This distinction gets blurred somewhat when voters are made to vote for electing two types of government at the same time, at the same polling booth, and on the same day.
- No Guarantee of Tenure of 5 Years for Lok Sabha & State Assemblies - There may be a scenario where due to constitutional failure in a state, the state assembly has to be dissolved. Or, Lok Sabha can be dissolved prematurely if No Confidence Motion is passed. So, such scenarios must be provided for in the constitution. This will need constitutional amendment.
- Need to align state assemblies with Lok Sabha - Holding Simultaneous Elections along with Lok Sabha would need either extending tenure of some State Assembly for more than 5 years or reducing tenure of other state assemblies. This will require another constitutional amendment.
- Difficult to Deploy entire Security Forces at the same time throughout India
- Lack of Political Consensus on holding simultaneous elections among different political parties.

IMPORTANT RECOMMENDATIONS

- 170th Law Commission Report has suggested that election of same of Legislative Assemblies where term is ending six months after the General election to Lok Sabha can be clubbed with it but election result can be declared at the end of their tenure. This can be possible with the cooperation of political parties.

- The Standing Committee on Personnel, Public Grievances, Law and Justice under the Chairmanship of Dr. E.M. Sudarsana Natchiappan had submitted a report on the "Feasibility of Holding Simultaneous Elections to Lok Sabha and State Legislative Assemblies" in December 2015.
- The Committee noted that the Representation of People Act, 1951 permits the Election Commission to notify general elections six months prior to the end of the terms of Lok Sabha and state assemblies. The Committee recommended that elections could be held in two phases.
- It stated that elections to some Legislative Assemblies could be held during the midterm of Lok Sabha. Elections to the remaining legislative assemblies could be held with the end of term of Lok Sabha.
- NITI Aayog in its Three Year's Action Agenda has suggested that all elections in India should happen in a free, fair and synchronised manner to cause "*minimum campaign mode disruption*" to governance.
- In this direction, NITI Aayog has suggested to move towards switching to a synchronised two-phase election to the Lok Sabha. This would require a maximum one-time curtailment or extension of some state assemblies.
- To implement this in the national interest, a focused group of stakeholders comprising constitution and subject matter experts, think tanks, government officials and representatives of various political parties should be formed to work out appropriate implementation related details.
- This may include drafting appropriate constitution and statutory amendments, agreeing on a workable framework to facilitate transition to simultaneous elections, developing a stakeholder communication plan and various operational details.

WAY FORWARD

- The proposal to introduce simultaneous elections in India both to Lok Sabha and State Assemblies is a bold reform and must be carried forward with the consensus of all state assemblies and political parties.
- Draft proposal must be made by NITI Aayog on important constitutional amendments and other amendments in Representation of People Act and other laws which would be needed to hold simultaneous elections in India.
- Election Commission must come up with its administrative framework regarding the steps necessary to ensure free, fair and transparent elections in India.

RIGHTS & RESERVATIONS

Previous Year Questions

YEAR	UPSC QUESTIONS
2017	Examine the scope of Fundamental Rights in the light of the latest judgment of the Supreme Court on Right to Privacy.
2017	Discuss each adjective attached to the word 'Republic' in the preamble. Are they defendable in the present circumstances stances?
2014	What do you understand by the concept "freedom of speech and expression"? Does it cover hate speech also? Why do the films in India stand on a slightly different plane from other forms of expression? Discuss.
2013	Discuss Section 66A of IT Act, with reference to its alleged violation of Article 19 of the Constitution

►RIGHTS VERSUS DUTIES

Supreme Court has issued notices to Centre and states in a writ petition seeking enforcement of the fundamental duties of citizens as enshrined in the Constitution of India.

ARGUMENTS MADE BY THE PETITIONER IN SUPPORT OF FUNDAMENTAL DUTIES

- Citizens have a duty to uphold the ideals of the country and to contribute to its growth and betterment.
- Not carrying out the fundamental duties by the citizen has a direct bearing on the fundamental rights guaranteed under Articles 14, 19 and 21 of the Indian Constitution.
- It asked the Court 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 the 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.
- The petition asked the Court to constitute independent high-powered committee to scrutinise and review the entire legal framework relating to the effective implementation of Fundamental Duties.

ABOUT FUNDAMENTAL DUTIES

- Fundamental Duties were added in the Constitution by Constitution 42ND Amendment on the recommendation of Sardar Swaran Singh Committee.
- This brought Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights (UDHR).

- Accordingly, Part IV-A was added into the Constitution which inserted Article 51A. Initially, Article 51A provided for 10 fundamental duties of every citizen of India from Article 51A (a) to (j).
- 11th Fundamental Duty was added by Constitution 86th Amendment in 2002 – which added Article 51A (k).

RECOMMENDATIONS OF SWARAN SINGH COMMITTEE WHICH WERE NOT ACCEPTED

- Parliament can make law to penalise or punish non-compliance with or refusal to observe any of duties.
- Duty to pay taxes should also be a Fundamental Duty of the citizens.
- Such penal provisions shall be beyond the scope of judicial review on following grounds:
  1. Infringement of Fundamental Right
  2. Repugnancy or Inconsistency with other constitutional provisions

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 and video spots, highlighting important messages related to Fundamental Duties, in the background of proper music and the National Flag, to be commissioned by All India Radio, Doordarshan, and other DD Channels.
- 3rd January 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 the 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 the right, the other person has the corresponding duty related to that right. If one enjoys the right, it becomes the duty of the other not to prove an obstacle in the enjoyment of his right.
- For example: 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 –
  1. Duties not regarding persons
  2. Duties owed to persons indefinitely
  3. Self-regarding duties
  4. 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. For example, an employee has a duty to work as per their master.
- Similarly, every "citizen" has certain duties towards its Nation as per Article 51A of Constitution.
- Now 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 – It implies some act on the part of the person on whom it is imposed. If a person owes money to another, the former is under a duty to pay the money to the latter.
- Negative Duty – It implies restraint on the part of the person on whom it is imposed. For example, if a person owns lands, others are under a duty not to make any interference with that person's use of the land.
- Primary Duty – Any duty which exists independently of any other duty. Ex. The 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, the former is under a duty to pay damages to the latter.

WHAT ABOUT ENFORCEABILITY OF FUNDAMENTAL DUTIES?

- Some of our Fundamental Duties are legally enforceable and their disregard is punishable. Ex.

Article 51A (a) - *It shall be the duty of every citizen of India – (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.*

- Now, this duty is legally enforceable as the Union Government has legislated THE PREVENTION OF INSULTS TO NATIONAL HONOUR ACT, 1971. Its provision highlights that any insult to National Flag or Constitution of India is punishable with imprisonment for a term which may extend to three years along with fine or both.
- Further, whoever intentionally prevents the singing of the Indian National Anthem or causes disturbances to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.
- However, there are other Fundamental Duties which are not legally enforceable. Example – Article 51A (b) - *to cherish and follow the noble ideals which inspired our national struggle for freedom.*

LEGAL PROVISIONS AVAILABLE FOR ENFORCEABILITY OF FUNDAMENTAL DUTIES

Justice Verma Committee listed legal provisions available about enforcement of Fundamental Duties

- To ensure that no disrespect is shown to the National Flag, Constitution of India and the National anthem, the Prevention of Insults to National Honour Act, 1971 was enacted.
- The Emblems and Names (Prevention of Improper Use) Act 1950 was enacted soon after independence to prevent improper use of the National Flag and the National Anthem.
- Flag Code of India – embodies correct usage and display of National Flag
- Section 153A of the 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 153 B of the IPC - Imputations and assertions prejudicial to the national integration constitute a punishable offence
- Unlawful Activities (Prevention) Act 1967 - Communal organization can be declared unlawful association
- Sections 295-298 of the IPC - Offences related to religion
- Provisions of the 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 the ground of religion and the promotion or attempt to promote feelings of enmity or hatred between different classes of citizens of India on the 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 Member of Parliament or a State Legislature.

►RIGHT TO EDUCATION

Former CJI Dipak Misra mentioned that development of scientific temper and spirit of enquiry by education is important and right to education is more than a right.

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

- Article 21A was added in the Indian Constitution through 86th Amendment and 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 the appropriate Government and local authorities to provide and ensure admission, attendance and completion of elementary education by all children in the 6-14 age group.
- With this, India has moved forward to a rights based framework that casts a legal obligation on the Central and State Governments to implement the fundamental rights of child in the age group of 6-14 years as enshrined in the Article 21A of the Constitution, in accordance with the 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 or her from pursuing and completing elementary education.
- It specifies the duties and responsibilities of appropriate Governments, local authority and parents in providing free and compulsory education, and sharing of financial and other responsibilities between the Central and State Governments.
- *Lays norms and standards relating to Pupil Teacher Ratios (PTRs), buildings and infrastructure, school-working days, teacher-working hours.*

- *It prohibits (a) physical punishment and mental harassment; (b) screening procedures for admission of children; (c) capitation fee; (d) private tuition by teachers and (e) running of schools without recognition,*
- It provides for *development of curriculum in consonance with the values enshrined in the Constitution.*
- The *Central Government and the 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 the Central and State Government respectively on implementation of the provisions of the RTE Act in an effective manner.

►RIGHT TO HEALTH

Under Ayushman Bharat Pradhan Mantri Jan Arogya Yojana (PMJAY) provides a cover of up to Rs. 5 lakhs per family per year, for secondary and 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

- Article 23 - Prohibition of traffic in human beings and forced labour – indirectly protects physical and mental health of people trapped in trafficking
- 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 – also protects health of children working in hazardous environment.

PART IV

- Article 39(e) - State shall direct its policy towards securing - that 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 the State to raise the level of nutrition and the 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

- In addition to the DPSP, some other health-related provisions can be found in the 11th and 12th Schedules, as subjects within the jurisdictions of Panchayats and Municipalities, respectively. These include the 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

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

►RIGHT TO PRIVACY

Supreme Court in *Justice Puttaswamy Case* has ruled Right to Privacy as an integral part of Right to Life and Personal Liberty as guaranteed under Article 21 of Constitution. Right to Privacy are recognised by Constitution as inhering in each individual as an intrinsic and inseparable part of human element which dwells within. However, right to privacy is not absolute and state can make law to restrict right to privacy. A law on invasion of life or personal liberty must meet the three-fold requirement of

1. Legality: Existence of law i.e. state action must have a legislative mandate.
2. Need: A legitimate state aim i.e., there must be a legitimate state purpose.
3. Proportionality: Ensures a rational nexus between objects and the means adopted to achieve them.

SUPREME COURT'S JUDGMENT ON DIFFERENT ASPECTS OF PRIVACY UNDER ARTICLE 21

- On Dignity: Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human existence. The dignity of the individual, equality between human beings and the quest for liberty are the foundational pillars of the Indian Constitution
- Natural Right - Life and personal liberty are not creations of the Constitution. These rights are recognised by the Constitution as inhering in

everyone as an intrinsic and inseparable part of the human element which dwells within.

- Right to Life - Privacy is a constitutionally protected right which emerges primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arise in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III.
- Layers of Privacy - Privacy is the constitutional core of human dignity. Privacy has both a normative and descriptive function. At a normative level privacy sub-serve those eternal values upon which the guarantees of life, liberty and freedom are founded. At a descriptive level, privacy postulates a bundle of entitlements and interests which lie at the foundation of ordered liberty.
- Right to be Left Alone - Privacy includes at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation.
    - So, Privacy also connotes a right to be left alone. Privacy safeguards individual autonomy and recognises the ability of the individual to control vital aspects of his or her life.
    - Personal choices governing a way of life are intrinsic to privacy.
    - Privacy protects heterogeneity and recognises the plurality and diversity of our culture.
    - While the legitimate expectation of privacy may vary from the intimate zone to the private zone and from the private to the public arenas, it is important to underscore that privacy is not lost or surrendered merely because the individual is in a public place.
    - Privacy attaches to the person since it is an essential facet of the dignity of the human being.
- Negative and Positive Aspect of Privacy - The negative content of privacy restrains the state from committing an intrusion upon the life and personal liberty of a citizen. Its positive content imposes an obligation on the state to take all necessary measures to protect the privacy of the individual.

►KARNATAKA HC UPHELDS BAN ON HIJAB IN SCHOOLS

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

HC JUDGMENT

- It held that wearing the hijab is not an essential religious practice in Islam and is not, therefore, protected under by the right to freedom of religion guaranteed by Article 25 of the Constitution. The court said it was a reasonable restriction that was constitutionally permissible.
- The Bench also upheld the legality of the Karnataka government's February 5, 2022, order prescribing guidelines for uniforms in schools and pre-university colleges under the provisions of the 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 the uniform with hijab and those who do it without. That would establish a sense of 'social-separateness', which is not desirable.
- It also offends the feel of uniformity which the dress-code is designed to bring about amongst all the students regardless of their religion & faiths.
- The object of prescribing uniform will be defeated if there is non-uniformity in the matter of uniforms.
- The aim of the regulation is to create a 'safe space' where such divisive lines should have no place and the ideals of egalitarianism should be readily apparent to all students alike.

TEST FOR ESSENTIAL PRCATICES OF RELIGION (ACHARYA JAGADISHWARANANDA AVADHUTA)

- What constitutes an integral or essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background, etc. of the given religion.
- Essential part of a religion means the core beliefs upon which a religion is founded. Essential practice means those practices that are fundamental to follow a religious belief.
- It is upon the cornerstone of essential parts or practices that the superstructure of a religion is built, without which a religion will be no religion.
- Test to determine whether a part or practice is essential to a religion is to find out whether the nature of the 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 the character of that religion or in its belief, then such part could be treated as an essential or integral part.
- There cannot be additions or subtractions to such part because it is the very essence of that religion and

alterations will change its fundamental character. It is such permanent essential parts which are protected by the Constitution.

RESTRICTIONS UNDER ARTICLE 25

- Under Article 25(1) - all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion. But state can regulate such practice on grounds of public order, morality and health.
- Further, under Article 25 (2)(a) - state can regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice.

►RIGHT TO BE FORGOTTEN

Delhi High Court while recognising the right to be forgotten has ordered removing one of its own judgments from a leading database platform and search engines as persons should not be perpetually stigmatized for past conduct.

RIGHT TO BE FORGOTTEN UNDER EU GPDR

- Personal data must be erased immediately when data is no longer needed for its original processing purpose.
- When Data owner has withdrawn his/her consent and there is no other legal ground for processing the data provided by the data owner.
- If data owner has objected to processing of his/her data and there are no legitimate grounds for the processing, erasure is required.
- Data must naturally be erased if the processing itself was against the law in the first place.
- Right to be forgotten also requires data controllers to compare the subjects' rights to "the public interest in the availability of the data" when considering such requests for data removal.

IMPORTANT TERMS DEFINED IN THE PERSONAL DATA PROTECTION BILL, 2019

- "Data Principal" means the natural person to whom the personal data relates.
- "Data Processor" means any person, including the State, a company, any juristic entity or any individual, who processes personal data on behalf of a data fiduciary.
- "Data Fiduciary" means any person, including the State, a company, any juristic entity or any individual who alone or in conjunction with others determines the purpose and means of processing of personal data.

VIEWS EXPRESSED BY B.N. SRIKRISHNA COMMITTEE

- Need for Remedy - If the data principal believes that data processing has unfairly disclosed personal data then she should be able to have a remedy against such disclosure.
- Right Against Disclosure - The right to be forgotten should provide data principal the right against the disclosure of her data when the processing of her personal data has become unlawful or unwanted
- Need for Balancing Test - In cases where there is a conflict of assessment as to whether the purpose of the disclosure has been served or whether it is no longer necessary, a balancing test that the interest in discontinuing the disclosure outweighs the interest in continuing with it, must be carried out.
- In carrying out this balancing test, certain principled and practical issues must be considered:
  - in case of a direct or subsequent public disclosure of personal data, the spread of information may become very difficult to prevent;
  - restriction of disclosure immediately affects the right to free speech and expression.
- Right to Privacy to be balanced with freedom of Speech - The purpose for a publication may often involve matters of public interest and whether the publication is necessary may depend on the extent of such public interest. The appropriateness of right to be forgotten in these circumstances would require that the right to privacy be balanced with the freedom of speech.
- Threat of Permanent Deletion of some Data - If every individual started exercising a right to be forgotten over various types of personal data or derivatives of personal data, the nature of the public realm of information itself would be brought into question as such information may be permanently deleted.
- Need to distinguish between Restrictions on Disclosure & Permanent Erasure - to address these free speech concerns, there may be a need to make a distinction between restrictions on disclosure (such as delinking in search results) and permanent erasure from storage, which may not be permitted as a separate individual participation right.
- Restrictions on free speech & RTI needs to be considered - While determining whether to allow for the right to be forgotten, the appropriateness of consequent restrictions on the right of free speech

and expression and the right to information would necessarily have to be considered.

- The Committee recommended statutory balancing test which may be achieved through the application of a test with five criteria:
  1. Sensitivity of the personal data sought to be restricted.
  2. Scale of disclosure or degree of accessibility sought to be restricted.
  3. Role of the data principal in public life (whether the data principal is publicly recognisable or whether they serve in public office).
  4. Relevance of the personal data to the public (whether the passage of time or change in circumstances has modified such relevance for the public).
  5. nature of the disclosure and the activities of the data fiduciary (whether the fiduciary is a credible source or whether the disclosure is a matter of public record; further, the right should focus on restricting accessibility and not content creation).
- Time-period for implementing such rights by a data fiduciary, as applicable, shall be specified.

"RIGHT TO BE FORGOTTEN" UNDER PERSONAL DATA PROTECTION BILL, 2019 – SECTION 20

Based on Sri Krishna Committee's report, government has included concept of Right to forgotten under Personal Data Protection Bill, 2019.

- The data principal shall have the right to restrict or prevent the continuing disclosure of his personal data by a data fiduciary where such disclosure –
  (a) has served the purpose for which it was collected or is no longer necessary for the purpose.
  (b) was made with the consent of the data principal and such consent has since been withdrawn.
  (c) was made contrary to the provisions of this Act or any other law for the time being in force.
- Right to be forgotten under Bill can be enforced by an Adjudicating Officer when an application in that behalf is submitted by the data principal.
- Data Principal must show that disclosure of such personal information overrides the right to freedom of speech and expression and the right to information of any other citizen.
- The Adjudicating Officer while making an order under "Right to be forgotten" must consider the following aspects:
  - Sensitivity of the personal data,
  - Scale of disclosure and the degree of accessibility sought to be restricted or prevented,
  - Role of the data principal in public life,
  - Relevance of the personal data to the public,
  - Nature of the disclosure and of the activities of the data fiduciary, particularly whether the data fiduciary systematically facilitates access to personal data and whether the activities shall be significantly impeded if disclosures of the relevant nature were to be restricted or prevented.
  - The Order given by Adjudicating Officer can be reviewed if it is challenged.

►IMPACT OF DATA DENIABILITY

In the modern world and democracies driven by technology, data management and analysis plays a key role in analyzing ground situation and accordingly draft schemes and programs to address needs of the citizens. Data also reflects state of governance and accountability on part of the government. This article highlights the adverse impact of data deficit or when government purposely alters data or hides data.

ADVERSE IMPACT

1. Evasion of accountability and responsibility on part of government.
2. Impacts Policy making and Governance - False data makes policy making and governance difficult at ground level – for example, number of vaccines needed to fight an epidemic, subsidy schemes for below poverty line (when measuring BPL population itself becomes ambiguous)
3. Creates false political narratives of success stories of government – impacts decision making for citizens during election.
4. Impacts freedom of Expression - Growing Information Gap between State and Citizens impacts freedom of expression for citizens.
5. Power Asymmetry - Data extraction from citizens without providing adequate data from state leads to asymmetry of power between state and citizens – makes citizens vulnerable.
6. Power Concentration - Data denial on part of government results in power concentration.
7. Prevents insightful Debates - Lack of reliable data prohibits insightful debate from experts on various issue of national and international importance affecting India's interest.

Thus, there is a need for data driven governance to ensure governance at ground level along with realization of important human rights including fundamental rights of citizens. Data Governance mechanism should also be incorporated as part of Right to Information Act.

►INFORMATION TECHNOLOGY (INTERMEDIARY GUIDELINES AND DIGITAL MEDIA ETHICS) RULES, 2021

Ministry of Electronics and Information Technology (MEITY) has notified the Information Technology (Intermediary Guidelines and Digital Media Ethics) Rules, 2021 to regulate IT intermediaries such as Twitter, Facebook and digital media outlets. While many IT intermediaries have complied to these rules Twitter has failed to comply with them.

NEED FOR REGULATING IT INTERMEDIARIES

- IT intermediaries and social media sites have come to play a prominent role in the globalised era as it provides a forum for citizens across the globe to share information and ideas in real time.
- IT intermediaries contend that the information posted by users on them is by citizens and they do not have any liability as the information posted is so large pool of people and from across the globe.
- Communications Decency Act of USA gives immunity to social media platforms for content posted on them. In India, the IT (Intermediary Guidelines) Rules, 2011 gave this immunity to social media platforms.
- The present rules update the earlier rules and introduce a soft touch self-regulatory mechanism for use of the social media. This is justified since:
  (a) Similar protection is not available for newspapers, magazines or websites. Social media companies have argued that they do not have editorial control to regulate control. However, social media companies have increasingly carrying out interventions to regulate content. E.g., Banning posts of President Trump of USA.
  (b) Freedom of speech under the constitution is subject to reasonable restriction Article 19(2). Thus, social media platforms too can be regulated under the Constitutional scheme.
  (c) Due to growing importance of social media platforms, they can be considered as a public utility serving a public function. Hence, some sort of regulation is necessary from security point of view.
  (d) To check the misuse and protection of citizens.
  (e) Right of the sovereign to regulate communications.

CONCERNS HIGHLIGHTED ON IT RULES

- Privacy versus National Security - The rules only make superficial attempts at balancing privacy and security interests as security interests are being given primacy over both civil liberty interests as well as economic interests.
- Breaking End-to-end Encryption - The traceability obligation in the new rules is problematic as it would amount to breaking end-to-end encryption provided for all users on platforms such as WhatsApp. This will give greater powers of surveillance to state over personal affairs of citizens and tantamount to interference in right to privacy.
- Data Theft & Hacking - Breaking of end-to-end encryption will increase chances of data theft and hacking.
- Traceability clause capable of misuse - The rule as it's currently drafted is vague and this allows the government to use traceability power in a broad way and therefore open to misuse. Thus, to use traceability powers, court must clarify the grounds and circumstances for its use by state authorities.
- Guidelines against law on Subordinate Legislation - Ability to issue rules under a statute or law, to frame subordinate legislation, is by its nature a limited and constrained power. The current rules go beyond the realm of Information Technology Act, and thus in the garb of rulemaking, government has rather come up with primary set of legislation.
- Rules have created new term in the Parent Act: Executive has created new term "significant social media intermediaries" which has not been defined in the Information Technology Act, 2000.
- Limited Purview of IT Act - Regarding digital news and media portals, the purview of the Information Technology Act, 2000, is limited. It only extends to the blocking of websites and intermediary liabilities framework but does not extend to content authors and creators.
- Rules have added New Chapter on Registration of Digital News Sitesbefore the Ministry of Information and Broadcasting. Such provisions are absent in the parent Act.

- Pressure on Tech Companies - Platforms can also be arm-twisted into building in what's called weakness by design into their product.

►PRINCIPLES TO PROTECT HUMAN RIGHTS OF PRIVACY

- UDHR: No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- International Covenant on Civil and Political Rights – ICCPR: No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.
- 2014 Annual report of 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.

►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:

1. Putting people and their rights at the centre of the digital transformation
2. Supporting solidarity and inclusion
3. Ensuring freedom of choice online
4. Fostering participation in the digital public space
5. Increasing safety, security and empowerment of individuals
6. Promoting the sustainability of the digital future

What is the aim of the Declaration?

- Complement existing rights, such as data protection, ePrivacy, and the Charter of Fundamental Rights.
- Establishes once and for all that 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 the products support the bloc's sustainability and green transition goals.
- The declaration wants to make sure that "technological solutions respect people's rights, enable their exercise and promote inclusion".
- It also 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 the work-life balance.
- All Europeans are offered an accessible, secure and trusted digital identity", and that data does not

predetermine people's choices in education, health, and private life.

- Ensure "transparency about the use of algorithms and artificial intelligence", defending from data breaches and 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.

SUMMARY OF THE SC JUDGMENT

- *Supreme Court recognised the fundamental right to protest against a law* but held that fundamental right to protest cannot affect other fundamental rights and right to life of others.
- *Court will not interfere with farmer's protest as the right to protest is part of a fundamental right* and can be exercised subject to public order.
- *Protests can continue in a non-violent violent manner and police cannot use violent means to end or disturb a non-violent protest.*
- *State cannot impose any impediment in the exercise right to protest* if it is non-violent and does not result in damage to the life and properties of other citizens and is in accordance with law.
- *SC asked Central Government to put on hold the implementation of the farm laws to facilitate discussions.*
- *Article 19(1)(b) - to* assemble *peaceably and without arm.*

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

►RIGHT TO STRIKE VS RIGHT TO PROTEST OR DEMONSTRATE

Expressing solidarity with the trade unions that had given a call for a two-day nationwide strike against the central government's privatisation plans, opposition members in the Lok Sabha sought a discussion on the issue. Article 19(1)(c) of the Indian Constitution mentions that all citizens shall have the right to form associations or unions or co-operative societies. So, from the perspective of UPSC, let us understand whether right to strike can be said to be part of Article 19(1)(c) or not.

STRIKE – GENERAL UNDERSTANDING

- Strike, is a work stoppage caused by the mass refusal of employees to perform work. A strike usually takes place in response to employee grievances.
- Employees generally go on strike to put pressure on the employer to accept their demands. Thus, strike as a tool provides an opportunity for collective bargaining for the employees.
- Strike is a powerful tool for workmen not only to resolve disputes with the employer but also helps the employees to fight against oppression by the employers.

INDUSTRIAL DISPUTES ACT (IDA), 1947

- IDA has defined strike as - *it means a cessation of work by a body of persons employed in any industry acting in combination, or a concerted refusal, or a refusal under a common understanding, of any number of persons who are or have been so employed to continue to work or to accept employment.*
- IDA has defined "Lock-out" as – *It means the temporary closing of a place of employment or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.*
- Section 22 of IDA prohibits strikes and lock-outs for those employees employed in public utility service. It says that any person employed in a public utility service shall not go on strike in breach of contract
  - a) *without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or*
  - b) *within fourteen days of giving such notice; or*
  - c) *before the expiry of the date of strike specified in any such notice as aforesaid; or*

d) *during the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.*

So, if the employees follow the procedure as prescribed under the law, then they can go on strike. Under the Industrial Dispute Act, 1947 the ground and condition are laid down for the legal strike and if those provisions and conditions are not fulfilled then the strike will be illegal.

SUPREME COURT ON RIGHT TO STRIKE

Demonstrations and processions usually involve three fundamental rights; freedom of speech, freedom of assembly, and freedom of movement. However, questions have arisen whether right to go on a strike is a fundamental right of an employee or not.

- All India Bank Employees' Association v. National Industrial Tribunal and others (1962) – Supreme Court specifically held that even very liberal interpretation of Article 19(1)(c) cannot lead to the conclusion that trade unions have a guaranteed right to an effective collective bargaining or to strike, either as part of collective bargaining or otherwise. Thus, there is a guaranteed fundamental right to form association or Labour unions but there is no fundamental right to go on strike.
- Radhey Shyam Sharma v. The Post Master General Central Circle, Nagpur, (1964) – Supreme Court held that a perusal of Article 19(1) (a) shows that there is no fundamental right to strike.

JUDICIAL VIEW ON STRIKE BY GOVERNMENT SERVANTS

Regarding strike by government servants, judicial view appears to be that they are allowed to conduct demonstrations but strike can be prohibited by the government.

- Kameshwar Pd. v. State of Bihar (1962) – Differentiated Strike & Demonstrations
  - A rule made by Bihar Government prohibited government servants from participating in any demonstrations or strike in connection with any matter pertaining to their conditions of service.
  - Supreme Court ruled in favour of demonstration but against strike. SC said that a government servant by accepting service conditions does not lose his fundamental right under Article 19(1)(a) – right to freedom of speech and expression.
  - The Court held that demonstration is a visible manifestation of feelings or sentiments of an individual or group and helps in communicating one's ideas to others through speech and expression. Thus, according to Court certain form of demonstrations fall under Article 19(1)(a).
  - Thus, the Court declared the Rules of Bihar Government as bad as it banned every type of demonstrations however innocent.
  - However, the Rules of Bihar Government which prohibited strike was not held bad by the Supreme Court as there is no fundamental right to resort to strike.

►LIBERTY AND FREEDOM

UNDERSTANDING FREEDOM & IMPORTANCE OF FREE SOCIETY

- Absence of Constraints - A simple answer to the question 'what is freedom' is absence of constraints. Freedom is said to exist when external constraints on the individual are absent.
- Lack of External Control - In terms of this definition, an individual could be considered free if he/she is not subject to external controls or coercion and is able to make independent decisions and act in an autonomous way.
- Freedom is Multi-dimensional - Absence of constraints is only one dimension of freedom. Freedom is also about expanding the ability of people to freely express themselves and develop their potential.
- Positive Aspect - Freedom in this sense is the condition in which people can develop their creativity and capabilities.
- Need for Both Aspects of freedom is important - namely the absence of external constraints as well as the existence of conditions in which people can develop their talent is essential.
- A free society would be one which enables all its members to develop their potential with the minimum of social constraints.

WHY SOCIETY NEEDS CONSTRAINTS?

- Prevent from Chaos - We need some constraints or else society would descend into chaos. So, every society needs some mechanisms to control violence and settle disputes.
- Respecting diverse Views - So long as we can respect each other's views and do not attempt to impose our views on others we may be able to live freely and with minimum constraints.
- Constraints in a society means that citizens of the society are willing to respect differences of views,

opinions and beliefs. This constraint can be imposed by the state or implicit in a country's constitution to ensure law and order in the society.

- Role of State in Imposing Constraint - It is here where the role of state becomes important to decide the kind of constraints it wants to impose on its citizens for their overall welfare. This aspect has been explained by *John Stuart Mill* through his *"Harm Principle".* So, first let us understand about ideas of freedom and liberty as expounded by J.S. Mill.

JOHN STUART MILL ON FREEDOM & LIBERTY

- *Freedom of speech is the bulwark of democratic government.* This freedom is essential for the proper functioning of the democratic process.
- *Freedom of speech and expression is regarded as the first condition on liberty.* It occupies a preferred position in the hierarchy of liberties giving protection to all other liberties.
- Idea of Liberty Grows with Society - Mill has stated that liberty depends on the idea that society progresses from lower to higher stages and that this progress culminates in the emergence of a system of representative democracy.
- Historical View on Liberty - In the past, liberty meant primarily protection from tyranny. However, over time, the meaning of liberty changed along with the role of rulers, who came to be seen as servants of the people rather than masters.
- Tyranny of Majority - a democratic majority may force its will on the minority by stifling public opinion, individuality and rebellion. Here, society itself becomes the tyrant by seeking to inflict its will and values on others.
- Three Types of Liberty:
  1. There is the liberty of thought and opinion.
  2. Liberty of tastes and pursuits, or the freedom to plan our own lives.
  3. Liberty to join other like-minded individuals for a common purpose that does not hurt anyone. Each of these freedoms negates society's propensity to compel compliance.

CONCEPT OF LIBERTY EXPANDED BY SC IN MANEKA GANDHI JUDGMENT

- In the case of Gopalan, Supreme Court had delinked Article 19 from Article 21 and 22.
- However, in Maneka Gandhi Case, Supreme Court held that Article 14, 19 and 21 are not mutually exclusive - This means that a law prescribing a procedure for depriving a person of personal liberty has to meet the requirement of Article 19. Also the procedure established by law in Article 21 must confirm with the requirements of Article 14 as well.
- SC in Maneka Gandhi gave an expansive interpretation to the expression "personal liberty" in Article 21. The Court emphasised that the expression "personal liberty" is of the widest amplitude covering a variety of rights "which go to constitute the personal liberty of a man". Some of these attributes have been raised to the status of distinct fundamental rights and given additional protection under Article 19.
- The Court also held that the expression "personal liberty "ought not to be read in a narrow and restricted sense to exclude those attributes of personal liberty which are specifically dealt with in Article 19.

CONCLUSION

- Freedom is at the core of human society, is so crucial for a dignified human life, it should only be constrained in special circumstances.
- The 'harm caused' must be 'serious'. For minor harm, J.S. Mill recommends only social disapproval and not the force of law.
- Thus, these principles of liberty must be followed by the government and the judiciary to ensure that citizens are not unnecessarily restricted or constrained or illegally detained for minor harms which does not need the full might or iron fist of the state.

►ANTI-CONVERSION LAW

States like UP, MP and Himachal Pradesh have passed laws anti-conversion laws that prohibit religious conversion specially for the purpose of marriage.

UTTAR PRADESH PROHIBITION OF UNLAWFUL CONVERSION OF RELIGION ORDINANCE, 2020

- The legislation makes not only religious conversions that are forcefully obtained an offence but that also declares void any conversion found to be made solely for marriage.
- Burden of proof as to whether a religious conversion was affected through misrepresentation, force, undue influence, coercion, allurement or by marriage, lies on the person who has caused the conversion.
- Any aggrieved person, his/her parents, brother, sister, or any other person who is related to him/her by blood, marriage, or adoption may lodge an FIR against such forced conversion.

- Reconversion to person's previous religion will not be illegal even if it is vitiated by fraud, force, allurement, misrepresentation etc.
- Any person accused under the offence shall be punishable with imprisonment from 1 to 5 years and fine of up to Rs. 15,000.
- If any person is involved in forceful conversion of minor, women or person belonging to Scheduled Caste or Scheduled Tribe shall attract a punishment of imprisonment between 2 to 10 years and shall also be liable to fine of up to Rs. 25,000.
- A person previously convicted for forceful conversion, if found guilty for a second time, will be punishable with the double the punishment prescribed.
- Such marriage resulted out of forceful conversion shall be declared as void by the family Court.
- The offence is cognizable and non-bailable. It means that a police officer can arrest an accused without a warrant and bail can only be granted by the Court at their discretion and not by an officer.

ALLAHABAD HIGH COURT ON FREEDOM OF CONSCIENCE

- The HC in overruling the judgment in Noor Jahan recognised the importance of Article 25 and observed that it did not see "Priyanka Kharwar and Salamat as Hindu and Muslim," but rather saw them "as two grown up individuals who out of their own free will and choice are living together peacefully and happily...."
- Article 25 of the Constitution expressly protects the choices that individuals make. In addition to the right freely to profess, practice and propagate religion, it guarantees to every person the freedom of conscience.
- Oxford Dictionary explains the term conscience as "a person's moral sense of right and wrong, viewed as acting as a guide to one's behaviour."
- So, the idea of conscience of a person goes beyond their religion and also involves ethical decision making in their day to day life.

RESTRICTIONS UNDER ARTICLE 25

- Under Article 25(1) - all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion. But state can regulate such practice on grounds of public order, morality and health.
- Further, under Article 25 (2)(a) - state can regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practice.

1977 SUPREME COURT JUDGMENT IN REV. STAINISLAUS V. STATE OF MADHYA PRADESH

- Two anti-conversion law made by the state of Madhya Pradesh and Orissa were challenged
  - The Madhya Pradesh Dharma Swatantrya Adhiniyam, 1968 and
  - The Orissa Freedom of Religion Act, 1967
- These laws required that a District Magistrate be informed each time a conversion was made and prohibited any conversion that was obtained through fraud or illegal inducement.
- Supreme Court upheld two of the earliest anti-conversion statutes in India on grounds of public order.
- Supreme Court held that held that the 'right to propagate' under Article 25 was limited to "*transmit or spread one's religion by an exposition of its tenets*", but that does not include the right to convert another person. The Court held that states are competent to legislate on religious conversion on the grounds of 'Public Order' provided under State List.
- Fundamental right to propagate religion does not include right to convert a person to other religion.

PROBLEMS WITH ANTI-CONVERSION LAW IN INDIA

- Challenge to Secularism - State can interfere in citizens' personal lives including freedom of conscience and free profession of religion as per Article 25.
- Such anti-conversion laws goes against Right to Privacy Judgment thereby against Article 21 as right to privacy also include sanctity of family life, marriage, procreation, home and sexual orientation.
- Informing the District Magistrate about such inter-religious marriages goes against Article 21 as it allows state to interfere with person's right to life and personal liberty.
- Such laws subvert the basic principles of a constitutional democracy that grants individuals freedom of choice and religion. It undermines the free choice of adult women by referring to terms like "allurement".
- It reverses criminal jurisprudence regarding burden of proof - as the person who has converted must prove that the conversion was not done by coercion, force or illegally.

- Can be used as a political weapon against specific religious communities in a politically charged atmosphere.
- Goes against Article 16 of Universal Declaration of Human Rights which says that men and women have the right to marry without any limitation due to race, nationality or religion. Men and women are entitled to equal rights as to marriage, during marriage and at its dissolution.

►UNIFORM CIVIL CODE

Article 44 of the Indian Constitution states that the State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India. However, it is not so easy to make a uniform law on personal laws of all religions as each aspect of personal life like marriage, divorce, succession etc. are governed differently. So, Uniform Civil Code is an attempt to unify all civilian laws including personal laws for people of all faith living in India. UCC is the proposal to administer same set of secular civil laws to govern all people irrespective of their religion, gender, domicile, caste, etc. This law will be distinguished from public law and will subsume all laws covering marriage, divorce, inheritance, adoption and maintenance of different religions into one codified law. However, so far it has been difficult to achieve uniformity in personal laws of all religion.

PRESENT PUSH FOR UCC

- Proposal to Examine UCC by Uttarakhand CM days after Uttarakhand Chief Minister took oath.
- Private Members' Bill proposed on UCC by Rakesh Sinha, Rajya Sabha member.
- Matter to be taken by 22nd Law Commission as per the Law Minister.
- Supreme Court - government should explore the UCC to secure gender justice, equality and dignity of women.
- Proposal by Chancellor of Maulana Azad National Urdu University asked the Supreme Court to direct the government to constitute a judicial commission or a high-level expert committee to prepare a draft UCC in tune with international conventions which protect the rights of women.

UCC AND INDIAN CONSTITUTION

- UCC has been provided under part IV of the Indian constitution and is part of DPSP. Article 44 states - "The *State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."*
- The objective 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. Various minority religions especially the Muslims felt that UCC would curtail their freedom of religion, hence were apprehensive of replacing their personal laws with UCC.
- 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.
- Nevertheless, having UCC embodied in DPSP reflects the intention of securing justice and equality for all citizens.

BENEFITS OF UNIFORM CIVIL CODE

- UCC would not only protect the vulnerable sections, including women and religious minorities, but "promote nationalistic fervour through unity" as well as simplify the complex personal laws.
- It will do away with diversity in matrimonial laws, simplify the Indian legal system and make Indian society more homogeneous.
- It will de-link law from religion.
- It will create a national identity and will help in containing fissiparous tendencies in the country.
- It will also help in establishing social justice and gender equality in family matters.
- The introduction of UCC will promote monogamy among all the citizen of India including Muslim and it will lead to betterment in the position of women.
- It will also remove prejudices against women regarding personal laws on divorce and maintenance.
- It will help in strengthening the secular fabric of the country and promote unity.

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 Shah Bano judgment. The Act allowed maintenance to women only for 90 days after the divorce".

b) In the 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 UCC – 2018

- UCC Neither Necessary nor Desirable - Recently law commission submitted a report on reform of family laws. On the issue of Uniform Civil Code, Law Commission said that UCC is currently neither necessary nor desirable in India.
- Need for Religion wise Amendment - The commission has recommended religion-wise amendment in personal laws to end discrimination against women within the communities.
- Ensure Equality Within Community - It urged the legislature to "first consider equality within communities i.e. between men and women rather than equality between communities". This way some of the differences within personal laws which are meaningful can be preserved and inequality can be weeded out to the greatest extent possible without absolute uniformity.
- Preserve Diversity of Personal laws in absence of Consensus through Codification - In the absence of any consensus on a uniform civil code the Commission felt that the best way forward may be to preserve the diversity of personal laws but at the same time ensure that personal laws do not contradict fundamental rights guaranteed under the Constitution of India. To achieve this, it is desirable that all personal laws relating to matters of family must first be codified to the greatest extent possible, and then the inequalities that have crept into codified law, should be remedied by amendment.

ARGUMENTS AGAINST UNIFORM CIVIL CODE

- Against Right to Freedom of Religion - It will introduce State interference in religious affairs hence against the concept of secularism and may violate Article 25. This may go against S.R. Bommai Judgment which held - *The Constitution has chosen secularism as its vehicle to establish an egalitarian social order. Secularism is part of the fundamental law and* basic *structure of the Indian political system.*
- It may impact the cultural practice of some tribal communities in India.
- Considering the plural society of India – it will be a complex task to unify all personal laws of all religions, castes, communities, tribes etc. across the country.

WAY FORWARD

- Hence, when and if an Uniform civil Code is brought into effect, it will have to ensure a balance between the protecting of fundamental rights and religious principles of different communities. Before enacting a common personal law, it is necessary to take into confidence all religion and communities of India.
- Further, steps can be taken to legislate on such common matters which are least controversial but with complete consent of every community in India. The idea is to provide uniformity in set of rules by consent and not to create more fissures and fault lines in the name of enforcing a uniform common law for India.

►SEDITION PUT ON HOLD

The Supreme Court has suspended pending criminal trials and court proceedings under Section 124A (Sedition) of the Indian Penal Code, while allowing the Union of India to reconsider the 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 new case of sedition is registered, then the accused is at liberty to approach the Court and Court will dispose the case.

In Kedar Nath Singh v. State of Bihar (1962), the Supreme Court upheld the constitutional validity of sedition and noted it as being a reasonable restriction on free speech as provided in Article 19(2) of the Constitution. It made clear that a citizen has the right to say or write whatever she likes about the government, or its measures, by way of criticism or comments, if she does not incite people to violence against the government established by law or with the intention of creating public disorder. So, the question remains as to why sedition is used by the government as a coercive law to invoke fear in the minds of citizens of India.

SEDITION & FREE SPEECH WORKS AT OPPOSITE ENDS

- Sedition and Free Speech operates at two ends of the spectrum but sedition can cross the path of free speech once in a while. Once, threshold of the reasonable restrictions are crossed by an individual, he/she enters into the unknown domain or territory of sedition.
- This world of sedition is mostly one sided as the government holds most of the strings of one's life and personal liberty. So, it is important to know the grey areas where the world of sedition begins and more often than not, it begins with the idea of freedom of speech and expression which is also one of the fundamental right under Article 19(1)(a).
- Free speech is one of the most significant principles of democracy - The purpose of this freedom is to allow an individual to attain self-fulfilment, assist in discovery of truth, strengthen the capacity of a person to take decisions and facilitate a balance between stability and social change. The freedom of speech and expression is the first and foremost human right, the first condition of liberty as it makes the life meaningful. This freedom is termed as an essence of free society.

IMPORTANCE OF FREE SPEECH

- Universal Declaration of Human Rights, 1948, in its Preamble declared freedom of speech as a fundamental right.
- John Stuart Mill advocated for the free flow of the ideas and expressions in a society. He argued that for the stability of a society one must not suppress the voice of the citizens, howsoever contrary it might be. To reach a point of conclusion and that too a right conclusion, in certain cases, open public discussions and debates are inevitable.
- According to Mill, this could be achieved through the right to freedom of speech. The right not only makes it possible to highlight the popular opinion of a society but also provides a platform to the suppressed and unheard people who wish to voice against any celebrated culture.
- Mill further points out that a good government is the one where the intelligence of the people 'is promoted.

RESTRICTIONS OF 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 under Article 19(2) 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 for restriction on free speech.

HISTORY OF SEDITION

- Sedition laws were enacted in 17th century England, when lawmakers believed that only good opinions of the government should survive, as bad opinions were detrimental to the government and monarchy. This sentiment and law was borrowed and inserted into the IPC in 1870.
- Section 113 of Macaulay's Draft Penal Code corresponds to the present section 124A of IPC on sedition. The punishment proposed was life imprisonment. The offence of sedition is provided under section 124A of the Indian Penal Code, 1860 (IPC).
- The law was first used to prosecute Bal Gangadhar Tilak in 1897. That case led to Section 124A of the IPC being amended, to add the words "hatred" and "contempt" to "disaffection", which was defined to include disloyalty and feelings of enmity. Even Mahatma Gandhi was later tried for sedition for his articles in Young India.
- Even in Constituent Assembly, an attempt was made to incorporate sedition to restrict free speech which was opposed by Jawaharlal Nehru.

SUPREME COURT JUDGMENTS ON SEDITION

- Kedarnath Singh vs State of Bihar,1962 - Constitution Bench had ruled in favour of the constitutional validity of Section 124A (sedition) in the IPC. The Court held that a person can be prosecuted for sedition only - *if his acts caused "incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace".*
- Unless an act of a person does not incite violence or disturb public order cannot be booked under the dangerous section of sedition.

- Balwant Singh v State of Punjab, 1995 - Supreme Court, in, acquitted persons from charges of sedition for shouting slogans such as "Khalistan Zindabad" and "Raj Karega Khalsa" outside a cinema after Indira Gandhi's assassination.
- Instead of looking at the "tendency" of the words to cause public disorder, the Court held that *mere sloganeering which evoked no public response did not amount to sedition, for which a more overt act was required.* The accused did not intend to "incite people to create disorder" and no "law and order problem" occurred.
- The court has been categorical in expressing that *every criticism does not amount to sedition and the real intent of the speech must be considered before imputing seditious intent to an act.*
- It was reasoned that raising of some lonesome slogans, a couple of times by two individuals, without anything more, did not constitute any threat to the Government of India as by law established nor could the same give rise to feelings of enmity or hatred among different communities or religious or other groups.
- *Shreya Singhal v. Union of India* - Section 66A of the Information and Technology Act, 2000, was declared unconstitutional on the ground *that it was in direct conflict with the fundamental right of freedom of speech and expression.*
- The Supreme Court 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.
- There are three concepts which are fundamental in understanding the reach of freedom of speech and expression. The first is discussion, the second is advocacy, and the third is incitement.
- 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 that a law may be made curtailing the speech or expression that leads inexorably to or tends to cause public disorder or tends to cause or tends to affect the sovereignty & integrity of India, the security of the State, friendly relations with foreign States, etc.
- The freedom of speech does not only help in the balance and stability of a democratic society, but also gives a sense of self-attainment. In the case of 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
- S. P Gupta v. Union of India - Supreme Court held that the right to know is inherent in the right to freedom of speech and expression under Article 19(1) (a).
- Javed Habib v State of Delhi - it was held that Holding an opinion against the Prime Minister or his actions or criticism of the actions of government or drawing inference from the speeches and actions of the leader of the government that the leader was against a particular community and was in league with certain other political leaders, cannot be considered as sedition under Section 124A of the IPC.
- The criticism of the government is the hallmark of democracy - The democratic system which necessarily involves an advocacy of the replacement of one government by another, gives the right to the people to criticize the government.
- Higher standards of proof needed for conviction under Sedition - This is necessary to protect fair and reasonable criticisms and dissenting opinions from unwarranted State suppression. Legitimate speech must be protected and care must be taken that the grounds of limitation are reasonable and just.
- Section 124A IPC must be read in consonance with Article 19(2) of the Constitution - and the reasonableness of the restriction must be carefully scrutinised based on facts and circumstances of the case. On the other hand, there have also been instances where people have been charged with sedition for making statements that in no manner undermine the security of the nation.

OBSERVATIONS OF LAW COMMISSION

- Dissent and criticism of the government are essential ingredients of a robust public debate in a vibrant democracy. Thus, if the country is not open to positive criticism, there lies little difference between the pre- and post-Independence eras.
- Right to criticise one's own history and the right to offend are rights protected under free speech under Article 19 of the Constitution. While it is essential to

protect national integrity, it should not be misused as a tool to curb free speech.

- Every restriction on free speech and expression must be carefully scrutinised to avoid unwarranted restrictions.
- In a democracy, singing from the same songbook is not a benchmark of patriotism. People should be at liberty to show their affection towards their country in their own way.
- An expression of frustration over the situation cannot be treated as sedition. 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.
- The Commission also asked whether it would be worthwhile to rename Section 124A and find a suitable substitute for the term – sedition

ARGUMENTS IN FAVOUR OF SEDITION	ARGUMENTS AGAINST SEDITION
• Used only in specific circumstances • Application of sedition is a part of reasonable restriction. • Does not curb freedom of speech until it incites violence • Used against anti-national elements or actors such as Naxals, terrorists etc. • Mere misuse of sedition law by one government cannot be grounds for repeal of the law.	• Against democratic norms • Grossly misused by state machinery to quell dissent • Used against writers, journalists, students who raise voice against policies of government. • Draconian in nature • It is used to gag press and freedom of speech and expression. • Has a chilling effect on the freedom of speech.

CONCLUSION

- There is a need to differentiate between strong criticism of the government and incitement of violence. Mere criticism of the government or its policies should not amount to sedition.
- Such a dissent or criticism must be accompanied by incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace which is against the interests of sovereignty and integrity of India or security of the state - for invoking charges under sedition.
- Sedition should not be used by the government against such people voicing their opinion even against the functioning of the government.
- Government must either repeal sedition or introduce amendments to fix specific criteria for use of sedition against any citizen or organisation.

►FIRST & SECOND BACKWARD CLASS COMMISSION

In the backdrop of Supreme Court's Judgment to revisit Indra Sawhney Judgment which caps reservation at 50%, let us also revisit First and Second Backward Class Commission constituted by the government.

KELKAR COMMISSION – FIRST BACKWARD CLASS COMMISSION

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

Second Backward Class Commission (Mandal Commission)	
Who announced its formation?	PM Morarji Desai in December 1978
When was the Report Submitted?	On 31st 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-snearers, 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. Nagraj 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 must 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 must 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. (because 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.

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

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

IMPORTANT HIGHLIGHTS OF THE JUDGMENT

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

►ECONOMIC CRITERIA NOT SOLE BASIS TO DETERMINE CREAMY LAYER

SC has quashed notification issued by Haryana Government and held that economic criterion cannot be sole basis to decide creamy layer within backward classes of Haryana Backward Classes (Reservation in Services and Admission in Educational Institutions) Act, 2016 provides for social, economic and other factors for determination of Creamy Layer.

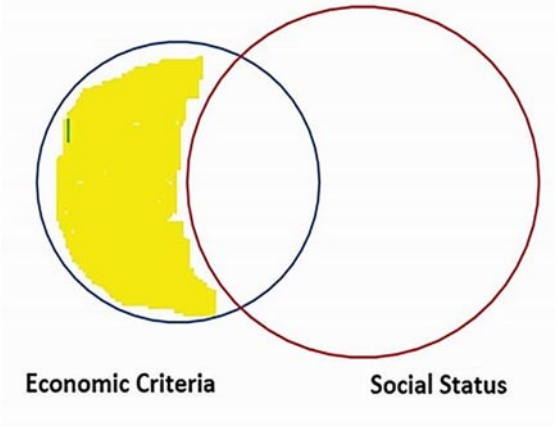
SUPREME COURT'S JUDGMENT

- Haryana Government's notification was in flagrant violation of the directions issued by Supreme Court in Indra Sawhney Judgment.
- Economic criterion should not be the sole basis to identify sections of backward communities as creamy layer.
- Social advancement, higher employment in government services, etc., plays an equal role in deciding whether a person belonged to the creamy layer and could be denied quota benefits.
- Exclusively "economic criteria" were unconstitutional since the category of "poor" did not reflect "social backwardness".
- For the court, 'social backwardness' meant extreme marginalisation in terms of social status, primarily in the form of caste.

SOCIAL STATUS ALSO IMPORTANT TO DETERMINE CREAMY LAYER – SC

- 'Creamy layer' would include "persons from backward classes who occupied posts in higher services like IAS, IPS and All India Services had reached a higher level of social advancement and economic status, and therefore, were not entitled to be treated as backward".

- Likewise, people with sufficient income who were able to provide employment to others, should also be taken to have reached a higher social status and therefore, should be treated as outside the backward class.
- Similarly, persons from backward classes who have higher agricultural holdings or were receiving income from properties beyond a prescribed limit should be included within Creamy Layer.



WELFARE POLICIES	RESERVATION
• Welfare Policies addresses economic marginalisation for the vulnerable sections • Welfare policies are redistributive strategies to mitigate poverty. • It fulfils the constitutional mandate of **Directive Principles of State Policy under Part IV.**	• Reservation addresses exclusion of socially and educationally backwards groups from state power. • Reservations are special policies aimed to include groups which suffered from socio-political marginalisation and were excluded from joining the mainstream. • **Article 16 (4) and 16 (4A) are enabling provisions** and accordingly State has discretion in providing reservation in public services under Article 16(4) or reservation in promotions under Article 16(4A). • If the states wish to provide reservation in promotion, then the **State must collect quantifiable data showing inadequacy of representation of that class in public services.**
	• Even if under-representation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of the Court, the **State cannot be directed to provide such reservations under writ of Mandamus.**

DISADVANTAGES	
CASTE BASED RESERVATION	**RESERVATION ON ECONOMIC CRITERIA**
• There are dominant agrarian castes who are not entirely alienated from assets. • Caste based reservations would lead to inefficiency in administration and may impact overall national development. • Caste based reservations propagates sub-nationalism or regionalism and may hinder national unity and integrity. • Impact of caste dominance in regional and national politics and electoral outcomes.	• Reservations, under the Indian constitution, do not refer to the sharing of state power by all social groups, but the inclusion of subordinated and marginalised groups. • Poverty as a form of subordination does not necessarily reflect social backwardness of the entire group or community which needs measures beyond welfare policies. • Reservation based on economy will allow the upper caste to do away with caste and this may impact backward class representation in education and public services.

►RESERVATION IN PROMOTION NOT A FUNDAMENTAL RIGHT

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

ISSUES CONSIDERED BY SUPREME COURT

1. Whether the State Government is bound to make reservations in public posts?

2. Whether decision of the state to provide or not provide reservation shall be based only on quantifiable data relating to adequacy of representation of persons belonging to Scheduled Castes and Scheduled Tribes?
    1. Can the state refuse to collect quantifiable data regarding the adequacy or inadequacy of representation of the Scheduled Castes and Scheduled Tribes in public services?

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 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 must collect quantifiable data showing inadequacy of representation of that class in public services.
3. Even if under-representation of Scheduled Castes and Schedules Tribes in public services is brought to the notice of the Court, the State cannot be directed to provide such reservations under writ of Mandamus.
4. Supreme Court effectively held that State Government is not bound to make reservations and citizens cannot claim reservation in public services under Article 16(4) and reservation in promotion under Article 16(4A) as Fundamental Right.

►SC UPHOLDS RESERVATION IN AIQS – PROMOTES SUBSTANTIVE EQUALITY

Supreme Court while upholding the validity of reservations in All India Quota Scheme not only recognised the idea of 'substantive equality' but also held that the binary of merit versus reservation is superfluous. Supreme Court in number of other judgments has held that Article 16(1) can exist parallelly along with Article 16(4) and 16(4A) without violating the principles of equality enshrined under Article 14 of Indian Constitution.

ALL INDIA QUOTA (AIQ) SCHEME

- All-India Quota (AIQ) Scheme was introduced in 1986 under directions of 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.

RESERVATION POLICY PURSUED SO FAR

- Until 2007, no reservation was implemented within the All India Quota for medical admission.
- Abhay Nath v University of Delhi and Others (Jan, 2007) - Supreme Court directed that reservation of 15% for Scheduled Castes and 7.5% for Scheduled Tribes be introduced in the AIQ.
- The same year, the government passed THE CENTRAL EDUCATIONAL INSTITUTIONS (RESERVATION IN ADMISSION) ACT, 2007.
- Section 3 of the Act provides for Reservation of seats in Central Educational Institutions in the following manner:

Categories	Percentage of Reservation
Scheduled Caste	15%
Scheduled Tribe	7.5%
Other Backward Classes	27%

BENEFITS OF EWS WAS NOT EXTENDED TO AIQ SCHEME

- CONSTITUTION (ONE HUNDRED AND THIRD AMENDMENT) ACT, 2019 enabled the provision of 10% reservation in educational institutions including private educational institutions, whether aided or unaided by the State for EWS category.
- Accordingly, seats in medical/dental colleges were increased over two years in 2019-20 and 2020-21 to accommodate this additional 10% EWS reservation so that the total number of seats available for unreserved category does not reduce.
- In the AIQ seats, however, the benefit of EWS under Article 15(6) was not extended.

BENEFITS FOR THE STUDENTS

- The OBC students from across the country shall now be able to take benefit of this reservation in AIQ Scheme to compete for seats in any State.
- Around 1500 OBC students in MBBS and 2500 in post-graduation will be benefitted through this reservation.

- Reserved category students need not only depend on reservation provided by state in medical colleges.
- Now, along with the 27% reservation for OBCs, 10% reservation for EWS is also being extended in AIQ seats for all the undergraduate / postgraduate medical/dental courses from the current academic year 2021-22.
- This will benefit every year around more than 550 EWS students for MBBS and around 1000 EWS students for PG medical courses.

SUPREME COURT JUDGMENT – IMPORTANT HIGHLIGHTS

- Binary of merit versus reservation superfluous: While ruling in favour of extending reservation to OBCs, the Court has concluded that the binary has become superfluous.
- Substantive Equality Not an Exception: 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.
- Formal equality inadequate: Formal equality or the principle that everyone competes on an equal footing, is inadequate to address social inequalities. The inherent disadvantages of the less advanced sections, necessitates provisions that help them compete with advanced classes.
- Reservation ensures distributive justice: Reservation is not at odds with merit but furthers its distributive consequences. Merit should be socially contextualized and reconceptualized as an instrument that advances social goods like equality.
- Open competitive examination does not reflect social, economic & cultural disadvantage: Competitive examinations may be necessary for distribution of educational opportunities, but it does not enable equal opportunity for those competing without the aid of social and cultural capital, inherited skills and early access to quality schooling. Merit cannot be reduced to narrow definitions of performance in an open competitive examination which only provides formal equality of opportunity.
- High scores in an examination are not a proxy for merit: Good performance in an examination does reflect hard work, but does not always reflect "merit" solely of one's own making. The rhetoric surrounding merit obscures the way in which family, schooling, fortune and a gift of talents that the society currently values aids in one's advancement.
- Reservation needed for post-graduate courses: SC rejected that there was no need for reservation in post-graduate medical education as impact of backwardness does not simply disappear because a candidate has a graduate qualification and does not create parity between advanced classes and backward classes.

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

The Constitution (One Hundred and Fourth Amendment) Act, 2019 has amended Article 334 of the Indian Constitution to extend reservations for Scheduled Castes (SCs) and Scheduled Tribes (STs). The amendment did not extend the reservation for Anglo-Indians provided under Article 334 and this led to demonstration against this move by sections of Anglo-Indian community.

ARTICLE 334

- Article 334 provided for expiration (after 25th January, 2020, if not extended further) of reservation of seats and special representation for the following:
  (a) Reservation of seats for the Scheduled Castes and the Scheduled Tribes in the House of the People and in the Legislative Assemblies of the States.
  (b) Representation of the Anglo-Indian community in the House of the People and in the Legislative Assemblies of the States by nomination.

EXTENSION OF RESERVATION

- Thus, to extend reservation, government introduced Constitution (One Hundred and Twenty-Sixth Amendment) Bill, 2019 to extend date for reservation for another 10 years up to 25th January, 2030.
- However, the extension of 10 years up to 25th January, 2030 for reservation under Article 334 has been provided only to members of Scheduled Caste and Scheduled Tribes and not to members of Anglo-Indian Communities under Article 334 (b).
- Constitution (One Hundred and Fourth Amendment) Act, 2019 accordingly has amended the marginal heading of Article 334.
- The earlier marginal heading - Reservation of seats and special representation to cease after seventy years – shall be replaced by - *"Reservation of seats and special representation to cease after certain period.*
- The period of seventy years shall be replaced by eighty years for Scheduled Caste and Scheduled Tribes but shall remain seventy years only for Anglo-Indians.

REASONS FOR EXTENDING RESERVATION FOR SC/STs

- The government believes that the reason for which Constituent Assembly granted reservation for Scheduled Castes and the Scheduled Tribes have yet not ceased to exist despite their progress in the last 70 years.
- Therefore, with a view to retain the inclusive character as envisioned by the founding fathers of the Constitution, the government wishes to continue the reservation of seats for the Scheduled Castes and the Scheduled Tribes for another ten years i.e. up to 25th January, 2030 in the House of the People and in the Legislative Assemblies of the States.

►HARYANA GIVING RESERVATION IN PRIVATE JOBS

State Government of Haryana has prepared draft of the *Haryana State Employment of Local Candidates Ordinance, 2020.* The ordinance aims to provide "75% of the new employment to local candidates for jobs having salary of less than Rs 50,000 per month in various privately managed companies, societies, trusts, limited liability partnership firms, partnership firms, etc., situated in the state of Haryana. However, the employers will have the option to recruit local candidates from one district to only 10 percent. Exemption clause shall also be provided if suitable local candidates are not available for a particular category of industry.

CHALLENGE FOR EMPLOYERS

- It may not be viable for the private organisations as they work on profit driven motive and accordingly hire the best talent available in any salary bracket.
- Many corporates and MNCs are situated in Gurugram and nearby areas adjacent to Delhi. To avoid state wrath and ensure productivity and business, the employers of the NCR Region and may either relocate to nearby state of UP in the National Capital Region of Delhi or shift the residence of their employees at least on paper to either Delhi or UP.

LEGAL CHALLENGE

- The Ordinance of Haryana can be constitutionally challenged to violate Article 19(1)(g) which states that all citizens have right to practice any profession, or to carry on any occupation, trade or business
- The Ordinance can be challenged to violate Article 14 of the constitution which ensures equality before the law or the equal protection of the laws within the territory of India.
- Earlier even Andhra Pradesh Government had provided 75 per cent reservation to locals in government and private jobs. The Andhra Pradesh High Court directed the State government to inform if the law on quota for locals was enacted as per the Constitution.
- It was contented that the Reservation provided by Andhra Government is violative of Article 16(2) and Article 16(3) of the Constitution.
- Article 16 - Equality of opportunity in matters of public employment

  (1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State.

  (2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.

  (3) Nothing in this article shall prevent Parliament from making any law prescribing, regarding a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.

PROVIDING RESERVATION TO LOCALS – PUBLIC AND PRIVATE SECTOR	
BENEFITS	**DISADVANTAGE**
Enhanced economic opportunity to the local population including the vulnerable section and the reserved categories.	***It creates a sense of state pride and sentiments against migrants from other states.*** ***Migrants are viewed jealously and increases risk for the lives and safety of migrants in such polarized atmosphere of regionalism.*** ***Overall such a policy will increase social tension.***
Prevents unnecessary migration to other states.	***Against larger constitutional goals it hinders national integration.***
Improve socio-economic conditions of large section of state's population. ***With continuous source of***	***Against - Article 14, 19(1)(e) & 19(1)(g)*** ***Against right to equality, right to reside and settle***

income, such families can afford healthy and nutritious diet. ***This will also help in achieving various Sustainable Development Goals related to health, nutrition, wellbeing, achieving zero hunger etc.***	***in any part of the territory of India and right to practice any profession, or to carry on any occupation, trade or business.***
Creates stronger bonds among citizens of states and this can help to reduce communalism in the society.	***Dissuade private sector investment and harm economic interest of the state in the longer run.***
Increase spending in the state.	***Prevent flow of remittances into poorer states of India and hence promote regional inequality.***
It fulfils the mandate of **Article 16(2) and 16(3)** respectively. **Article 16(2)** - *No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them, be ineligible for, or discriminated against in respect of, any employment or office under the State.* **Article 16(3)** - *Nothing in this article shall prevent Parliament from making any law prescribing, about a class or classes of employment or appointment to an office under the Government of, or any local or other authority within, a State or Union territory, any requirement as to residence within that State or Union territory prior to such employment or appointment.*	***The idea of sons of the soil will seep into regional politics and this will impact the social fabric of our society.*** ***It will give rise to politics based on segregation.*** ***Such policies will also impact economic growth of the state as many outsiders will be forced to leave state including unskilled, semi-skilled and skilled human resources.*** ***So, overall bad politics will lead to poor economic growth of the state.***

►SCHEDULED CASTE/ SCHEDULED TRIBE CAN HAVE SUB-GROUPS

In State of Punjab vs. Davindar Singh, a five-judge Constitution Bench of Supreme Court (headed by Justice Arun Mishra) 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".

SUB-CATEGORISATION PROVIDED BY PUNJAB HELD UNCONSTITUTIONAL BY HIGH COURT

- Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 provides that 50% of the vacancies of the quota reserved for Scheduled Castes in direct recruitment, shall be offered to Balmikis and Mazhbi Sikhs, if available, as a first preference from amongst the Scheduled Castes.
- This provision was held unconstitutional by Punjab and Haryana High Court as the Court relied on the judgment pronounced in *V Chinnaiah vs State of Andhra Pradesh and Others* which disallows such sub-categorisation in reservation for Scheduled Caste and Scheduled Tribes.
- E.V. Chinnaiah 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.

JUDGMENT GIVEN BY SUPREME COURT

- The Court held that sub-classification made under Punjab Scheduled Castes and Backward Classes (Reservation in Services) Act, 2006 was to ensure that the benefit of the reservation percolate down to the deprived section, to provide benefit to all and give them equal treatment.
- The Court held that such sub-classification would not amount to exclusion from the list 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. The Court said that creamy layer for 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.
- As per Article 16(4) and Article 342A, it would not be permissible to adopt different criteria for Scheduled Castes, Scheduled Tribes, and socially and educationally backward classes.
- It is State's obligation to undertake the emancipation of the deprived section of the community and eradicate inequalities. So to remove inequality even within same community, State can sub-classify and adopt distributive justice method so that State

benefits does not concentrate in few hands and equal justice to all is provided as per Article 39.(b) and 39(c).

►SUB-CATEGORISING OF OBCs

Five-year data on OBC quota implementation in central jobs and higher educational institutions showed that a very small section among members of OBC have taken majority of benefits of reservation. The government to quantify the flow of benefits among different communities among OBC and to achieve greater social justice and inclusion for all, President in exercise of the powers conferred under Article 340 appointed a Justice G. Rohini Panel. The commission will examine the sub-categorisation of Central List of the Other Backward Classes (OBC).

OTHER REPORTS ON SUB-CATEGORISATION OF OBC

Sub-categorisation of OBCs has been recommended by a few Commissions and implemented by some states based on social backwardness as the criteria.

- The First Backward Class Commission report of 1955, also known as the Kalekar Report, had proposed sub-categorisation of OBCs into backward and extremely backward communities.
- In the Mandal Commission report of 1979, a dissent note by member L R Naik proposed sub-categorisation in intermediate and depressed backward classes.
- In 2015, former National Commission for Other Backward Classes under Justice (Retd) Eswaraiah asked for sub-categorisation within OBCs into Extremely Backward Classes (Group A), More Backward Classes (Group B) and Backward Classes (Group C).
- Presently, 10 states, have sub-categorised OBCs using varying criteria, including ascribed status such as de-notified, nomadic or semi-nomadic tribes, the religion of a community, caste status before conversion to Christianity or Islam, and perceived status socially or traditional occupation.

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- Commission was to examine the sub-categorisation of Central List of the Other Backward Classes (OBC).

ROHINI COMMISSION'S PROPOSAL

- The Commission has drawn up a proposal for FOUR CATEGORY FORMULA.
- Commission intends to divide total OBC castes in Central List into four subcategories.
- 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. This proposal is yet not final.

ARGUMENTS SUPPORTING SUB-CLASSIFICATION

- Reservation system promotes equality among equals as enshrined in Article 14.
- Extension of Reservation every ten years has ensured socio-economic upliftment of the weaker sections.
- Justice Ramachandra Raju Commission, 1997 recommended sub-dividing SCs into four groups and apportioning reservations separately for each.
- 2018 judgment in Jarnail Singh v Lachhmi Narain Gupta mentioned that priority can be given to weaker class among existing SC/STs and has said that creamy layer concept can be applied to SC/ST.
- Article 16 (4) provides that the State can make any provision for the reservation of appointments or posts and in matters of promotion in favour of any backward class of citizens who, in the opinion of the state, are not adequately represented in the services under the State.
- Article 15(4) empowers the state to create special arrangements for promoting the interests and welfare of socially and educationally backward classes of the society such as SC and STs.
- Sub-Quota given by different states – States like Andhra Pradesh, Punjab, Tamil Nadu and Bihar have introduced special quotas for the most vulnerable Dalits. For example, in Tamil Nadu, a 3% quota within the SC quota is accorded to the Arundhatiyar caste.
- Horizontal Reservation provided by state governments further propels the development of SC/ST in educational and public services.

ARGUMENTS AGAINST SUB-CATEGORIZATION

- States do not have power to alter Presidential list that identifies SCs and STs under Article 341 & 342.
- Non-uniform categorisation of SC/ST across states: A caste notified as SC/ST in one state may not be a SC/ST in another state. These vary from state to state.
- Test or requirement of social and educational backwardness cannot be applied to SCs & STs.

- Categorising any caste as SC/ST by Centre may be done only for vote bank politics.
- Only certain section of SC/ST enjoys benefits in education and public services due to extreme poor conditions of rest of the communities within SC/ST.

►ECONOMICALLY WEAKER SECTION

SC has referred Constitution 103rd Amendment Act, 2019 to a Constitution Bench. The act provides for 10% reservation to economically weaker section of society over and above existing reservation in government jobs and admission to education institutions as per provisions of newly inserted Articles 15(6) and 16(6) of Constitution. This is in pursuance of objectives of Article 46 of Constitution.

CONSTITUTION (103RD AMENDMENT) ACT, 2019

- Reservation of 10% will be over and above existing 50% reservation enjoyed by members of SCs, STs and OBCs. This will take total reservation to 60%.
- Intends to include such members who do not avail benefits of reservation. This includes members in general category, minority communities including Muslims, Sikhs, Buddhists, Christian and others who do not enjoy any kind of reservation.
- Criteria to avail benefits of reservation as EWS:
  - Persons whose family has gross annual income of less than Rs. 8 lakh per annum.
  - Persons possess less than 5 acres land.
  - Have agricultural land of less than 5 acres.
  - Have a house smaller than 1,000 sq. ft.
  - In a municipality, a residential plot smaller than 100 yards.
  - In a non-notified municipality, a residential plot of less than 200 yards.
- Economically Weaker Sections shall be notified by State from time to time based on family income and other indicators of economic disadvantage.'

ONGOING CONSTITUTIONAL DEBATE AROUND ECONOMIC RESERVATION IN INDIA

- SC has ruled against exceeding maximum of 50% reservation (Indira Sawhney Case, 1992).
- However, states like Tamil Nadu go beyond this limit and SC has upheld the state's policy many a time. Presently, TN has a 69% quota system.
- Youth for Equality has filed a writ petition arguing that 103rd amendment violates basic structure doctrine.
- However, Economic reservation finds its ground in terms of equality. It is difficult to see how economic reservation damages or destroys the concept of equality, and consequently Basic Structure.
- It is said that it is against idea of equal opportunity as it favours a few and provide them special privileges discriminating others.
- However, act enable inclusion of those who are left behind because of economic disabilities. Thus brings economic welfare of the society.
- Private, unaided educational institutions, have argued that their fundamental right to practice a trade/profession is violated when the state compels them to implement its reservation policy
- However, for the unaided institutions, it argued that the Constitution allows the Parliament to place reasonable restrictions on the right to carry on trade.

CONCLUSION

Thus, 103rd amendment act it poses a difficult judicial examination. No doubt it envisions to uplift economically weaker sections of the society, but its constitutional validity needs to be examined.

IMPORTANT ORGANIZATIONS

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	The jurisdiction of the Central Bureau of Investigation(CBI) regarding lodging an FIR and conducting probe within a particular state is being questioned by various States. However, the power of States to withhold consent to the CBI is not absolute. Explain with special reference to the federal character of India.
2021	Though the Human Rights Commissions have contributed immensely to the protection of human rights in India, yet they have failed to assert themselves against the mighty and powerful. Analyzing their structural and practical limitations, suggest remedial measures.
2020	Which steps are required for constitutionalization of a Commission? Do you think imparting constitutionality to the National Commission for Women would ensure greater gender justice and empowerment in India? Give reasons.
2019	"The Attorney-General is the chief legal adviser and lawyer of the Government of India." Discuss
2018	Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Schedules Castes in the religious minority institutions? Examine.
2018	"The Comptroller and Auditor General (CAG) has a very vital role to play." Explain how this is reflected in the method and terms of his appointment as well as the range of powers he can exercise.
2018	How is the Finance Commission of India constituted? What do you know about the terms of reference of the recently constituted Finance Commission? Discuss.
2018	How are the principles followed by NITI Aayog different from those followed by the erstwhile Planning Commission in India? (GS III)
2018	Whether National Commission for Scheduled Castes (NCSC) can enforce the implementation of constitutional reservation for the Schedules Castes in the religious minority institutions? Examine.
2016	Exercise of CAG's powers in relation to the accounts of the Union and the States is derived from Article 149 of the Indian Constitution. Discuss whether audit of the Government's Policy implementation could amount to overstepping its own (CAG) jurisdiction

CONSTITUTIONAL BODIES

►COMPTROLLER & AUDITOR GENERAL

CAG of India is the Supreme Audit Institution of India (SAI) appointed by the President under Article 148. As a constitutional body, CAG by auditing the accounts and related activities of the government and its institutions acts as the guardian of public purse.

The CAG's (Duties, Powers and Conditions of Service) Act, 1971 (enacted as per Article 149) provides for duties and powers to compile and audit accounts. The CAG is also the head of the Indian Audit and Accounts Department, the affairs of which are managed by officers of Indian Audit and Accounts Service.

FUNCTIONS OF CAG

- Audit all receipts and expenditure of Union and States which are payable into the Consolidated Fund of India and of each State and of each Union territory having a Legislative Assembly and ensure that rules and procedures are followed.
- Ascertain legal sanctity for amounts disbursed by Parliament and State Assemblies.
- Audit all transactions of the Union and of the States relating to Contingency Funds and Public Accounts.
- Audit all trading, manufacturing, profit and loss accounts and balance-sheets and other subsidiary accounts kept in any department of the Union or of a State - and report on the expenditure, transactions or accounts so audited.
- Audit of receipts and expenditure of bodies or authorities substantially financed from Union or State Revenues including government companies and corporations.
- Scrutinise the procedure under which loan is granted to any authority or body.
- Inspect any office of accounts under the control of the union or of a State, including treasuries, and such offices responsible for the keeping of initial or subsidiary accounts.

DIFFERENT KINDS OF AUDIT

- Efficiency-cum-performance audit was started in 1958 on the recommendations of Public Accounts Committee in lieu of growing development schemes and projects (like multipurpose hydroelectric power projects) launched by the central government.
- System-based Audit of Revenues was introduced in 1960 on Public Accounts Committee's recommendations to strengthen the system of tax assessment and collection by the central and state revenue departments. Systems-based audit of revenues helped the Ministry of Finance to frame amendments to various acts, rules, and procedures.
- Performance audits can be of two kinds: compliance-oriented (are things being done right?) or research oriented (are the right things being done?).

AUDIT AS PER CAG'S (DUTIES, POWERS AND CONDITIONS OF SERVICE) ACT, 1971

The completeness and accuracy of accounts is examined in audit to verify that there is proper voucher or proof of payment. Section 13 of the Act enjoins on the Comptroller and Auditor General the duty to audit all expenditure from the Consolidated Fund of India, of each State and each Union Territory having a Legislative Assembly.

The audit of expenditure is comprehensive and includes:

- Audit against provisions of funds - Audit against provision of funds is aimed at ascertaining whether the moneys shown in the accounts as having been disbursed, were legally available for and applicable to the service or purpose to which they had been applied or charged.
- Regularity audit - The objective of regularity audit is to see whether the expenditure conforms to the authority, which governs it.
- Propriety audit - Propriety audit is directed towards examining the propriety of executive action beyond the formality of expenditure to its wisdom, faithfulness and economy, and bringing to notice cases of waste, losses and extravagant expenditure.
- Efficiency-cum-performance or value for money audit - is a comprehensive appraisal of the progress and efficiency of the execution of development and other programs and schemes wherein an assessment is made as to whether these are executed economically and whether they are producing the results expected of them.
- Systems audit - organization and systems governing authorization, recording, accounting and internal controls are analyzed and performance evaluated with reference to standards of quality.

AUDIT OF COMMERCIAL ACCOUNTS

- The fundamental objectives of audit of accounts of companies/corporations are to ascertain whether the Financial Statements:

(a) present true and fair view of the entity's financial position;

(b) are prepared in accordance with the IndAS Standards and Companies Act, 2013 and laws governing the entities;

(c) are presented with due consideration to the circumstances of the audited entity;

(d) contain sufficient disclosures about their various elements, including any unusual items; and

(e) various elements thereof are properly evaluated, measured and presented.

- The detailed audit of accounts of Government Companies and deemed Government Companies is conducted by statutory auditors appointed under the Companies Act by the CAG. He can also issue directions to the statutory auditors for conduct of audit, authorized their reports.

AUDIT MANDATE - PSUS

- Public Sector Undertakings which function on commercial lines and whose commercial accounts come under the audit of the Comptroller & Auditor General can be broadly grouped into the following four categories:

(i) Government companies, i.e. companies in which the Central and/or State Governments own not less than 51 per cent of the paid-up share capital.

(ii) Deemed Government companies under the Companies Act, 2013.

(iii) Statutory bodies wholly or mainly financed by Government and set up under Acts of Parliament and/or State or Union Territory Legislature; and

(iv) Government commercial and quasi-commercial departmental undertakings, that are managed departmentally.

SCRUTINY OF FUNCTIONS OF CAG BY PUBLIC ACCOUNTS COMMITTEE

- As per parliamentary rules, the CAG's reports are examined by the PAC, except for the ones prepared on commercial undertakings, which are examined by the Committee on Public Undertakings (COPU). Over time, a convention also developed that the CAG would assist the Estimates Committee whenever required.
- The Committee on Public Accounts scrutinizes Appropriation Accounts of the Government of India and the reports of the Comptroller and Auditor General of India presented to President of India under Article 151.
- While scrutinizing the Reports of the CAG on Revenues Receipts, the Committee examines various aspects of Government's tax administration such as cases involving under-assessments, tax-evasion, non-levy of duties, misclassifications etc.
- PAC thus, identifies the loopholes in the taxation laws and procedures and makes recommendations to check leakage of revenue.

CONCERNS – FUNCTIONING OF CAG

- Appointment of CAG by the Executive reflects bias – despite PAC's recommendation of appointment by a Select Committee.
- Over centralisation of functions of audit of expense and revenue of Union and State government – impacts quality of audit
- Disciplinary control and regulation over officers belonging to first and second line of financial control in public works – also leads to corruption in
- Reduced financial oversight due to off-budget financing undertaken by PSUs through market borrowings based upon loan repayment guarantee by the Government.
- Increasing tendency of government expenditure being out of purview of audit as funding of NGO's by government and PPP are outside the mandate of CAG audit.

SUGGESTIONS FOR STRENGTHENING CAG

Even increasing demand from citizens for probity and accountability especially in matters of public finance has increased the salience of CAG and its functioning. Thus, the following steps need to be taken to strengthen CAG:

- Appointment of the CAG should be done by multi-member Select Committee to make the appointment process participatory and transparent. The Chairman of PAC should be part of this committee.
- Expanding the powers of CAG by empowering it to audit NGOs substantially funded by State and Public Private Partnership Projects.
- CAG to be given powers of RTI to extract information from ministries/departments in fixed time.
- Panchayats and municipalities finances to be audited by CAG as an increasing expenditure happens through this time.
- CAG to develop mechanisms for incorporating social audit and use of technology in making audit process more participative and efficient.
- CAG should audit major public welfare schemes of the government.

►ATTORNEY GENERAL OF INDIA

A person who is qualified to be appointed as Judge of the Supreme Court is appointed as Attorney General of India (AGI) by the President under Article 76 of the Indian Constitution and forms part of Union Executive. The Attorney-General shall hold office during the pleasure of the President, and shall receive such remuneration as the President may determine.

IMPORTANT FUNCTIONS & DUTIES OF AGI

- Provide legal advice to Government of India (GoI) on all important matters.
- Appear in Supreme Court or in any High Court on behalf of GoI (including suits, writ petitions, appeal and other proceedings).
- Represent GoI in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- Defend government's initiatives and moves if they are challenged on grounds of constitutionality or otherwise.
- Article 88 of the Constitution confers on AGI the right to speak, right to participate 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.
- However, in such proceedings, the Attorney general is not entitled to vote in such proceedings.

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.
- defend an accused person in a criminal prosecution, without the permission of the Government of India
- Accept appointment to any office in any company or corporation without the permission of the Government of India.
- Advise any Ministry or Department of GoI or any statutory organization or any Public Sector Undertaking 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.
- 2015 - Single Judge Bench of Delhi High Court ruled that AGI is a public authority as he performs the functions required under Article 76(2) of the Indian Constitution and fulfils the definition of public authority provided under RTI Act and there is no need to apply the test of "state" under Article 12.
- 2017 - However, Division Bench of Delhi High Court overruled the earlier judgment 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.

CONCERNS

- Exemption from disclosure under RTI Act.
- Selective approval from central government to represent in criminal proceedings of private clients which mostly includes cases pertaining to members affiliated to ruling party.
- As per Law Officer (Conditions of Service) Rules, 1987, a law officer shall be appointed for three years and can be again re-appointed for further three years. So, this often led to politicisation of the office of Attorney General of India.

SOLICITOR GENERAL OF INDIA

Ministry of Personnel, Public Grievances and Pensions through its notification of June 2020 has extended the term of Mr. Tushar Mehta as the Solicitor General (SG) for another three years. As per the notification, the Appointments Committee of Cabinet approved the re-appointment of Mr. Tushar Mehta as Solicitor General of India with effect from July 1 for a period of three years or until further orders.

ABOUT SOLICITOR GENERAL OF INDIA

- Law Officer (Conditions of Service) Rules, 1987 provides for the functions of Law Officer which includes the Attorney-General for India, the Solicitor-General for India, Additional Solicitor-General for India. Unlike the AG, Solicitor General's duties and functions are not provided in the Constitution of India.
- He is the secondary law officer of India after the

Attorney General of India and assists the AG in performing his responsibilities.

- Under the Conditions of Service Rules, Law Officer including the Solicitor General is appointed for a period of 3 years and can be re-appointed.

DUTIES OF SOLICITOR GENERAL – WHO IS ALSO A LAW OFFICER OF INDIA

- Give advice to the Government of India upon such legal matters, and perform legal duties which may be referred or assigned by the Government of India.
- Appear in the Supreme Court or in any High Court on behalf of the Government of India in cases including suits, writ petitions, appeal and other proceedings in which the Government of India is concerned as a party or is otherwise interested.
- Represent the Government of India in any reference made by the President to the Supreme Court under Article 143 of the Constitution.
- Discharge such other functions as are conferred on a Law Officer by or under the Constitution or any other Law for the time being in force.

►PUBLIC SERVICE COMMISSIONS

Government of India Act, 1935 provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces. Similar provisions have been adopted in the Indian Constitution from Article 315 to Article 323.

THE FUNCTIONS OF PUBLIC SERVICE COMMISSION ARE

1. Conduct examinations for appointment to the services of the Union.
2. Direct recruitment by selection through interviews.
3. Appointment of officers on promotion / deputation / absorption.
4. Advising the Government on matters relating to:
   (i) methods of recruitment to civil services and for civil posts
   (ii) principles to be followed in making appointments, promotions and transfers from one service to another
   (iii) Assist States in framing and operating schemes of joint recruitment for any services for which candidates possessing special qualifications are required.
   (iv) disciplinary cases relating to different civil services
   (v) Framing and amendment of Recruitment Rules for various services and posts under the Government.
5. Presentation of Annual Report by Union Public Service Commission to the President and by respective State Public Service Commissions to their Governor regarding work done by the Commission. Such Report shall be laid before each House of the Parliament for UPSC and before house of houses of Legislature of respective states.

►NATIONAL COMMISSION FOR SCHEDULE CASTE

The National Commission for Scheduled Castes is an constitutional body established under Article 338 with a view to provide safeguards against the exploitation of Scheduled Castes and Anglo Indian communities to promote and protect their social, educational, economic and cultural interests, special provisions were made in the Constitution. Constitution 89th Amendment constituted two separate Commission for the welfare of Scheduled Castes and Scheduled Tribes.

DUTIES AND FUNCTIONS OF THE COMMISSION

- Investigate and monitor all matters relating to the safeguards of Scheduled Castes under the Constitution or under any law or any order of the Government and Evaluate the working of such legal safeguards provided to protect Scheduled Castes.
- Inquire into specific complaints with respect to the deprivation of rights and safeguards of the Scheduled Castes.
- Participate and advise in the planning process of socio-economic development of the Scheduled Castes and to evaluate the progress of their development under the Union and any State.
- Present Annual Report or other Reports to the President upon the working or implementation of safeguards for members of Scheduled Castes.
- Recommend Union/States measures to implement effective safeguards and other measures for the protection, welfare and socio-economic development of Scheduled Castes.
- Ensure protection, welfare and development and advancement of the Scheduled Castes.

POWERS OF THE COMMISSION

While investigating matters to inquire into any complaint, the Commission has powers of a Civil Court trying a suit and in respect of the following matters:

(a) summoning and enforcing attendance of any person from any part of India and examining them on oath.

(b) requiring discovery and production of any documents.

(c) receiving evidence on affidavits.

(d) requisitioning any public record or copy from any court or office.

(e) issuing summons/communications for the examination of witnesses and documents.

(f) any other matter which the President may by rule determine.

According to Article 338(9), Union and every State Government shall consult the Commission on all major policy matters affecting Scheduled Castes.

CHALLENGES & CONCERNS

- Despite adequate constitutional and legal safeguards, members of Scheduled Castes still face discrimination and atrocities in the society without adequate safeguards.
- Financial, Administrative and Operational constraints in the functioning of NCSC and over empowering of officials of Ministry of Social Justice further weaken NCSC.
- The Annual Report by the Commission is seldom placed in both Houses of Parliament and when tabled after several years, is barely debated.
- There has been a decline in quality of data presented through Annual Reports.
- Politicised nature of appointments in the Commission impacts rights and safeguards of SCs.

SUGGESTIONS

- An amendment is required either in Article 338 itself, or in the rules by which the President may fix a period for the discussion of the Report in Parliament.
- The Commission must undertake qualitative studies by commissioning social anthropologists and social scientists to undertake studies and to institutionalize mechanisms by which contemporary changes and transitions in the social structure can be reflected, recorded and acted upon.

►NATIONAL COMMISSION FOR SCHEDULE TRIBES

Article 338A inserted by Constitution 89th Amendment established National Commission for Scheduled Tribes.

FUNCTIONS OF THE COMMISSION

- Investigate, monitor & evaluate issues pertaining to legal safeguards provided to members of STs under Constitution, laws or government orders.
- Inquire into specific complaints relating to violation of rights & safeguards of STs.
- Participate and advise in planning process relating to their socio-economic development.
- Evaluate progress of development of STs.
- Submit annual report and other reports to President regarding working of safeguards, measures needed for effective implementation of programs/schemes for welfare and socio-economic development of STs.
- Other measures to be taken by NCST for protection, welfare and development & advancement of the Scheduled Tribes, namely:
  - (i) Conferring ownership rights in respect of minor forest produce to the Scheduled Tribes living in forest areas.
  - (ii) Safeguard rights to the Tribal Communities over mineral resources, water resources etc. as per law.
  - (iii) Development of tribals and to work viable livelihood strategies.
  - (iv) Improve efficacy of relief and rehabilitation measures for tribal groups displaced by development projects.
  - (v) Prevent alienation of tribal people from land and to effectively rehabilitate such people in whose case alienation has already taken place.
  - (vi) Elicit maximum cooperation and involvement of Tribal Communities for protecting forests and undertaking social afforestation.
  - (vii) Ensure full implementation of the Provisions of Panchayats (Extension to the Scheduled Areas) Act, 1996.
  - (viii) Reduce and ultimately eliminate the practice of shifting cultivation by Tribals that lead to their continuous disempowerment and degradation of land and the environment.

POWERS OF NCST

For Investigation and Inquiry into matters related to Scheduled Tribes, the Commission is vested with powers of a Civil Court having authority to:

(a) Summon and enforce attendance of any person and examine on oath.

(b) Discovery & production of any documents.

(c) Receive evidence on affidavits.

(d) Requisition any public record or copy thereof from any court or office.

(e) Issue Commissions for examination of witnesses and documents.

CONCERNS & CHALLENGES

- Despite constitutional stature, NCST has not brought about qualitative change in lives of STs.
- More concerned with day to day matters of transfer, posting and employment of tribals in government,
- All petitions received by NCST are not recorded.
- The mismatch between atrocities taking place and cases which NCST deals with can be attributed to the following reasons:
  - not all cases which are registered require Commission's intervention,
  - Understaffed: lack of dedicated staff to deal with the volume of cases that are registered.
  - tendency among staff to concentrate on more easily manageable service cases and neglecting other cases pertaining to the atrocities.
- The Commission rarely issues summons to officers from different departments or ministries for non-compliance of orders from the Commission regarding redressal of complaints.
- In cases where atrocities are committed by public servants including police and forest officials, follow up with the complaints become difficult for the Commission.
- Overlapping jurisdiction of NCST with other government agencies with respect to investigation into atrocities committed on STs.
- Commission functions under Ministry of Tribal Affairs and appointment by the Centre also becomes another area of concern.

SUGGESTION

- Chairman and Members of NCST should be carefully chosen keeping in view their capability, commitment and experience.
- Adequately staffing the NCST to fulfil its duties.
- Increasing the number of regional offices of NCST for ensuring one regional officer for all states having substantial tribal population.
- Existing independent investigating machinery in the Commission needs to be strengthened.
- To effectively deal with violation of rights of STs, the Commission should be conferred powers to impose sanctions on defaulting officials to enable the Commission to effectively discharge its functions relating to safeguards of the Scheduled Tribes.
- The report of NCST along with action taken report should be laid before each house of Parliament within three months of submission.

►NATIONAL COMMISSION FOR BACKWARD CLASSES

National Commission for Backward Classes (NCBC) was initially constituted by the Central Govt under the National Commission for Backward Classes Act, 1993. However, the Constitution (One Hundred and Second Amendment) Act, 2018 gave NCBC constitutional status and inserted Article 338B in the Indian Constitution. Article 338B establishes National Commission for Backward Classes (NCBC) and provides it the authority to examine complaints and welfare measures regarding socially and educationally backward classes (SEBCs). Accordingly, the Union and every State Government shall consult the Commission on all major policy matters affecting the socially and educationally backward classes. Constitution 102nd Amendment also repealed the National Commission for Backward Classes Act, 1993. The Amendment states that the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.

FUNCTIONS OF THE NCBC

- Investigate and Monitor matters relating to Safeguards provided for SEBCs under this Constitution or any law or government order.
- Evaluate the working of such legal safeguards provided for the socially and educationally backward classes.
- Inquire into specific complaints with respect to the deprivation of rights and safeguards of SEBCs.
- Participate and advise on the socio-economic development of SEBCs and to evaluate the progress of their development under the Union and any State.
- Suggest measures to be taken by Union or states for the effective implementation of those safeguards and other measures for the protection, welfare and socio-economic development of SEBCs.

- Present Annual Reports upon working of those safeguards including other Reports.

POWERS OF THE NCBC

For Investigation and Inquiry into matters related to safeguards provided to SEBCs, the Commission is vested with powers of a Civil Court having authority to:

(a) Summon and enforce attendance of any person and examine on oath.

(b) Discovery & production of any documents.

(c) Receive evidence on affidavits.

(d) Requisition any public record or copy thereof from any court or office.

(e) Issue Commissions for examination of witnesses and documents.

CONSTITUTION 105TH AMENDMENT

- Constitution 105th Amendment by amending Article 338B, 342A and 366(26C)allow states and union territories to prepare their own list of socially and educationally backward classes.
- Constitution 102nd Amendment 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 i.e. by an act of legislature 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 Bill exempts states and union territories from this requirement for matters related to preparation of their list of socially and educationally backward classes.*

STATUTORY AND OTHER ORGANIZATIONS

►NATIONAL & STATE HUMAN RIGHTS COMMISSION

NHRC is a statutory body that was established in 1993 through the Protection of Human Rights Act (PHRA), 1993. It consists of a Chairman and 4 members that aim to provide an institutional arrangement for upholding of human dignity and prevention of human rights violations. 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 and endorsed by the United Nations General Assembly.

FUNCTION OF NHRC

(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.

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

Amendment provides for

- Former Judge of Supreme Court and High Court to be the Chairperson of NHRC and SHRC respectively.
- Increased membership of NHRC from 2 to 3 members of which one person shall be a woman.
- Reduced the term of the Chairperson and Members NHRC & SHRC from five to three years and has made them eligible for reappointment.
- Deemed Members of NHRC includes 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.

But since the new amendments do not make the nature of decisions of NHRC & SHRC binding and leave it to perform ceremonial functions in cases of human rights abuse. The experts have hailed it to be failing to solve the inherent problem of the organisation.

ISSUES CONCERNING NHRC

- Non-filling of vacancies: Most human rights commissions are functioning with less than the prescribed Members. This limits the capacity of commissions to deal promptly with complaints, especially as all are facing successive increases in the number of complaints.
- Non-proportionate use of limited Resources: Large chunks of the budget of commissions go in office expenses, leaving disproportionately small amounts for other crucial areas such as research and rights awareness programs.
- Limited Manpower to address increasing complaints.
- Powers are only advisory in nature.
- Members lack any experience in dealing with Human rights issues.
- Not empowered to look into matter post one year of its occurring.

Hence, needs exist to be adequately empower NHRC by enhancing its financial and human resource base, making its decision immediately enforceable etc. These steps shall go a long way in ensuring their success in promoting and protecting human rights.

SUGGESTIONS

- Decisions of NHRC must be made binding from merely being an advisory body.
- Proceedings to be made Quasi-Judicial in the Nature - since NHRC already has the powers of a civil court, and its proceedings are already deemed to be judicial proceedings.
- Status should be enhanced to that of a constitutional body to ensure compliance of its decisions.
- Change in the composition through introduction of civil society members.

Hence, a complete revamping of NHRC is required to make it more effective and truly a watchdog of human rights violations in the country.

►LOKPAL & LOKAYUKTA

FIRST ARC ON LOKPAL

The 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 rest of the bureaucracy.
- Each government department should have a 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 favouritism. 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 the Prime Minister or the Chief Minister and they can then set the machinery of law in motion and inform the Lok Pal.

NCRWC ON LOKPAL

The National Commission to Review the working of the Constitution (NCRWC) made the following recommendations on corruption and Lokpal:

- The Constitution should make the appointment of Lok Pal. But the office of the Prime Minister should be kept out of the purview of the Lok Pal.
- The Petitions Committee of Parliament should be attached as the supplementary body to the institution

of Lok Pal for ventilation, investigation and to redress the grievances of public against the administration.

- For fighting the corruption Public Interest Disclosure/ Whistle-Blower Act should be enacted to protect the informants.
- A law should be framed for those public servants who are making a loss to the State by malafide actions or omissions and be made liable to loss or damages.
- Benami property of public and non-public servants should be forfeited.
- The Commission suggested that accepting money or any other valuable consideration to speak or vote in a particular manner in the Parliament should be considered into the corrupt acts. For this purpose Article 105(2) of the Constitution which provides immunity to MPs or MLAs under Parliamentary privileges must be amended.

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 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 have 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 or trust or body that receives foreign contribution above Rs.10 lakh.
- Lokpal Act creates Special Courts to hear and decide the cases arising out of the Prevention of Corruption Act, 1988 or under the Lokpal Act involving public servants.
- The Special Courts shall ensure completion of each trial within a period of one year from the date of filing of the case in the Court.

IF A CHARGE IS MADE AGAINST THE PM?

- Lokpal cannot inquire into any corruption charge against Prime Minister if the allegations are related to international relations, external and internal security, public order, atomic energy and space, unless a full Bench 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 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.

CONCERNS & CHALLENGES

- Delay in appointment of Lokpal and Lokayuktas for states defeats the purpose of establishing anti-corruption body.
- Delay in establishing Inquiry and Prosecution Wing further stalls anti-corruption stance.
- The term "competent authority" to look into corruption charges for Prime Minister is the Council of Minister and for member of Council of Minister is the Prime Minister. This defeats the very purpose of investigating cases of corruption and violates rule of law.
- Lokpal and CVC usually come into action after there is some scam, corruption, financial irregularity and misappropriation.

WAY FORWARD

- Lokpal as an anti-corruption body should initiate proactive measures to ensure preventive vigilance rather than merely reacting to cases of corruption.
- Preventive vigilance can be achieved with alertness and can be strengthened through technology and experience. Along with technology and alertness-simplicity, clarity, transparency in the processes will go a long way for preventive vigilance.

►CVC

Central Vigilance Commission (CVC) has modified the guidelines for transfer and posting of officials in the vigilance units of government organisations, restricting their tenure to three years at one place. The tenure may be extended to three more years, but at a different place of posting. It would mean that the personnel can have two continuous postings in vigilance units, at two different places of posting, each running into a maximum of three years.

REASONS FOR THE ORDER

- Undue long stay of an official in a vigilance department has the potential of developing vested interests, apart from giving rise to unnecessary complaints or allegations.
- The Commission has modified its earlier guidelines to ensure transparency, objectivity and uniformity in its approach.
- Personnel who have worked for over three years at one place should be transferred in phases, with priority given to those who have served for the maximum period.
- CVC has ordered to transfer such officials who have completed more than 5 years of service in vigilance units in one place on a priority basis.
- In case someone has served at one place for over three years, his/her tenure at the next place would be curtailed to ensure that the combined tenure was limited to six years.

ABOUT CENTRAL VIGILANCE COMMISSION

- The Central Vigilance Commission (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.
- Consequently through The Central Vigilance Commission Act, 2003, *CVC became statutory body.*

FUNCTIONS & POWERS OF CVC

- Conduct inquiries into offences alleged to have made under Prevention of Corruption Act, 1988 by certain categories of public servants of Central Government, corporations established by or under any Central Act, Government companies, societies and local authorities owned or controlled by the Central Government.
- Exercise superintendence over the vigilance administrations of the various Central Government Ministries, Departments and Organizations of the Central Government.
- Advise various authorities in planning, executing, reviewing and reforming vigilance work of Central Government organisations.
- Receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action.
- Exercise superintendence over functioning of Delhi Police Establishment(CBI) regarding investigation of offences under The Prevention of Corruption Act, 1988.
- Review the progress of investigations conducted by the Delhi Special Police Establishment into offences committed under the Prevention of Corruption Act, 1988.

- Review the progress of applications pending with the competent authorities for sanction of prosecution under the Prevention of Corruption Act, 1988.
- Shall have all the powers of a Civil Court while conducting any inquiry.
- Plan and enforce regular or surprise inspections to detect the system failures and existence of corruption or malpractices.
- To ensure prompt observance of Conduct Rules relating to integrity of the Officers, like
  - The Annual Property Returns;
  - Gifts accepted by the officials
  - Benami transactions
  - Regarding relatives employed in private firms or doing private business etc.
- (Section 20 of Lokpal & Lokayukta Act) - Conduct inquiries into complaints referred by Lokpal as per the Lokpal and Lokayukta Act, 2013. Central Vigilance Commission in respect of complaints referred to it after making preliminary enquiry –
  - In respect of public servants belonging to Group A and Group B - shall submit its report to the Lokpal.
  - In case of public servants belonging to Group C and Group D - the Commission shall proceed in accordance with the provisions of the Central Vigilance Commission Act, 2003.

ANNUAL REPORT

- It shall be the duty of the Commission to present annually to the President a report as to the work done by the Commission within six months of the close of the year under report.
- The Report presented to the President by CVC shall contain a separate part on the functioning of the Delhi Special Police Establishment.
- On receipt of such report, the President shall cause the same to be laid before each House of Parliament.

WAY FORWARD

- CVC should build systems for preventive vigilance which will curb incidences of corruption from happening.
- CVC as an anti-corruption body should initiate proactive measures to ensure preventive vigilance rather than merely reacting to cases of corruption.
- Preventive vigilance can be achieved with alertness and can be strengthened through technology and experience.
- Along with technology and alertness, simplification of rules, regulations and procedures will ensure simplicity, clarity and transparency in the process. This will go a long way in the practice of preventive vigilance and will strengthen India's resolve of zero tolerance for corruption.

►ORDINACE INCREASING TERM OF CVC AND CBI CHIEF TO 5 YEARS

CONCERNS

- Increases political interference: Extension of tenure, in this adhoc and episodic fashion, will reaffirm the control of Executive over these investigative and is antithetical to their independent functioning.
- Goes against principle of ensuring fixity of tenure for the Director of CBI, laid down in Vineet Narain Case. Fixity of tenure is an essential element in ensuring independent functioning of government officials. A piecemeal extension system creates perverse incentive for officials to serve at the pleasure of the Government.
- Extension of tenure of these functionaries should only be in rare and exceptional cases and only for a short period of time. (Common Cause Case)
- Against equality: Similarly ranked officers in other departments and agencies of government do not have this privilege.
- The extension has been brought about by an Ordinance without giving proper reasons. This amounts to frivolous misuse of the Ordinance route to bypass Parliament.

WAY FORWARD

Non-political functioning of top investigative agencies of CVC and CBI is essential for the trust and integrity of these bodies. While a longer term for its leadership is essential, the frequent conditional extensions should make way for one-time secured 5 year term.

►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.
- The IP sets out their rights and obligations to the effect that

- neither side will pay, offer, demand or accept bribes or
- collude with competitors to obtain the contract, or

while carrying out the contract with the government.

- As per integrity pact, only those vendors/ bidders, who commit themselves to such a Pact with the buyer, would be considered competent to participate in the bidding process.
- So, entering 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.

►CENTRAL BUREAU OF INVESTIGATION

- CBI traces its origin to the *Special Police Establishment (SPE)* which was set up in 1941 by Government of India.
- The functions of the SPE then were to investigate cases of bribery and corruption in transactions with the War & Supply Department of India during World War II.
- The government enacted *The Delhi Special Police Establishment Act, 1946* after the Second World War which provided for the constitution of special force for investigation of offences alleged to have been committed under the *Prevention of Corruption Act, 1988.*
- CBI derives power to investigate from the *Delhi Special Police Establishment Act, 1946.* After promulgation of the Act, superintendence of SPE was transferred to the Home Department and its functions were enlarged to cover all departments of the Government of India.
- *The jurisdiction of SPE was extended to all the Union territories* and the Act provided for its extension to States with the consent of the State Government.
- The Headquarters of SPE was shifted to Delhi and the organisation was put under the charge of Director, Intelligence Bureau. However, in 1948, a post of Inspector General of Police, SPE was created and the organisation was placed under his charge.

RESTRUCTURING OF CBI AFTER VINEET NARAIN JUDGMENT

- Pursuant to the direction of Hon'ble Supreme Court in *Vineet Narain and others vs. Union of India,* the existing Legal Division was reconstituted as the *Directorate of Prosecution* in July 2001.
- Director, CBI as Inspector General of Police, Delhi Special Police Establishment, is responsible for the administration of the organisation.
- With enactment of the Central Vigilance Commission Act, 2003, the superintendence of Delhi Special Police Establishment vests with the Central Government for investigations of offences under *the Prevention of Corruption Act, 1988*, in which, the superintendence vests with the Central Vigilance Commission.

VINEET NARAIN CASE – CBI PLACED UNDER CVC

- Vineet Narain case is about hawala scandal where a journalist Vineet Narain implicated numbers of high ranking politicians and bureaucrats of having financial irregularities and their alleged links with militants across the borders.
- The Supreme Court in the case observed that CBI had failed in its responsibility and has become a caged parrot.
- The Court laid down *guidelines to ensure independence and autonomy of the CBI* and ordered CBI to be placed under the supervision of the Central Vigilance Commission (CVC), to ensure that it remains free from executive control or interference.
- Thus, The CVC was made responsible for ensuring that allegations of corruption against public officials

were thoroughly investigated regardless of the identity of the accused and without interference from the Government.

- Central Vigilance Commission was constituted by the Government in 1964 through an executive order on the recommendations of Committee on Prevention of Corruption, headed by Shri K. Santhanam.
- The government then passed the Central Vigilance Commission Act, 2003 to provide statutory status to the Central Vigilance Commission.
- As per the CVC Act, the Commission exercise superintendence, give directions and review the functioning of the Delhi Special Police Establishment in so far as it relates to the investigation of offences alleged to have been committed under the Prevention of Corruption Act, 1988.

PRIOR TO ENACTMENT OF LOKPAL AND LOKAYUKTA ACT, 2013

- Prior to the enactment of Lokpal & Lokayukta Act, 2013, the Central Vigilance Commissioner (CVC) was the Chairperson of the selection committee as per Section 4B of DSPE Act, 1946.

POST ENACTMENT OF LOKPAL AND LOKAYUKTA ACT, 2013

- The Central Government shall appoint the Director on the recommendation of the Committee consisting of –
  - Prime Minister – as Chairperson
  - The Leader of Opposition recognised as such in the House of the People or where there is no such Leader of Opposition, then the Leader of the single largest Opposition Party in that House – as Member
  - Chief Justice of India or Judge of Supreme Court nominated by CJI
- Tenure of CBI Director - The CBI Director shall continue to hold office for a period of not less than two years from the date on which he assumes office. The Director shall not be transferred except with the previous consent of the Committee.

PROVIDING AND WITHDRAWAL OF CONSENT GIVEN TO CBI BY STATE GOVERNMENT (SECTION 6)

- CBI does not have jurisdiction to investigate any case in any state government unless the state government provides consent for the same.
- Section 6 of *Delhi Special Police Establishment Act, 1946 empowers state governments to provide consent or even withdraw consent to CBI*. The general consent is necessary for CBI as the jurisdiction of the CBI and other agencies covered under Delhi Special Police Establishment Act, 1946 is confined to Delhi and Union Territories.
- Earlier, state government of Andhra Pradesh and West Bengal had withdrawn the "general consent" given to Central Bureau of Investigation (CBI) to investigate cases of corruption in the state.

RIGHTS OF CBI TO CONDUCT INVESTIGATION

- Section 6 of DSPE is based on Entry 80 of the Union List which allows extension of powers and jurisdiction of police force of one State in another State but not without the consent of other state.
- However, Withdrawal of Consent by State Government is Not Absolute as:
  - It does not affect pending investigation.
  - CBI can investigate cases registered in another state in relation to continuing investigation.
  - Constitutional Courts can allow CBI investigation despite state's withdrawal.

CONSTRAINED FUNCTIONING

- Despite these advantages, withdrawal of consent by states limits the functioning of CBI in conducting investigation.
- Due to functional constraints in matters of investigation on corruption against central government employees, CBI has filed a petition in the Supreme Court against withdrawal of consent by states.

FEDERAL ISSUES

- CBI is not empowered under DSPE to investigate matters pertaining to federal crimes and hence cannot initiate fresh investigations in state without state's consent.
- States have withdrawn consent to safeguard their federal rights against unscrupulous interference by the central government through CBI and other agencies.
- Supreme Court in S.R. Bommai had stated that the States are not mere appendages of the Union and described federalism as a concept which unites separate States into a Union without sacrificing State's own fundamental political integrity.

SUGGESTED REFORMS FOR CBI

There has been a demand of structural reforms at CBI including its own laws and responsibilities.

- L.P. Singh Committee and 2nd ARC have recommended enactment of a comprehensive central legislation to remove the deficiencies of not having a

central investigative agency having its own laws and charter of duties and functions.

- 19th and 24th Reports of Parliamentary Standing Committees of 2007 and 2008 suggested strengthening of legal mandate, infrastructure and financial resources of CBI to ensure independence in its functioning and autonomy from political and bureaucratic lobby.
- 24th Parliamentary Standing Committee even suggested CBI to take *Suo moto* cognizance of crimes and to give CBI pan Indian jurisdiction including jurisdiction to investigate corruption charges against officers of All India Services.

WAY FORWARD - Thus, despite the powers given to CBI to conduct investigation in states, their consent is mandatory to ensure balance of federal relations between centre and states as CBI Is neither federal police nor has powers under Entry 2 of State List.

►NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS

National Commission for Protection of Child Rights (NCPCR) has launched a pilot project for giving financial assistance to children who lost their single or both parents to COVID-19 or due to some other reason post-March 2020. The data for such children has been collected by the Commission through its 'Baalswaraj' portal.

ABOUT NATIONAL COMMISSION FOR PROTECTION OF CHILD RIGHTS (NCPCR)

- The Commissions for Protection of Child Rights (CPCR) Act, 2005provides for a National and State Commission for protection of Child Rights. NCPCR is a statutory body under the administrative control of the Ministry of Women & Child Development.
- The National Commission's Mandate is to ensure that all Laws, Policies, Programs, and Administrative Mechanisms are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the UN Convention on the Rights of the Child.
- The Child is defined as a person in the 0 to 18 years age group.

FUNCTIONS OF NATIONAL COMMISSION

(a) Examine and review the safeguards provided by or under any law for the protection of child rights and recommend measures for their effective implementation.

(b) Inquire into violation of child rights and recommend initiation of proceedings in such cases

(c) 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

(d) Address matters of 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;

(e) Study treaties and other international instruments and undertake periodical review of existing policies, programs and undertake and promote research in the field of child rights.

(f) Spread child rights literacy and promote awareness of the safeguards available for protection of these rights through publications, the media, seminars and other available means

(g) Inspect any juvenile custodial home or any other place of residence or institution meant for children under government authority including any institution run by a social organisation; where children are detained or lodged for the purpose of treatment, reformation or protection.

(h) Inquire into complaints and take Suo motu notice of matters relating to –

(i) deprivation and violation of child rights;

(ii) non-implementation of laws providing for protection and development of children;

(iii) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships to and ensuring welfare of the children and to provide relief to such children, or take up the issues arising out of such matters with appropriate authorities; and

(i) Monitor implementation of POCSO Act –against abuse of children

POWER OF COMMISSION RELATING TO INQUIRIES

- The Commission shall, while inquiring into any matter of children shall have all the powers of a Civil Court trying a suit under the Code of Civil Procedure, 1908 in respect of the following matters, namely —

(a) summoning and enforcing the attendance of any person and examining him on oath;

(b) discovery and production of any document;

(c) receiving evidence on affidavits;

(d) requisitioning any public record or copy thereof from any court or office; and

(e) issuing commissions for the examination of witnesses or documents.

ANNUAL REPORT & SPECIAL REPORT OF THE COMMISSION

- The Commission submits an annual report to the Central Government and to the State Government concerned and may submit Special Reports on any matter of urgent necessity whenever necessary.
- The Central Government and the State Government concerned shall cause the annual and special reports of the Commission to be laid before each House of Parliament or the State Legislature respectively.

THE ACT PROVIDES FOR CHILDREN'S COURT

- To provide speedy trial of offences against children or of violation of child rights, the State Government may, with the concurrence of the Chief Justice of the High Court, by notification, specify at least a court in the State or specify, for each district, a Court of Session to be a Children's Court to try offences against children.
- Special Public Prosecutor - For every Children's Court, the State Government shall, by notification, specify a Public Prosecutor or appoint an advocate who has been in practice as an advocate for not less than seven years, as a Special Public Prosecutor for the purpose of conducting cases in that Court.

►NATIONAL COMMISSION FOR WOMEN

The National Commission for Women (NCW) was set up as statutory body under the National Commission for Women Act, 1990 to review the Constitutional and Legal safeguards for women, recommend remedial legislative measures, facilitate redressal of grievances and advise the Government on all policy matters affecting women.

FUNCTIONS OF NCW

1. Investigate and examine all matters relating to the safeguards provided for women under the Constitution and other laws,
2. Present an Annual report or other Reports to the Central Government upon the working of safeguards including recommendations of NCW on improving conditions of women.
3. Review exiting provisions of the Constitution and other laws affecting women and suggest suitable changes or measures to address shortcomings in such laws.
4. Take up cases of violation of the provisions of the Constitution and of other laws relating to women with the appropriate authorities.
5. Look into complaints and take Suo moto notice of matters relating to:
   (a) deprivation of women's rights,
   (b) non-implementation of laws enacted to provide protection to women and to achieve the objective of equality and development,
   (c) non-compliance of policy decisions, guidelines or instructions aimed at mitigating hardships and ensuring welfare and providing relief to women, and take up the issues arising out of such matters with appropriate authorities,
6. Undertake promotional and educational research to improve women's representation.
7. Identify factors responsible for impeding advancement of women such as lack of access to housing and basic services, inadequate support services and technologies for reducing drudgery and occupational health hazards and for increasing their productivity.
8. Participate and advice on the planning process of socio-economic development of women.
9. Evaluate the progress of the development of women under the Union and any State,
10. Inspect jail, remand home, women's institution or other place of custody where women are kept as prisoners or otherwise and take up with the concerned authorities for remedial action, if found necessary.
11. Fund litigation involving issues affecting a large body of women.
12. Make periodical reports to the Government on any matter pertaining to women and in particular various difficulties under which women toil.

RECENT STEPS TAKEN UP BY NCW

- In keeping with its mandate, the Commission initiated various steps to improve the status of women and worked for their economic empowerment.
- The Commission completed its visits to all the States/UTs (except Lakshadweep) and prepared Gender Profiles to assess the status of women and their empowerment.
- It received many complaints and acted Suo-moto in several cases to provide speedy justice by
  - taking up important issues of child marriage,
  - sponsoring legal awareness programs

- Conducting Parivarik Mahila Lok Adalats for speedy disposal of cases through amicable mutual settlement. In the process, NCW also reviewed laws such as Dowry Prohibition Act, Pre-Conception and Pre-Natal Diagnostic Techniques Act, Indian Penal Code and the National Commission for Women Act, 1990 to make them more stringent and effective.
- It organized workshops/consultations, constituted expert committees on economic empowerment of women, conducted workshops/seminars for gender awareness and took up publicity campaign against female foeticide, violence against women etc. to generate awareness in the society against these social evils.

- NCW has provided a WhatsApp number to register cases of domestic violence.
- Ministry of Women and Child Development in coordination with NCW has also come up with a Helpline Number to provide 24-hour complaints and counselling services to women affected by violence.
- The Helpline number has been linked with appropriate authorities such as Police, Hospitals, District Legal Service Authority, and Psychological Services.
- The Helpline number will also provide information about women related government programs across the country.

CONSTITUTIONALIZATION OF STATUTORY COMMISSION

- A constitutional amendment under Article 368 needs to be introduced in either House of Parliament to add NCW or NCPCR as part of Indian Constitution.
- Provisions of NCW and NCPCR within the constitution will give the bodies more teeth in fighting cases of injustice against women and children. It will also help the Commission to review the working of safeguards against women and children.
- Constitutional status will further ensure administrative and financial autonomy of the working of the Commissions and will also insulate its functioning from the legislature and executive through adequate safeguards.
- These Commissions must be provided with Independent Secretariat to ensure autonomy in functioning, recruitment and transfer along with investigating cases pertaining to women and children.

►LAW COMMISSION OF INDIA

The Union Cabinet, chaired by the Prime Minister 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 to enact new legislations. It also undertake 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.

IMPORTANT FUNCTIONS TO BE PERFORMED BY 22ND LAW COMMISSION

(i) Identify laws which are no longer needed or relevant and can be immediately repealed.

(ii) Examine the existing laws in the light of Directive Principles of State Policy and suggest ways of improvement and reform.

(iii) Suggest such legislations as might be necessary to implement the Directive Principles and to attain the objectives set out in the Preamble of the Constitution.

(iv) Consider and convey to the Government its views on any subject relating to law and judicial administration that may be referred to it by Department of Legal Affairs.

(v) Consider requests for providing research to any foreign countries as may be referred to it by the Government through Department of Legal Affairs.

(vi) Take all such necessary measures to harness law and the legal process in the service of the poor.

(vii) Suggest revision of Central Acts of general importance to simplify and remove anomalies, ambiguities and inequities.

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.

►DEVELOPMENT AND WELFARE BOARD FOR DE-NOTIFIED, NOMADIC AND SEMI-NOMADIC TRIBES

Amongst the most disadvantaged communities in the country are the Denotified, Nomadic and Semi-Nomadic Communities (DNCs). These communities are hard to reach, less visible, and therefore frequently left out. While most Denotified Tribes (DNTs) are spread across the Scheduled Castes (SC), Scheduled Tribes (ST) and Other Backward Classes (OBC) categories, some DNTs are not covered in any of the SC, ST or OBC categories. Ministry of Social Justice and Empowerment has therefore notified in March, 2019 to constitute *Development and Welfare Board for Denotified, Nomadic and Semi-Nomadic Communities* chaired by Sh. Bhiku Ramji Idate. The Ministry has now come up with the Terms of Reference for the Board.

BACKGROUND – REASON FOR SETTING OF A SEPARATE BOARD FOR DNTs

- Government constituted *National Commission for Denotified, Nomadic and Semi-Nomadic Tribes, 2014* to prepare a State-wise list of castes belonging to Denotified and Nomadic Tribes and to suggest measures for development of Denotified and Nomadic Tribes to be undertaken by Central & State Government.
- The Commission recommended for setting of up a Permanent Commission for these communities.
- However, the government *did not set up a Permanent Commission for these communities* because most of the Denotified Tribes (DNTs) were covered in SC, ST or OBC.
- *Permanent Commission in conflict with SC/ST/OBC Commission* - According to government, setting of such permanent commission while looking into their grievance redressal might conflict with mandate of existing National Commissions for SCs, STs and OBCs.
- Thus, the government decided to set up a Development and Welfare Board under the Societies Registration Act, 1860 under the aegis of Ministry of Social Justice and Empowerment for the purpose of implementing development and welfare programs for Denotified, Nomadic and Semi-nomadic Communities.
- The Union Cabinet chaired by Prime Minister had accordingly given its approval to constitute Development and Welfare Board for Denotified, Nomadic and Semi-nomadic Communities.

TERMS OF REFERENCE OF THE BOARD

- To formulate and Implement Welfare and Development program as required, for De-notified, Nomadic and Semi-Nomadic Communities.
- To identify the locations/areas where these communities are densely populated.
- To assess and identify gaps in accessing existing programs and entitlements and to collaborate with Ministries/Implementing agencies to ensure that ongoing programs meet the special requirements of De-notified Nomadic and Semi-Nomadic Communities.
- To monitor and evaluate the progress of the schemes of Government of India and the States/UTs with reference to De-notified Nomadic and Semi-Nomadic Communities.
- To redress the grievances of DNTs communities and fulfil their expectations.

OTHER STEPS BY GOVERNMENT FOR NCTs

- Development and Welfare Board for De-notified, Nomadic and Semi-Nomadic Communities (DWBDNCs) have been working on classification of 269 communities which are currently not classified under SC/ST/OBC/Other communities.
- Further NITI Aayog has assigned the task of ethnographic survey of 62 tribes to the Anthropological Survey of India (AnSI) to conduct the

studies of these communities in different parts of the country.

- The following schemes are being implemented by State Government/UT Administrations for the DNTs
  - Pre-Matric Scholarship to DNT Students
  - Post-Matric Scholarship to DNT Students
  - Nanaji Deshmukh Scheme of Construction of Hostels for DNT Boys and Girls

►NATIONAL RECRUITMENT AGENCY

NRA has been set up as an independent, professional, specialist organization for conduct of a computer based online common eligibility test for recruitment and will help in bringing reform in recruitment.

NEED FOR NRA

- As of now, aspirants must take different exams that are conducted by various agencies for central government jobs
- On an average 2.5 crore to 3 crore aspirants appear for about 1.25 lakh vacancies in the central government every year.
- The NRA will conduct a common eligibility test (CET) and based on the CET score a candidate can apply for a vacancy with the respective agency.

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.

BENEFITS OF NRA

- Exam Centre in every district – It will enhance the access to the rural candidates. Special focus will be on creating examination infrastructure in all the 117 Aspirational Districts. It will reduce the cost, effort, time and safety for the candidates.
- Relief to Candidates – It will do away with the need to appear in multiple examinations conducted by multiple agencies. It will take job opportunities closer to the people and will motivate more candidates to participate in the process.
- Benefits to Women Candidates – Exam centre in every district will increase the access and ensure the safety for women candidates.
- CET Score to be valid for three years with no bar on number of attempts.
- Reduces burden on existing recruitment agencies, since they will have to conduct the process in 2nd stage after screening process has been conducted by NRA.
- CET conducted by NRA will be available in multiple languages.
- Marks of CET can be used by both Public as well as private candidates.

CHALLENGES

- It does not focus on the need for more Job creation and merely focuses on the recruitment process.
- Government Jobs are shrinking because of "Minimum Government maximum Governance" agenda.
- Its Mandate is limited to Group B and C non-technical posts in the Government.
- Timely conduction of the government exams has been a challenge for the agencies. Thus it is to be seen if this agency will be able to conduct the exam of such huge scale on time.

►NATIONAL & STATE MINORITIES COMMISSION

A petition has been filed in SC challenging Section 2(c) of National Commission for Minorities Act, 1992 as the provision gives wide and arbitrary powers to central government to notify certain religions as minority. The petition has also asked central government to define the term "minority" and lay down guidelines for identification of minorities at the district level.

CONCERN HIGHLIGHTED IN THE PETITION

- Followers of Judaism, Bahaism, and Hinduism; who are real minorities in Ladakh, Mizoram, Lakshadweep, Kashmir, Nagaland, Meghalaya, Arunachal Pradesh, Punjab, Manipur, cannot establish and administer educational institutions of their choice because of non-identification of the 'minority' at the state level, thus jeopardizing their basic rights guaranteed under Article 29-30.
- Ministry of Minority Affairs submitted that respective state governments can declare any religious or linguistic community, including Hindus as minority religion within the said state.

MINORITIES IN INDIA

- Union Government set up National Commission for Minorities under National Commission for Minorities Act, 1992.
- Initially five religious communities, viz., Muslims, Christians, Sikhs, Buddhists & Parsis were notified as minority communities by Union Government.
- Further vide notification dated 2014, Jains were also notified as another minority community.
- Union Government constituted National Commission for Minorities & State Government constituted State Minorities Commissions.
- For example, Delhi Minorities Commission has been set up under Delhi Minorities Commission Act, 1999. The Commission comprises a chairman and two Members from Minority Communities of Delhi, nominated by 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 mechanism of remedies available to them.

ABOUT 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.
- Chairperson and every Member shall hold office for a term of three years from the date he assumes office.
- Central Government shall cause 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 Union and the reasons for the non-acceptance.
- CAG can audit the accounts of the Commission.
- Commission shall, while performing its functions shall have all powers of a civil court trying a suit.

CONCERNS IN FUNCTIONING OF NCM & SMC

- Office bearers not appointed in time
- Many states have not yet constituted Minority Commissions
- Lacks constitutional support and hence does not enjoy authority.
- Annual Reports not tabled in Parliament regularly.
- National Minority Commission Act does not provide adequate powers to state minority commission.

►CENTRAL COSNUMER PROTECTION AUTHORITY

Consumer Protection Act, 2019 has constituted Central Consumer Protection Authority (CCPA) and 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

- Service Charge Issue – hotels or restaurant shall not add service charge automatically or by default in food bill or in any other name without consumer's consent.
- Misleading Advertisements – CCPA notified 'Guidelines for Prevention of Misleading Advertisements and Endorsements for Misleading Advertisements, 2022' to ensure that consumers are not fooled with unsubstantiated claims, exaggerated promises, misinformation and false claims. Guidelines forbid advertisements from exaggerating the features of product or service which may lead children to have unrealistic expectations of such product or service and claim any health or nutritional claims or benefits without being adequately and scientifically substantiated by a recognized body.
- App Based Taxi – CCPA has issued notices to 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.

- Selling Jammers through e-commerce platforms – CCPA issued notification as sale of se of any wireless device 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.

GRIEVANCE REDRESSAL MECHANISM FOR CONSUMER

- The consumer may lodge a complaint on the National Consumer Helpline (NCH), which works as an alternate dispute redressal mechanism at the pre-litigation level by calling 1915 or through the NCH mobile app.
- 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

Central Consumer Protection Authority shall:

(a) Protect, promote and enforce rights of consumers as a class, and prevent violation of consumer rights.

(b) Prevent unfair trade practices and ensure that no person engages himself in unfair trade practices.

(c) Ensure that no false or misleading advertisement is made of any goods or services which contravene the provisions of this Act or the rules or regulations made thereunder.

(d) Ensure that no person takes part in the publication of any advertisement which is false or misleading.

POWERS OF CCPA

- 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 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 penalty in respect of such false or misleading advertisement, by a manufacturer or an endorser.

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

CONCLUSION CCPA is continuously monitoring consumer protection landscape in the country. Recently, CCPA issued Safety Notices under CPA 2019 to alert and caution consumers against buying goods which do not hold valid ISI Mark and violate compulsory BIS standards.

CONSTITUTIONAL BASICS

Previous Year Questions

YEAR	UPSC QUESTIONS
2021	'Constitutional Morality' is rooted in the Constitution itself and is founded on its essential facets. Explain the doctrine of 'Constitutional Morality' with the help of relevant judicial decisions.
2021	Analyze the distinguishing features of the notion of Equality in the Constitutions of the USA and India.
2020	The judicial systems in India and UK seem to be converging as well as diverging in recent times. Highlight the key points of convergence and divergence between the two nations in terms of their judicial practices.
2017	Explain the salient features of the Constitution (One Hundred and First Amendment) Act, 2016. Do you think it is efficacious enough 'to remove cascading effect of taxes and provide for common national market for goods and services'?

►CONSTITUTION

- Constitution provides a set of basic rules that allow for minimal coordination amongst members of a society.
- Decides how government will be constituted and provides for power sharing mechanism between organs of government.
- Limits restriction which government imposes citizens, which are fundamental in nature. Such limitations are not to be trespassed by the government in ordinary circumstances.
- Enables government to fulfil the aspirations of its society and creates conducive conditions for an equitable and just society.
- Establishes certain independent authorities to perform duties in their respective fields.

IMPORTANCE OF BALANCED INSTITUTIONAL DESIGN

1. Fragmentation of power among different organs and institutions in a constitution ensures that no single institution acquires monopoly of power.
   - So, even if one institution wants to subvert the Constitution, others can check its transgressions. This mechanism of checks and balances has facilitated the success of the Indian Constitution.
   - The Indian Constitution horizontally fragments power across different institutions like the Legislature, Executive and the Judiciary and even independent bodies like the Election Commission.
2. A constitution must strike the right balance between certain values, norms and procedures as authoritative, and at the same time allow enough flexibility in its operations to adapt to changing needs and circumstances.
   - Too rigid constitution may not withstand the pressure and needs of time whereas too flexible

constitution may not hold the values and purpose for which the constitution was originally drafted.

- The Constitution is described as a living document as it provides for different kinds of amendment (simple majority, special majority, and special majority along with half of state government's ratification) for different provisions in constitution.
- This arrangement also ensures that no section or group can, on its own, subvert the Constitution.

►OBJECTIVES RESOLUTION

SALIENT FEATURES OF OBJECTIVES RESOLUTION

- India is an independent, sovereign, republic.
- India shall be a Union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian States as are willing to be a part of the Union.
- Territories forming the Union shall be autonomous units and exercise all powers and functions of the Government and administration, except those assigned to or vested in the Union.
- All powers and authority of sovereign and independent India and its constitution shall flow from the people.
- All people of India shall be guaranteed and secured social, economic and political justice, equality of status and opportunities and equality before law; and fundamental freedoms - of speech, expression, belief, faith, worship, vocation, association and action - subject to law and public morality.
- The minorities, backward and tribal areas, depressed and other backward classes shall be provided adequate safeguards.
- The territorial integrity of the Republic and its sovereign rights on land, sea and air shall be maintained according to justice and law of civilized nations.
- The land would make full and willing contribution to the promotion of world peace and welfare of mankind.

►PREAMBLE

Preamble contains the philosophy on which the entire Constitution has been built, indicates the source from where Constitution derives its authority and states objectives which Constitution seeks to promote and establish. In a Constitution, it presents the intention of its framers, the history behind its creation, and the core values and principles of the nation. "Objectives resolution" was introduced by Jawahar Lal Nehru which was later modified and adopted by the Constituent Assembly in January 1947 as the PREAMBLE of the Indian Constitution.

IMPORTANT HIGHLIGHTS

- The vision given in the Preamble of our Constitution is the guiding light for ensuring the spread and reach of the political, economic and social democracy in the country.
- The word Socialist, Secular, & integrity were added by Constitution 42nd Amendment. (The preamble has been amended only once so far)
- Does not grant any power but gives a direction to the Constitution and outlines its objectives.

THE PREAMBLE CONTAINS THE FUNDAMENTALS OF THE CONSTITUTION AND SERVES THE FOLLOWING IMPORTANT PURPOSES

- It contains the enacting clause which brings the constitution into force
  - It declares the rights and freedoms intended for its people
  - It declares the basic type of government and polity which is sought to be established in India
  - It throws light on the source of the Constitution viz. the *People of India*
- Thus, the source of the Constitution are the people themselves from whom the Constitution derives its ultimate sanction.
- The People of India thus constitutes the sovereign political body who hold the ultimate power and who conduct the government of the country through their elected representatives.

IS THE PREAMBLE PART OF THE CONSTITUTION?

- Preamble was added after rest of the constitution was already enacted.
- Supreme Court in Berubari Union Case (1960) said that Preamble in not part of the constitution.
- However, in Kesavananda Bharati case (1973), SC overturned its previous decision and held that preamble is a part of constitution and can be amended under article 368.
- Again, in LIC of India case, Supreme Court held that Preamble of constitution is its part.
- In the SR Bommai case, the Supreme Court held that preamble indicates basic structure of the constitution.

IMPORTANT TERMS OF THE PREAMBLE

- We, the People of India: Constitution has been drawn up and enacted by the people through their representatives, and not handed down to them by a king or any outside powers.
- Sovereign: People have supreme right to make decisions on internal as well as external matters. No external power can dictate the government of India.
- Socialist: Wealth is generated socially and should be shared equally by society. Government should regulate ownership of land and industry to reduce socio-economic inequalities.
- Secular - Citizens have complete freedom to follow any religion. But there is no official religion. Government treats all religious beliefs and practices with equal respect.
- Democratic - A form of government where people enjoy equal political rights, elect their rulers and hold them accountable. The government is run according to some basic rules.
- Republic - The head of the state is an elected person and not a hereditary position.
- Justice - Citizens cannot be discriminated on the grounds of caste, religion and gender. Social inequalities have to be reduced. Government should work for the welfare of all, especially of the disadvantaged groups
- Liberty - There are no unreasonable restrictions on citizens in what they think, how they wish to express their thoughts and the way they wish to follow up their thoughts in action.
- Equality - All are equal before the law. The traditional social inequalities have to be ended. The government should ensure equal opportunity for all.
- Fraternity - All of us should behave as if we are members of the same family. No one should treat a fellow citizen as inferior. Supreme Court emphasised that the words "fraternity assuring the dignity of the individual" have a special relevance in Indian context because of the social backwardness of certain sections of the community who had in the past been looked down upon.

The three concepts of LIBERTY, EQUALITY & FRATERNITY constitutes a trinity and one cannot be divorced from the other.

DIRECTIVE PRINCIPLES SUPPLEMENT THE PREAMBLE

- According to Supreme Court, Indian Constitution envisions to establish an egalitarian social order rendering to every citizen – social, economic and political justice in a social and economic democracy.
- The ideals stated in the Preamble are reinforced through the Directive Principles which provides in detail about goals of economic democracy, socio-economic content of political freedom, welfare state, an economic system which does not lead to concentration of wealth and ensures health of women, children and adults.
- Thus, Preamble when read along with DPSP further clarifies certain goals for the government to achieve to maximise social welfare of the People of India.

►FUNDAMENTAL RIGHTS & DIRECTIVE PRINCIPLES

- Part IV of Constitution (Articles 36 to 51) constitutes DPSP and is inspired by Irish Constitution.
- Earlier, the primary duty of a state was mainly to maintain law and order and defence of the country. However, the constitution makers realised that for India, achieving political democracy without ensuring economic democracy would be of no use.
- Thus, through the directive principles, constitution makers tried to strengthen and promote the well-being and equitable prosperity of people by laying down socio-economic goals as part of the Constitution.
- These principles obligate the state to take positive action in certain directions to promote welfare of the people and achieve economic democracy.
- Supreme Court (Lala Ram v Union of India) held that welfare state refers to the "greatest good of greatest number and the benefit of all and the happiness of all.

NON-ENFORCEABILITY OF DPSPs

- Article 37 has made the Directive Principles contained in PART-IV are made non-enforceable by any Court of law. However, the principles laid down are fundamental in the governance of the country and it shall be the duty of State to apply these principles in making laws to ensure socio-economic justice.
- The reason behind non-enforceability and non-justiciability of DPSPs is that they impose positive obligations on the state. While taking positive actions, the government operates under various restraints; most crucial is that of financial resources.
- Thus, the constitution makers were aware of these pragmatic difficulties and rather believed in an

awakened public opinion rather than enforced Court proceedings.

- Directive Principles differ from Fundamental Rights which call upon the state to refrain from taking prejudicial actions against and individual and therefore impose a negative duty on the state.
- Fundamental Rights seeks to introduce an egalitarian society and to ensure liberty for all whereas the Directive Principles seek to achieve a welfare state.
- Thus, both FR and DPSP constitute the conscience of the Constitution.

INTERPLAY OF RELATIONSHIP BETWEEN FUNDAMENTAL RIGHTS AND DPSP

The relationship between Fundamental Rights and DPSP especially over one's primacy over the other has been a cause of debate and judicial pronouncements have swayed on both sides.

FRs HAVING SUPREMACY

- Strict Interpretation of Article 37 - Initially the Court adopted strict and literal interpretation of Article 37 and ruled that DPSP could not override Fundamental Rights and in case of conflict, FR would prevail over DPSPs.
- Champakam Dorairajan (1951) – Government order in conflict with Article 29(2) was declared invalid. The Court declared that laws made to implement DPSPs cannot override or take away Fundamental Rights. DPSPs should confirm and run as subsidiary to Fundamental Rights else, FRs would be reduced to mere rope of sand.

TILT TOWARDS DPSP THROUGH HARMONIOUS CONSTRUCTION

- Perceptible Change in Judicial Attitude towards DPSP – Supreme Court started harmonizing both DPSP and FRs and in the case of Mumbai Kamgar Sabha, SC held that where two judicial choices are available, social philosophy of DPSPs have preference.
- Adopting Harmonious Construction (1958) – Court adopted the view that while determining the ambit and scope of Fundamental Rights, DPSPs cannot be completely ignored. Further, the Courts should adopt the principle of Harmonious Construction and attempt to give effect to both DPSP & FR as far as possible. Even in Kerala Education Bill, 1958, while affirming the primacy of FR over DPSP, the Court pleaded for harmonious interpretation of the two.
- FR & DPSP Complementary and Supplementary (1970): Without making DPSP justiciable, Courts began to implement values and principles of DPSP. In Chandra Bhavan Boarding and Lodging v State of Mysore, the Supreme Court asserted that there is no conflict overall between FR & DPDPs and both are complementary and supplementary to each other.
- Constitution 25th Amendment, 1971 added Article 31Cin the Fundamental Rights - If any law giving effect to Article 39(b) and 39(c) is passed by Parliament, then such laws shall not be declared invalid merely because it takes away or abridges Fundamental Rights under Article 14, 19 or 31. Further, such law shall be exempted from Judicial Review.
- Kesavananda Bharati Judgment declared first part of Article 31C as valid but declared the part unconstitutional which prevented judicial review of such laws. Further Supreme Court also observed that both FRs & DPSPs constitute the conscience of the Constitution and there is no antithesis between them as one supplements the other.
- State of Kerala v N.M. Thomas – SC held that DPSP and FR should be constructed in harmony with each other every attempt should be made by the Court to resolve any apparent inconsistency between the two.

STRESSING ON EQUALITY BETWEEN DPSPs & FRs

- Ashoka Kumar Thakur v Union of India – SC held that fundamental rights represent civil and political rights and DPSP embody social and economic rights. So, merely because DPSPs are non-justiciable does not mean that they are of subordinate importance.
- Olga Tellis – Since DPSPs are fundamental in the governance of the country, they must therefore be regarded as equally fundamental in understanding and interpretation of meaning and content of Fundamental Rights.
- Minerva Mills – Fundamental Rights are not an end in themselves but are means to an end and the end is specified in the Directive Principles. Both DPSPs and FRs together constitute the core of the commitment to social revolution and together are the conscience of the constitution. The Indian Constitution is found on the bedrock of "the balance" between the two. To give absolute primacy to one over the other is to disturb the harmony of the Constitution. This harmony and balance between Fundamental Rights and Directive Principles is an essential feature of the Basic Structure of the Constitution. Thus, anything that destroys the balance between the two parts will destroy an essential element of basic structure.

INTEGRATIVE APPROACH LEADING TO EXPANSION OF DPSPs & FRs

- It has now become a judicial strategy to read Fundamental Rights along with Directive Principles to define the scope and ambit of Fundamental Rights.
- This assimilative strategy has broadened and given greater depth and dimension thereby creating more space for rights of people over and above expressly stated in PART-III.
- At the same time, values underlying DPSP have also become enforceable by riding on the back of Fundamental Rights. Thus, it has been found that Courts have used Directive Principles not to restrict but to expand the ambit of Fundamental Rights.
- Thus, the theme – Fundamental Rights are but a means to achieve the goal indicated in the Directive Principles and that Fundamental Rights must be construed in the light of Directive Principles has been advocated by Supreme Court time and again.

INTEGRATIVE APPROACH LEADING TO EXPANSION OF ARTICLE 21

Integrative Approach between Fundamental Rights and Directive Principles has expanded Right to Life and Personal Liberty as provided under Article 21. By reading Article 21 along with the Directive Principles, Supreme Court has derived a bundle of rights such as:

- Right to live with human dignity enshrined in Article 21 derives its life and breath from DPSPs -Bandhua Mukti Morcha.
- Right to life includes the right to enjoy pollution free water, air and environment (Article 48A)– Subhash Kumar v State of Bihar
- Right to Health and Social Justice has been held to be a Fundamental Right of the workers. It is the obligation of the employers to protect the health and vigour of their employees and workers. The Court derived this right by reading Article 21 with Article 39(e), Article 41 (Right to work, to education and to public assistance in certain cases), Article 43 (Living wage, etc., for workers) and Article 48A (Protection and improvement of environment and safeguarding of forests and wild life) – *Consumer Education and Research Centre v Union of India*
- Right to Shelter – SC held that state owes an obligation to the homeless people to ensure at least minimum shelter and held that right to shelter is part of right to life – *PUCL v Union of India.*
- Right to Education is implicit through Article 41 (Right to work, to education and to public assistance in certain cases) and Article 45 (Provision for early childhood care and education to children below the age of six years) – *Unnikrishnan v A.P (1993).* Later Article 21A was added in PART-III through Constitution 86th Amendment.
- Right to Privacy – Puttaswamy Judgment

►DOCTRINE OF BASIC STRUCTURE

- Basic Structure doctrine was expounded in landmark judgment of Kesavananda Bharati v. State of Kerala.
- As per the judgment, *Basic Structure of the Constitution cannot be altered or amended by the Parliament or the Executive.*
- The ruling has contributed to the evolution of the Constitution in the following ways:
  1. It has set specific limits to the Parliament's power to amend the Constitution. It says that no amendment can violate the basic structure of the Constitution.
  2. Allows Parliament to amend any and all parts of the Constitution (within this limitation) and
  3. It places the Judiciary as the final authority in deciding if an amendment violates basic structure and what constitutes the basic structure.
- Thus, the power of judicial review to ascertain if any law made by the executive violates the Basic Structure of the Constitution cannot be taken away by the Executive.
- Basic Structure is not an exclusive list, and things can be added by the Judiciary in future in the list of Basic Structure.
- Some of the features which has been said to be the Basic Structure over a certain period are:
  - Supremacy of the Constitution
  - Republican and democratic form of government
  - Secular character of the Constitution
  - Separation of powers between the legislature, executive and the judiciary
  - Federal character of the Constitution
  - The mandate to build a welfare state contained in the Directive Principles of State Policy
  - Sovereignty and unity and integrity of the nation
  - Essential features of the individual freedoms secured to the citizens
  - Judicial Review – (Added by Minerva Mills Judgment)
  - Secularism as part of basic structure was again emphasised in S.R. Bommai v Union of India.

BASIC STRUCTURE DOCTRINE – EXAMPLE OF LIVING & DYNAMIC CONSTITUTION

- The theory of basic structure is itself an example of a living constitution. There is no mention of this theory in the Constitution. It has emerged from judicial interpretation.
- Thus, the Judiciary and its interpretation have practically amended the Constitution without a formal amendment. This also signals evolution of the Constitution through judicial pronouncements.
- The Basic Structure doctrine has further consolidated the balance between rigidity and flexibility as it completely prohibits amendment of certain provisions of the Constitution whereas allows amendment to other parts.

SIGNIFICANCE	CONCERNS
1. Ensures Constitutional Supremacy 2. Enforces the importance of Constitutionalism which limits state powers and authority. 3. Strengthens Judicial Review 4. Ensures Rights of Citizens against State's excess 5. Ensures Federal Balance and separation of power	1. Basic Structure Doctrine is a judicial construct not defined in the Constitution 2. Strengthens Judicial Activism & even Overreach – through excessive power of judicial review under Article 13 & 368 3. Limits Powers of Parliament 4. Basic Structure not an exhaustive list and subject to judicial interpretation.

Despite concerns, basic structure doctrine has prevented the Parliament from rewriting the Constitution in the garb of Amendment.

SUPREME COURT REMEDYING RIGHTS

Indian judiciary is entrusted with the task of protecting rights of individuals which is ensured by the Indian Constitution in two ways:

1. It can restore fundamental rights by issuing writs of Habeas Corpus; mandamus etc. (Article 32). The High Courts also have the power to issue such writs (Article 226).
2. Supreme Court can declare the concerned law as unconstitutional and therefore non-operational (Article 13).

Together these two provisions of the Constitution establish the Supreme Court as the protector of fundamental rights of the citizen on the one hand and interpreter of Constitution on the other. The second of the two ways mentioned above (Article 13) involves judicial review.

IMPORTANCE OF JUDICIAL REVIEW

- Judicial Review means the power of the Supreme Court (or High Courts) to examine the constitutionality of any law if the Court arrives at the conclusion that the law is inconsistent with the provisions of the Constitution, such a law is declared as unconstitutional and inapplicable.
- The term judicial review is nowhere mentioned in the Constitution. However, the fact that India has a written constitution and the Supreme Court can strike down a law that goes against fundamental rights, implicitly gives the Supreme Court the power of judicial review.
- Supreme Court can also use the review powers if a law is inconsistent with the distribution of federal powers laid down by the Constitution. Thus, review power of the Supreme Court includes power to review legislations on the ground that they violate fundamental rights or on the ground that they violate the federal distribution of powers.
- The review power extends to the laws passed by State legislatures also. Together, the writ powers and the review power of the Court make judiciary very powerful.
- In particular, the review power means that the judiciary can interpret the Constitution and the laws passed by the legislature. The practice of entertaining PILs has further added to the powers of the judiciary in protecting rights of citizens.

►EVOLUTION OF BASIC STRUCTURE DOCTRINE

- Constitution First Amendment – Added Article 31A, 31B and Ninth Schedule to the Constitution (under Article 31B) and any legislation provided under Ninth Schedule was beyond Judicial Review to promote agrarian reforms and ensure constitutional validity of Zamindari abolition laws.
- Shankari Prasad case - 1951 –
  - SC upheld the validity of Constitution First Amendment.
  - Court separated the concept of ordinary law making powers under Article 13 from constituent powers of Parliament to amend the Constitution under Article 368.

- This made amendments under Article 368 beyond Judicial Review.
- Article 368 empowered Parliament to amend constitution without any exception including Fundamental Rights (PART III).

- Sajjan Singh Case (1965)
  - Constitution 17th Amendment was challenged as it placed certain statutes under 9th Schedule.
  - This impacted judicial review of High Courts as most state laws were placed under 9th Schedule.
  - SC held that Pith & Substance of 17th Amendment was to encourage agrarian reforms and any impact on Article 226 was indirect, insignificant and only incidental.
  - On amending powers of Parliament, SC reiterated relation between Article 13 and 368.
- Golaknath case (1967)
  - Overruled Shankari Prasad and Sajjan Singh judgments.
  - Constitutional Amendment is law under Article 13 and hence subject to judicial review.
  - The term "law" also includes Constitutional Law as Article 13 gives an exclusive definition of law.
  - Fundamental Rights are given a 'transcendental and immutable' position and hence, the Parliament cannot amend Fundamental Rights.
  - Article 368 did not confer amending power to Parliament but had merely laid down the PROCEDURE for Amendment. Substantive power to amend the constitution is not found under Article 368.
  - The term "Amend" envisaged only minor modifications in the existing provisions but not any major altercations.
- Constitution 24th Amendment, 1971 - It declared that the Parliament has the power to amend provisions of the Constitution including Fundamental Rights under Article 368. It also amended Article 13 of the Constitution to make it inapplicable to any amendment of the Constitution under article 368.
- Constitution 25th Amendment, 1971 –
  - It omitted the word "compensation" under Article 31 and replaced it with the term "amount".
  - This was done to remove any contention that the government was bound to give compensation for any property acquired by it.
  - It delinked Article 19(1)(f) from Article 31(2).
  - It added Article 31C which provided that
    - (i) if any law is passed to give effect to the Directive Principles contained in Article 39(b) and 39(c) and contains a declaration to that effect, such law shall not be invalid merely because it takes away or abridges Fundamental Rights under Article 14, 19 or 31
    - (ii) Such law shall not be questioned in Court of Law.
    - (iii) State laws could also claim immunity from judicial review after receiving assent from the President.
  - This amendment changed the relation between PART III & PART IV of the Constitution.
  - So, after introduction of Article 31C, DPSP under Article 39(b) and Article 39(c) were given precedence over Fundamental Rights under Article 14, 19 and 31.
- KESAVANANDA BHARATI V STATE OF KERALA
  - Constitution 24th and 25th Amendment were challenged under Article 32. 13 Judge Bench sat to decide the case because Golaknath Case was decided by 11 Judges Bench.
  - The judgment was delivered on 24th April 1973.

KESAVANANDA ON AMENDMENT OF CONSTITUTION

- SC in Kesavananda held that power to amend the Constitution is to be found in Article 368 itself.
- The Court also held that laws made by the Parliament can be categorised under two heads
  1. The Constituent power of Parliament to amend the constitution under Article 368.
  2. Ordinary law-making power under Article 13.
- The Court recognised that there is a distinction between Ordinary law-making power of Parliament under Article 13 and Constituent Power of the Parliament under Article 368.
- Constitution makers did not use the expression "Law" under Article 13 (2) as including Constitutional Law. This would mean that fundamental rights under Part III or any other part of the Constitution can be amended through Article 368.
- However, Parliament does not enjoy unlimited powers to amend constitution.
- So, for the first time, Supreme Court in Kesavananda Bharati case held that amending power of Parliament cannot be exercised by the Parliament in such a manner to destroy the Basic or Fundamental Features of the Constitution.

- By saying that Parliament cannot override basic structure, it effectively means that SC has the power of Judicial Review to find out
  - Whether any legislation or executive order has violated the basic structure of the Constitution?
  - Whether or not any constitutional amendment destroys the basic features of the Constitution?
- If an amendment goes beyond the provisions of the Constitutions, the Court has the power of judicial review to declare such provisions as constitutionality invalid.

KESAVANANDA BHARATI ON CONSTITUTION 25TH AMENDMENT

- First part of Article 31C protected a law giving effect to the policy of the state towards securing principles of Article 39(b) and Article 39(c) from being challenged on grounds of violation of Article 14, 19 and 31.
- Second part of Article 31C did not allow judicial review by Courts even if the law was not concerning to Article 39(b) and Article 39(c).
- SC held the first part of Article 31C as valid as it identified a limited class of legislation and exempted it from operations of Article 14, 19 and 31.
- Whereas second part of Article 31C was declared Invalid as it barred judicial review by Courts. The Court held that they have the power to inquire whether the law have achieved the objectives mandated under Article 39(b) and Article 39(c).
- The Court also held that the "amount" paid cannot be illusory or arbitrary and must have reasonable relationship with the value of property in question.

CONSTITUTION 42ND AMENDMENT, 1976

- It added Article 368(4) and 368(5).
- Article 368(4) - No amendment of this Constitution including the provisions of Part III made under this article whether before or after the commencement of Constitution (Forty-second Amendment) Act, 1976 shall be called in question in any court on any ground.
- Article 368(5) - There shall be no limitation whatever on the constituent power of Parliament to amend by way of addition, variation or repeal the provisions of this Constitution under this article.

MINERVA MILL JUDGMENT, 1980

- Reiterated the Basic Structure Doctrine and added Judicial Review as part of basic structure of the constitution.
- Supreme Court declared Article 368 (4) and Article 368 (5) as invalid. It also declared extension made to Article 31C by Constitution 42nd Amendment as being unconstitutional on the ground of violation of the basic structure.
- Court recognised that Parliament has the right to make alterations in the Constitution so long as they are within its basic framework of the Constitution.
- Parliament cannot, under Article 368, expand its amending power to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic and essential features. The donee of a limited power cannot by the exercise of that power convert the limited power into an unlimited one.
- Court held that limited amending power is one of the basic features of the Constitution and, therefore, the limitations on that power cannot be destroyed. In other words, Parliament cannot, under article 368, expand its amending power to acquire for itself the right to repeal or abrogate the Constitution or to destroy its basic features.

I.R. COELHO JUDGMENT, 2007

- 9th Schedule was added to Constitution by Constitution (First Amendment) Act, 1951.
- First Amendment Act curtailed Fundamental Right to property guaranteed under Article 31(repealed by Constitution 44th Amendment) so that important measures with respect to agrarian reforms could be passed by the State Legislatures by immunizing them against review in Courts.
- First amendment added two new Articles namely Article 31A & Article 31B and 9th Schedule to make laws abolishing Zamindari unchallengeable in courts.
- Any law added to 9th SCHEDULE could not be challenged in a Court even though they violated Fundamental Rights.
- However, in a landmark judgment by 9 Judge Constitution Bench in 2007 held that - all amendments made to the Constitution on or after 24th April, 1973 by which 9th SCHEDULE was amended by various laws can be judicially reviewed if they have violated the basic structure of the constitution as mentioned in Article 14, 19, 20 and 21 of the Indian Constitution.
- So, as of now the position is that no matter whatever law is placed under 9th Schedule, they can be judicially reviewed if they violate basic structure of Constitution pertaining to Article 14, 19, 20 or 21.

► FUNDAMENTAL DUTIES

- Fundamental Duties were added in Constitution on recommendation of Sardar Swaran Singh Committee.

This insertion brought Constitution in line with Universal Declaration of Human Rights (UDHR).

- Recommendations of Swaran Singh Committee were added by The Constitution (Forty-Second Amendment) Act, 1976. Accordingly, Part IV-A was added into the Constitution which inserted Article 51A in the Indian Constitution. Initially, Article 51A provided for 10 fundamental duties of every citizen of India from Article 51A (a) to (j).
- 11th FD was added by Constitution (Eighty-sixth Amendment) Act, 2002, added Article 51A (k).

SWARAN SINGH COMMITTEE

- Rights and duties are correlative to each other, and fundamental duties are therefore, intended to serve as a constant reminder to every citizen that while Constitution specifically conferred on them certain fundamental rights. It requires citizens to observe certain basic norms of democratic conduct and democratic behaviour. The Swaran Singh committee was asked to formulate a list of fundamental duties so that the citizen should not think only of his rights.
- In Dr. Dasarthi case, it was held that under Article 51 A (j) of Constitution, *all citizens owe a duty of themselves* to *strive towards excellence in all spheres of individual and collective activity so that this nation may constantly rise to higher levels of endeavour and achievement when state undertakes to promote excellence, it can do so only through methods which Constitution permits to adopt.*

ACTS, DUTIES AND OBLIGATIONS – FUNDAMENTAL DUTIES (ARTICLE 51A)

- All Acts performed are not Duties - A "duty" is roughly speaking an "act" which ought to be done or should be done. The term act and duty however, are not identical. To ascribe a duty to a man is to claim that he should perform certain act. Yet not all acts which a person should do constitute duties. We can say that all acts which a person ought to do are not Duties.
- A Duty is owed to others by virtue of one's position - For example, an employee has a duty to work according to their employer. Similarly every "citizen" has certain duties towards its nation as per Article 51A of the Constitution. So, we can say that generally duties consist of positive acts and not in mere abstaining from doing some act.
- Now duties also create obligations - So, duties (like wrongs) can be classified as – Moral Duty & Legal Duty. When a law recognises an act as duty, it commonly enforces the performance of it or punishes its disregard.
- Some Fundamental Duties Legally Enforceable - Accordingly we find that some of our Fundamental Duties are legally enforceable and their disregard is punishable. For example let us see the provision of Article 51A (a).

51A. It shall be the duty of every citizen of India – (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem.

- Now, this duty is legally enforceable as the Union Government has legislated the Prevention of Insults to National Honour Act, 1971. Its provision highlights that any insult to National Flag or Constitution of India is punishable with imprisonment for a term which may extend to three years along with fine or both.
- Further, whoever intentionally prevents the singing of the Indian National Anthem or causes disturbances to any assembly engaged in such singing shall be punished with imprisonment for a term, which may extend to three years, or with fine, or with both.
- However, there are other Fundamental Duties which are not legally enforceable. Example – Article 51A (b) - *to cherish and follow the noble ideals which inspired our national struggle for freedom.*

►SEPARATION OF POWER

Indian Constitution ensures Separation of Powers for legislature, executive and judiciary to prevent their misuse of power. However, Indian Constitution differs from US Constitution in providing strict SOP.

SEPARATION OF POWER IMPLIES:

- Same person do not form more than one organ of the Government.
- One organ of the Government should not exercise the function of other organs
- One organ of the Government should not encroach with the function of the other two organs of the Government.

OVERLAPPING AREAS

- Parliamentary form of Government having Cabinet
- Accountability of Executive to Legislature
- President of India – being the head of the executive, also performs legislative (ordinance) and judicial (mercy petition) functions through council of ministers.
- Speaker of Lok Sabha – has administrative and judicial powers – deciding cases of defection & parliamentary privileges.
- Judicial Review under Article 13 & 368:

- Removal of President, Judges of Supreme Court& High Courts: Through parliamentary process.

GROUNDS OF COMPARISON	INDIA	USA
Citizenship	Single	Dual
Constitution	Single	Dual
Rights of States	Union of states with no right to secede	Agreement between states with right to secede
Separation of Power	Overlapping power between Centre and States – Concurrent List	Absolute Separation of Power between Centre and states
Residuary Power	Centre	States
Functioning of Legislature	Directly Elected Lok Sabha; Seats allocated in proportion to the state's population.	Senate (upper house) is elected directly; each state sends only two representatives irrespective of state population.
Judiciary	Supreme Court and High courts together adjudicate union and state laws.	Supreme Court of United States has authority over whole country but only through federal law. States also have their own Supreme Court.

Indian Constitution through SOP overall ensures balance of power by institutionalising checks and balance on functioning of each organ of government. Despite differences in the nature of federation of India and Unites States, both federations have been successful.

►CONSTITUTIONAL HISTORY

GOVERNMENT OF INDIA ACT, 1858

- It was dominated by the principle of absolute imperial control without any popular participation in India's administration.
- Powers of the Crown were to be exercised by the Secretary of State for India, assisted by Council of 15 members known as the Council of India. The Council was composed exclusively of people from England – some were nominees of the Crown while others were the representatives of Directors of the East India Company.
- The Secretary of the State who was responsible to the British Parliament governed India through the Governor-General assisted by an Executive Council consisting of High Officials of the Government.
- Administration of India was unitary and rigidly centralised. Though the territory was divided into provinces with a Governor or Lieutenant Governor aided by the Executive Council, the provinces were mere agents of Government of India and had to function according to the 'superintendence, direction and control of the Governor-General in all matters relating to provinces.
- There was no separation of functions and all authority for governance – civil and military, legislative and executive was vested in the Governor-General who was responsible to the Secretary of State.
- The control of Secretary of State over Indian Administration was absolute and the Act vested in him the superintendence, direction and control of all acts, operations and concerns related to Indian administration or revenues.
- Thus, Secretary of State wielded Indian Administration through Governor-General as his agent in matter of policy or details. Entire machinery of administration was bureaucratic and totally unconcerned about public opinion in India.

FEATURES OF INDIAN COUNCIL ACT, 1861

- Governor-General's Executive Council (which so far comprised exclusively of officials) included certain non-official members while transacting Legislative Business as a Legislative Council.
- However, this Legislative Council was neither representative nor deliberative in any sense as the members were nominated and their functions were confined exclusively to a consideration of legislative proposals placed before it by the Governor-General.
- Legislative Council could not criticise acts of administration or conduct of authorities. Even in legislation, effective powers were reserved for Governor-General such as – giving prior sanctions to Bills relating to certain matters without which they could not be introduced in Legislative Councils, vetoing the Bills after they were passed or reserving them for consideration of Crown or legislating through Ordinances which the same authority and effect as Acts passed by the Legislative Councils.
- Similar provisions were made for Legislative Councils in the Provinces. Even for initiating legislations in the

Provincial Councils regarding many matters, prior sanction of Governor-General was necessary.

FEATURES OF INDIAN COUNCILS ACT, 1892

- Objective of legislation was to widen basis and expand functions of Government of India & to give further opportunity to non-official and native people in India to take part in the work of Government.
- Two improvements were introduced regarding Indian and Provincial Legislative Councils through the Council Act of 1892 namely
  - (i) Majority official members were retained, non-official members of Legislative Council were to be nominated by Bengal Chamber of Commerce and Provincial Legislative Councils. While non-official members of Provincial Councils were to be nominated by certain local bodies such as universities, district boards, municipalities.
  - (ii) Council was to have power of discussing Annual Statement of Revenue and Expenditure (Budget) and power to address questions to the Executive.

FEATURES OF INDIAN COUNCILS ACT, 1909

First attempt at introducing a representative and popular element was made by Morley-Minto Reforms, known by the names of then Secretary of State for India (Lord Morley) and the Viceroy (Lord Minto) which were implemented by the Indian Councils Act, 1909.

- Size of Provincial Legislative Councils was enlarged by including elected non-official members so that the official majority was gone.
- An element of elections was also introduced in the Legislative Council at the Centre but there the official majority was maintained.
- Deliberative functions of Legislative Councils were also increased by giving them the opportunity of influencing policy of administration by moving resolutions on the Budget and on any matter of public interest except certain subjects – Armed Forces, Foreign Affairs and the Indian States.
- For the first time introduced direct election provided for separate representation of Muslims or communal electorate. This idea of separate electorate for Muslims was synchronous with the formation of Muslim League as a political party in 1906.

FEATURES OF GOVERNMENT OF INDIA ACT, 1919

Morey-Minto reforms failed to satisfy aspirations of Indian nationalists as reforms did not establish a Parliamentary form of government and still final authority on decision making were Executives. Indian National Congress became more active during First World War and started its Home Rule movement. In response, British Government assured increasing associations of Indians in every branch of administration and gradual development of self-governing institutions to progressive realisation of responsible government in British India. Secretary of State for India (Montagu) and Governor-General (Lord Chelmsford) gave legal shape to Government of India Act, 1919. Main features were:

1. Introduced dyarchy in Provinces

- Responsible government in the provinces was introduced without impairing the responsibility of the Governor through the Governor-General.
- Under dyarchy or dual government, subjects of administration were to be divided in two categories for Centre and Provinces.
- Central Subjects were exclusively under the control of central government. The provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.

Provinces	
Transferred Subject	**Reserved Subject**
It was to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which proportion of elected members was raised to 70 per cent. The foundation of responsible government was thus laid down in the narrow sphere of 'transferred subjects.'	Reserved Subjects were to be administered by the Governor and his Executive Council without any responsibility to the Legislature.

2. Relaxation of Central control over the provinces

- Devolution Rules made under 1919 Act made a separation of subjects of administration into two categories – Central and Provincial.
- Subjects of all-India salience were brought under Central subject while issues relating to administration in provinces were classified as Provincial. Led to relaxation of central control over provinces in administrative, legislative and financial matters.
- Sources of revenue were divided into two categories for provinces to run their administration with the help of revenues raised by provinces.
- Provincial budgets were separated from Government of India and the provincial legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.

3. Indian Legislature made more Representative

- Consist of an Upper House (Council of State) composed of 60 members of which 34 were elected

and a Lower House (Legislative Assembly) composed of 144 members of which 104 were elected.

- Power of both houses was equal except power to vote supply was given exclusively to Legislative Assembly.

CONCERNS WITH GOI ACT, 1919

- Not federal distribution of power but delegation of power from centre to provinces.
- Despite devolution of powers, the political structure remained unitary and centralised with Governor-General in Council as the keystone of whole constitutional edifice.
- Governor-General had authority to decide whether a particular subject matter was provincial or central.
- Previous sanction of Governor-General needed by provincial legislature on number of subjects to take any Bill for consideration.
- Governor General's Overriding Powers for Central Legislation
  - Prior sanctions needed to introduce Bills relating to certain matters.
  - Power to veto or reserve for consideration of the Crown any Bill passed by Indian Legislature
  - Power to make ordinances for temporary period in case of emergency.
- Governor had overriding financial powers and dominated ministerial policy measures.
- Finance was a reserved subject placed in charge of members of Executive Council and not the ministers.
- Members of Indian Civil Service through whom ministers were to implement their policies were recruited by the Secretary of State and were responsible to him and not the Ministers.
- No concept of collective responsibility of the ministers as they were appointed individually and worked more as advisers of the Governor.
- Governor has discretion to act otherwise than in accordance with the advice of his ministers.
- Governor could even certify a grant refused by the legislature or a Bill rejected by it.

FEATURES OF GOVERNMENT OF INDIA ACT, 1935

Based on Simon Commission Report, GoI,1935 Act abolished dyarchy, provided for provincial autonomy, separate representation to Muslims, Sikhs, Europeans, Indian Christians and Anglo-Indians.

FEDERAL FEATURES

- Established Indian Federation – having British India Provinces & Princely States as units.
- Provincial Autonomy: Provinces became autonomous units of federation and not delegates of Centre.
- Executive authority of Province was exercised by the Governor on behalf of the Crown and not as a subordinate of Governor-General.
- Governor was also required to act as per the advice of Ministers responsible to the Legislature.
- Distribution of Legislative Power between Centre & Provinces – Federal List Centre, Provincial List - Provinces, Concurrent List - both Centre & Provinces had jurisdiction.
- Governors acted on the advice of Ministers responsible to Provincial Legislatures.
- Bicameral Central & Provincial Legislature – Legislative Assembly for five years and Legislative Council as permanent body not subject to dissolution.
- Federal Court – headed by CJI had original jurisdiction in any dispute between Federation, Provinces or Federated States.

CENTRALISING TENDENCIES

- Sanction of Governor-General or Governor required - for certain legislative proposals passed by legislative assembly.
- Optional for Princely States to join the federation but not for Provinces. Since the Indian rulers never gave their consent, Federation envisaged by Government of India Act, 1935 never came into being.
- Governor could act in his 'discretion or in exercise' of 'individual judgment' - in certain matters without ministerial advice under control & directions of Governor-General vis-à-vis Secretary of State.
- Governor General on account of 'Special Responsibilities' could override ministerial advice & act on directions of Secretary of State, prevent discussions in Legislature on any Bill, make temporary ordinances & permanent Acts.
- Bill passed by Central Legislature was subject to veto by Crown.

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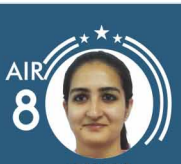
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