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H1- Constitution - Sources & Indian Spirit

Indian Constitution is the longest written constitution in the world. It has borrowed many provisions from the constitutions of various other countries. However, it has been criticized as 'bag of borrowings' - a copy of other constitutions. In this Handout we discuss - how far it is fair to call it a blind copy and paste and does it contain 'Indian spirit' at the core of it?

What are the different sources of the provisions of the Indian constitution?

Country	Features Borrowed
Britain	Parliamentary form of government; Rule of law, lower House of Parliament more powerful than the Upper House, responsibility of Council of Ministers towards Parliament.
USA	Fundamental rights; Preamble; Judicial review, Functions of vice-president, amendment of constitution, nature and functions of the supreme court, independence of judiciary.
France	Ideals of liberty, equality and fraternity etc.
Australia	Concurrent list; Freedom of trade, commerce and intercourse; Joint-sitting, Procedure for solving deadlock over concurrent subjects between the Centre and the States.
Canada	Federation with a strong Centre; Residuary powers with the Centre; Appointment of state governors, Name of the Union of India
Soviet Union (Former USSR)	Fundamental duties; Ideals of justice in the Preamble
Ireland	DPSPs; Nomination of members to Rajya Sabha; Method of election of the President
South Africa	Procedure for amendment; Election of members of Rajya Sabha
Government of India Act 1935	Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions, administrative details

How Indian constitution is a testimony of Indian Spirit?

The framers of the constitution adopted these provisions and modified them according to the suitability and requirement of the Indian socio-economic-political scenario. Indian constitution is a testimony of Indian Spirit in the following manner:

1. The framing and execution of its provisions was driven and remoulded by Indians to suit local diverse realities.
2. Basic Structure doctrine: Certain fundamental and basic features of the constitution that cannot be changed or destroyed form its 'basic structure'.
3. Indian ideals were imparted into the Constitution. For instance, it gave its own idea of secularism.
4. Panchayati Raj System is an Indian creation to suit Indian conditions.
5. Quasi-Federalism: with special features - like All India Services, appointment of Governor, Emergency provisions etc.
6. It empowered the state to enter into the realm of Indian society and transform it by eradicating deeply embedded social and economic hierarchies. E.g., Reservation

Even today, the Indian judiciary is open to applying foreign constitutional doctrines in domestic cases to keep up with the times and adopt the best practices. Dr BR Ambedkar, thus, rightly and proudly stated that Indian Constitution was created after 'ransacking the known Constitutions across the world'.

Achievements of Indian constitution:
1. **Unity in diversity** in India is living proof that despite different religions, cultures, and languages people of India live together with love and peace.
2. **Social transformation:** The democratic process has brought about a shift of political power from the higher urban class to lower rural class, now a politically influential lot.

3.	**Economic Front:** These include strategic affairs and security, politico-legal democratic governance as well as society and economy.
4.	**Acceptance and Legitimacy of the Constitution:** It has never been questioned by a large number of social groups or political parties.
5.	**Environment protection: By 42nd Amendment Act, 1976, Articles 48A was inserted** – it provides that the State shall endeavour to protect and improve the environment.
6.	**Rule of law**: The nation is not governed by Rule of man but by Rule of law. In other words, as per Article 13 of the Indian Constitution rule of law means law of land.
7.	**Empowerment of the people**: Constitution has been a legal benchmark to grant equality to vulnerable sections in society in all spheres.

H2- Constitutional Morality

What is Constitution?

1. It is the basic and fundamental law of the land on the basis of which other laws are made and enforced.
2. It lays down the basic structure of the political system, establishes rule of law and defines the powers and responsibilities of the various organs of the government.
3. The document is based on the faith and aspirations of the people to provide fundamental identity to the people.
4. Performs 4 functions – (a) rules of coordination between diverse groups (b) specifies distribution of power in society (c) limits power of the state (d) enable fulfillment of goals and aspirations of society.

What is Constitutionalism?

1. Constitutionalism refers to sticking to the ideals specified by a system of government, whereas transformation refers to bringing about change in an organized manner.
2. It is constantly in opposition to the constitution's rigidity and plays a critical role in protecting constitutional principles, values and safeguard individual liberty.
3. In India, constitutionalism is considered to be a natural corollary to the fundamental governance of the country.
4. It is ensured by - Written constitution, Rule of law, Separation of power and Judicial review.
5. Constitutionalism can be absent despite having a constitution (e.g., where Constitutional has not led explicit provision).

What is Constitutional Morality?

1. It is morality that has inherent elements in the provisions, norms and the conscience of the Constitution. It is an expectation of actions that resonates not just in the text but also in the soul of the constitution.
2. Constitutional morality is a reflection of adherence to the core principles/substantive content of the constitution
3. It seeks to create an egalitarian, ethical and equal society based on social, economic and political justice.
4. It Leads to effective coordination for resolution of conflicting interests of different groups whilst promoting administrative cooperation.

How does one uphold constitutional morality?

1. It can be upheld by raising voice against non-constitutional and unethical practices.
2. It is necessary to educate the public regarding the importance of upholding these ideals.
3. Constitution morality involves adherence to constitutional principle like: Constitutional supremacy, Parliamentary form of government, Rule of law, Equality, Liberty, Justice, Intolerance, for corruption to name a few.

How is constitutional morality rooted in the Constitution?

1. **Preamble**: Spells out values like justice, liberty, equality and fraternity to be the foundation stones of our democracy.
2. **Fundamental Rights**: Protects the rights of individuals against arbitrary use of power by the State. Especially, Article 32 provides for enforcement of these rights in SC.
3. **Directive Principles**: Guidelines for the State to implement the vision of the makers of the constitution. These include Gandhian, Socialist and Liberal-Intellectual directions.
4. **Fundamental Duties**: Citizens not only enjoy rights but have to fulfil certain duties towards the nation.
5. **Check and Balances**: like Legislative check on executive; judicial review of legislative and executive actions etc.

What is Ambedkar's idea of Constitutional Morality?

1. Ambedkar invoked the phase 'constitutional morality' during constituent Assembly debates. His concerns were hinged upon a moment of transition, wherein India was still recuperating from partition.
2. According to him, constitutional morality was the answer to the existing disparity in the society and the doctrine primarily translated to respect among stakeholders in a republic for Constitutional democracy as the accepted form of governance and administration.

What are some Supreme Court judgements which upheld constitutional morality?

1. **Government of NCT of Delhi Vs. Union of India (2018):** High functionaries need to follow constitutional morality and protect constitutional values.
2. **Naz Foundation case (2009),** the Supreme Court opined that only Constitutional Morality and not Public Morality should prevail.
3. **Navtej Singh Johar & Ors. Vs. Union of India (2018):** Section 377 violates the rights of LQBTQI Community on the bedrock of the principles enunciated in Article 14, 19 and 21.
4. **Justice K.S. Puttaswamy & Anr. Vs. Union of India & Ors**. (2017): SC upheld the constitutional validity of Aadhaar subject to certain limitations.
5. **Indian Young Lawyer's Association v. State of Kerala (2006) (Sabrimala Case):** Constitutional morality should prevail over customary values, traditions and beliefs.
6. **Lt Governor of Delhi case (2016):** SC proclaimed constitutional morality as a governing idea that "highlight the need to preserve the trust of people in the institution of democracy.

What are the criticisms of Constitutional Morality?

1. **Morality as a subjective concept** depends on the value choice of each individual.
2. **Violative of basic tenet of democracy**, like 'Separation of Power' between judiciary, legislature and the executive.
3. **Lack of clarity**: due to different perceptions without explicit mention of the term 'constitutional morality' in the Constitution.
4. May run **counter to public morality** (E.g., Naz Foundation vs Government of NCT of Delhi 2009)
5. **Distrust**: The top-down imposition of constitutional morality by the Court encourages a general distrust among the public towards the legislature and the executive.

What is the significance of Constitutional Morality?

1. **Rule of law**: Constitutional morality ensures the establishment of rule of law in the land by integrating changing aspirations and ideals of the society.
2. **Preserve trust**: It allows people to cooperate and coordinate to pursue constitutional aspirations that cannot be achieved.
3. **Promotes diversity**: Constitutional morality recognizes plurality and diversity in society and also tries to make individuals and communities more inclusive in nature. For example, LGBTQ rights reaffirmed by the SC.
4. **Maintaining democracy**: It preserves the trust of the people in institutions of democracy. For example, abolishing Sati practice.
5. **Social morality**: It can use laws and forms to impact and change the persisting social morality. Imposes implied constitutional limits on the government.
6. **Achieving constitutionalism**: The concept of constitutional morality urges the organs of the State to preserve the heterogeneous nature of society.

Constitutional morality is the foundation for the edifice of effective constitutional laws. Upholding 'constitutional morality', thus, is quintessential moral duty of all the sections of the society to deepen the Indian democracy.

H3- Transformative Constitutionalism

In the constitution of India, there is an unmistakable emphasis on the commitment to transformation of relations between individual & State and between individual themselves. This transformative vision of our constitution underlines its working and interpretation.

What is transformative constitutionalism?

1. It is the term coined by American Academic Karl Klare in his book titled 'The Legal Culture & Transformative Constitutionalism' published in 1998.
2. It entails achieving the constitution's primary goal of transforming society for the better based on continually changing principles. It can be done through infusion of the values of liberty, fraternity, equality and dignity in the social order.
3. The judiciary is a crucial aspect of transformative constitutionalism since ideology embeds religion in the law as a tool for social and political change.
4. It ensures Rule of Law, Good Governance and democracy in a state as it enables check and balances on the excessive use of state power.
5. There are two dimensions of transformative constitutionalism: a) Transformed the relationship between the individual and the state b) Transformed the state and the society itself

What is the transformative role of judiciary?

1. The introduction of PIL (Public Interest Litigation) to the Indian Judicial system has played a major role in propagating the concept of transformative constitutionalism.
2. Judicial interventions have played a catalytic role in ensuring that civil and political rights are brought into the political mainstream.
3. These interventions have also played a role in the realm of socio-economic rights and helped in the political mainstreaming of the concerns of the marginalized.
4. Justice Bhagwati pointed out that the judge infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of society.

What is the significance of transformative constitutionalism?

1. It helps to constitute an egalitarian society based on the principles of liberty and social, political and economic justice.
2. It upholds human rights which forms the basis of a civilized society and to remove social evils like discrimination on the basis of sex, caste, race, sexual orientation or religion.
3. It is necessary for the proper functioning of a democracy that cares about the welfare of even the marginalized sections of society.
4. It is a limitation on government and an anti-thesis of arbitrary rule of despotic government. The limitation of the government by law is essence of the constitutionalism
5. It guaranteed the fundamental right to the citizen of the country

What are the various SC Judgments that upheld transformative constitutionalism?

Besides the cases discussed in Handout 1 (Naz Foundation case, Navtej Singh Johar v case, Justice K.S.Puttaswamy case) following cases upheld the idea of transformative constitutionalism:

1. **Kesavananda Bharati v. State of Kerala (1973):** The topic of whether or not the parliament has the right to modify the Constitution sparked a lengthy debate.
2. **Maneka Gandhi v. Union of India (1978):** The Supreme Court's judgment expanded the meaning of the 'Right to life' under Article 21.
3. **Rameshwar Prasad v. Union of India:(2006):** It is premised on the Rule of Law in which subjective satisfaction is substituted by objectivity provided by the provisions of the Constitution itself."
4. **M Siddiq (D) Thr Lrs vs. Mahant Suresh Das & Ors case (2019):** (Ayodhya Dispute verdict). It was the case revolving around two religious communities and their dispute over a piece of land.
5. **Anuradha Bhasin vs Union of India (2020):** The SC ruled that article 19(1)(a) includes the right to access the internet and that the ban on journalists breaches article 19(1)(g), which guarantees the freedom to practice any profession through internet.
6. **Dr. Maya D Chablani vs Radha Mittal (2021):** The Indian Constitution's 'Right to Life'

was extended generously to street dogs under Article 21.

What is the role of the constitution in the 'Reconstruction of Society'?

1. Equality: The constitution envisions an equal society to uphold the aspirations of the marginalized section. E.g., Universal adult franchise, gender equality, etc.
2. Uphold human dignity: The constitution aims to uphold the dignity of all and enable punitive action for any transgression to it. E.g., The Untouchability Offences Act, 1955.
3. Affirmative actions: The constitution desires abrogation of the hierarchical nature of society in order to ensure equality of opportunities for one and all. E.g., 103rd constitutional amendment act 2019 (EWS)
4. Inclusive society: The constitution being mindful towards inclusive society ensures adequate protections for the minorities. E.g., Article 29 and 30.
5. Role of judiciary: as envisioned by the constitution - to ensure checks and balances for upholding the need and aspirations of the society. E.g., Right to privacy under Article 21.
6. Citizen centric polity: The authority of the Constitution lies with 'We the people of India' => thus adopting a rights-based approach to development. E.g., Right to Education under Article 21A, etc.

What are the political reconstructions of transformative nature of Indian constitution?

1. Asymmetric federalism: Owing to large socio-cultural diversity and demographic variation constitution adopt a demos-enabling model of asymmetric federalism.
   a) E.g., schedule 5 and schedule 6, Variation in number of representatives being sent to Rajya Sabha (1 in Tripura; 31 in UP), Special provision under Article 371-371J.
2. Protection against tyranny: The constitution facilitates preventive measures in order to protect democracy from the tyranny of majority as well as autocracy of an individual. E.g., 44th amendment to constitution.
3. Devolution of powers: The constitution makes provision to ensure wider devolution of political powers for balanced and inclusive development E.g., 73rd and 74th amendment Acts
4. Political reforms: The constitution of India is responsive to the political corruption and shows the ability to undertake corrective measures in order to prevent subversion of representative democracy. E.g., Ani-defection Law under 10th schedule added by 52nd amendment.
5. Cooperative federalism: As the country moves towards a more integrated, complicated and sophisticated economy the constitution displays its transformative character by promoting cooperative federalism. E.g., 101st amendment brought GST framework.
6. Balance between political and socio-economic democracy: The SC in Minerva mills case highlighted the harmonious construction between fundamental rights and directive principles.

What are the challenges of transformative constitutionalism?

1. Achieving goal: It has not been able to fully achieve the goals set by the constitution.
2. Law-politics divide: Points of conflict with the political arms of government that largely retain the power over policy and government expenditure.
3. Controversial in nature: It is more controversial because the contours of judicial activism that sometimes goes with transformative constitutionalism are undefined or amorphous.
4. Insufficient cure: It has been criticized as being an insufficient cure for widespread poverty and inequality that continue to ravage post-colonial Africa.

Transformative constitutionalism, thus, is a process and an event that has played an important role in defining the essence of democracy and a constitution within it. It enables ensuring the Constitution as a tool for further improving the existing conditions of human rights, legal rights and other constitutional rights in the country.

H4- Interpretation of the Constitution

What is Constitutional Interpretation?

It is the way in which the judiciary construes the law, particularly constitutional documents, legislation and frequently used vocabulary. It comprehends the methods or strategies available to people attempting to resolve disputes about the meaning or application of the Constitution.

What is the role of Supreme Court in Interpretation of the Constitution?

1. Supreme Court of India acts as final interpretation of Constitution in India.
2. The function of judicial review is a part of the constitutional interpretation itself.
3. The interpretation entails approaches like - Literal (text/grammatical), conceptual (concepts and themes) and thinking (reasons).

What are the various doctrines in interpreting the constitution?

The Judiciary applies various doctrines in interpreting the constitution.

1. **Doctrine of Severability**: It means that when some particular provision of a statute offends or is against a constitutional limitation, but that provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute.
2. **Doctrine of Eclipse**: It is a is a principle that states that any law which is inconsistent with the fundamental rights is not invalid.
3. **Doctrine of Pith and Substance**: It states that if the substance of legislation falls within a legislature's lawful power, the legislation does not become unconstitutional just because it impacts an issue beyond its area of authority.
4. **Doctrine of Colourable Legislation**: It means when a legislature does not have the power to make laws on a particular subject directly, it cannot make laws on it indirectly.
5. **Doctrine of Harmonious Construction:** The Doctrine states that whenever there is a case of conflict between two or more Statutes or its parts/provisions, then the Statute has to be interpreted upon harmonious construction.
6. **Doctrine of Territorial Nexus:** According to this doctrine, laws made by a state legislature are not applicable outside that state, except when there is a sufficient nexus between the state and the object.
7. **Doctrine of Implied/Incidental Powers**: It is applied where there is a need for the government to pass laws for the benefit of the country and people, that is not expressly stated in the constitution or any other legislation.
8. **Doctrine of Incidental and Ancillary Powers:** This doctrine indicates that if a legislative body has the power to legislate on a particular matter, then they can also legislate on its ancillary topics.
9. **Doctrine of Waiver:** It explains that a person, entitled to a right or privilege, is free to waive that right or privilege. It is voluntary relinquishment of a known existing legal right or privilege.
10. **Doctrine of Precedent**: It makes the decisions of courts, usually binding on the subordinate courts in cases in which similar or identical questions of law are raised before the court.
11. **Doctrine of Occupied Field:** As per the doctrine of "occupied field" enshrined in Article 254(1) of the Constitution, if there exists a Central law on a concurrent subject, then a State law cannot override it.
12. **Doctrine of Prospective Overruling:** It dictates that a decision made in a particular case would have operation only in the future and will not carry any retrospective effect on any past decisions.
13. **Doctrine of Progressive interpretation:** It means that the Courts have interpreted the provisions of the Constitution in the light of the Social, economic and legal Conditions prevailing at that point of time.

What is the importance of interpreting the Constitution?

1. **Resolve unaddressed questions**: Interpretation is necessary to determine the meaning of ambiguous provisions of the Constitution or to answer fundamental yet unaddressed questions.
2. **Legal applications**: Constitutions are broadly worded and general documents => To apply them to particular legal circumstances, rules of constitutional interpretation become necessary.

3. **Spirit of the Constitution**: Rules of constitutional interpretation help identify the spirit of the text in toto.
4. **Constitutional Symbolism**: A written Constitution is in many senses a symbolic document and to identify its symbolism is an important legal venture, where interpretation becomes crucial.

What are the constitutional provisions involved?

Article 141: Law interpreted shall be binding on all courts within territory of India.

1. **Article 132**: If HC certifies under article 134-A that the case involves a substantial question of law as to interpretation of the Constitution, then appeal lies with Supreme court.
2. Others include **Article 32 & 226, Article 136, Article 142 etc.**

What are the SC judgements related to interpretation of the Constitution?

1. **A.K. Gopalan v State of Madras 1950**: Interpreted key fundamental rights including Article 19 and 21.
2. **Shankari Prasad Case (1951)**: The judiciary interpreted if Fundamental Rights can be amended under Artice 368. Here, the validity of the 1st constitutional amendment, which added Article 31-A and 31-B of the Constitution, was challenged.
3. **Kesavananda Bharati v State of Kerala** - Court held that Parliament's power to amend the Constitution did not extend to altering its "basic structure".
4. **Maneka Gandhi v. Union of India**: Court adopted a broader interpretation of the constitution whereby fundamental rights are comprehensive Bill of rights rather than a miscellaneous grouping of constitutional guarantees.

Judiciary has been playing a remarkable role by the way of judicial review for maintaining the supremacy of the constitution. Interpretation, thus, continues to safeguard democracy and ensure peace, justice and good order. The constitution has provided judiciary with independence and enough powers to keep executive in check, making Supreme Court as the final judge of the constitution.

H5- Constituent Assembly – Committees & Criticism

The Constituent Assembly of India was a body of representatives created under the Cabinet Mission Plan to frame the Constitution of India. Following India's independence in 1947, its members served as the nation's first Parliament as the 'Provisional Parliament of India'.

What is the historical background of the Constituent Assembly?

1. In **1934, M.N Roy** first proposed the idea of Constituent Assembly for India. Later, in 1935, Indian National Congress (INC) officially demanded Constituent Assembly.
2. In 1938**,** Jawaharlal Nehru declared that 'the Constitution of free India must be framed, without outside interference, by a Constituent Assembly elected on the basis of adult franchise"
3. The demand was finally accepted *in principle* by the British Government in what is known as the **'August Offer' of 1940.**
4. The assembly was constituted in **November 1946** under the scheme formulated **Cabinet Mission Plan of 1946.** Members were **elected indirectly.**
5. The Assembly comprised **representatives of all sections** of the Indian society – Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections.
6. The Assembly included all important personalities of India at that time, **with the exception of Mahatma Gandhi**.

What were the Committees of the Constituent Assembly?

Chairman	Committees presided
J L Nehru	• Union Powers committee • Union Constitution committee • States committee for negotiating with states • States Committee
S. Patel	• Provincial constitution committee • Advisory Committee on Fundamental Rights, minorities and Tribal and excluded areas
Dr BR Ambedkar	• Drafting committee
JB Kripalani	• Fundamental Rights sub-committee
Gopinath Bardoloi	• North-East Frontier Tribal Areas and Assam excluded and partially excluded areas sub committee
AV Thakkar	• Excluded and partially excluded areas sub-committee
Dr Rajendra Prasad	• Rule procedure committee • Steering committee • Committee on the Rules of Procedure • Ad hoc Committee on the National Flag • Finance and Staff committee.
Alladi Krishnaswami Ayyar	• Credential committee
H C Mukherjee	• Minorities sub-committee
B. Pattabhi Sitaramayya	• House Commitee
K.M. Munshi	• B. Pattabhi Sitaramayya
G.V Mavalankar	• Committee on the Functions of the Constituent Assembly
Vallabh Bhai Patel	• Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas

H.C. Mookherjee	• Minorities Sub-Committee
A.K Thakkar	• North East Frontier Areas and Assam Excluded and Partially Excluded Areas Sub Committee

What are the criticisms of the Constituent Assembly?

1. **Not a Representative Body**: It was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
2. **Not a Sovereign Body**: The constituent assembly was not a sovereign body since it was created by the British. However, it worked as a fully independent and sovereign body.
3. **Time-Consuming**: It is said that the makers took a long time in framing the constitution. However, keeping in mind the complexity and the peculiarities of the diverse and large Indian nation, this can be understood.
4. **Complicated language:** The language of the constitution was criticized for being literary and complicated.
5. **Dominated by Congress**: The assembly was dominated by the Congress Party. But the party dominated the provincial assemblies and this was natural. Moreover, it was a heterogeneous party with members from almost all sections of Indian society.
6. **Lawyer-Politician Domination**: It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of society were not sufficiently represented.
7. **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu-dominated body. Lord Viscount Simon called it 'a body of Hindus'.
8. **Dominated by Lawyers:** Critics also argued that the Constitution became bulky and cumbersome due to dominance of lawyers in the Constituent Assembly.

What are the achievements of Constituent Assembly?

1. It laid the foundation of **representative democracy** in India => Here, people elect their leaders.
2. Through it, people of India were guaranteed social, economic and political **justice, equality and fundamental freedoms**.
3. Constitutent Assembly **contained the tendencies of cession** to deliver the organic law of land.
4. It **strengthens national unity** by stating that citizens who enjoy the "privileges and immunities' of one state should be entitled to the same treatment in other states.
5. It **empowered the people for participation in public affairs** whilst ensuring due exercise and protection of their rights.
6. It provides the **possibility of amending the Constitution** helped ensure its ratification, although many feared the powerful federal government it created would deprive them of their rights.
7. Promoting knowledge and respect for **principles like constitutionalism** through thoughtful debates in its House => enhancing the legitimacy of the settlement and the constitution.
8. It was the makers of the Constitution who provided for **ecosystem suitable for feeding the starved** and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity.

The Constituent Assembly, thus, **nurtured the constitution** that deals not only with the structure of government, but also with how communities relate to the structure. The Constituent Assembly **became the Provisional Parliament** of India and helped in shaping the Indian political system.

H6- Sovereignty

Introduction

"Sovereignty is that characteristic of the state by virtue of which it cannot be legally bound except by its own or limited by any power other than itself." - Jellineck

According to Harold Laski, sovereignty is the ultimate power of the state to exercise power over individuals and groups within the state. Sovereign refers to the independent authority of a State. That it has the power to legislate on any subject; and that it is not subject to the control of any other State / external power. It refers to the state's ability to carry out all of its functions with the assistance of some authority or power.

What is Sovereignty?

1. The term Sovereignty is derived from old French word Souverain, meaning supreme power within a territory. In political sense, it is the ultimate power or authority, in the process of decision making of the state and to maintain an order
2. The use of the term "Sovereignty" in Political Science dates back to the publication of Bodin's "The Republic" in 1576.
3. In any state, sovereignty is assigned to the person, body, or institution that has the ultimate authority over other people in order to establish a law or change an existing law.
4. The Preamble of the Indian constitution declares India to be a "Sovereign" country, implying that India has its own supreme law and is not subject to the laws of any other state or nation. Ultimately power bestows within the people.

What is the meaning of Sovereignty in Indian context?

1. The Preamble of the Indian constitution declares India to be a "Sovereign" country, implying that India has its own supreme law and is not subject to the laws of any other state or nation. Furthermore, India is free of any external interference in its own affairs.
2. The Preamble to the Indian Constitution affirms that on 26 November 1949, the people of India adopted, enacted and gave to themselves the Constitution, 'having solemnly resolved to constitute India into a sovereign democratic republic' which indicates that the power of the constitution is derived from the people giving the sovereignty to the people.
3. According to the principle of popular sovereignty, the people's united will is the supreme authority of the land and for the principle to be accumulated into the legal framework of the country, the supremacy of the people must predate the law of the land.

What are the aspects of sovereignty?

There are two aspects of sovereignty - internal sovereignty and external sovereignty. These are discussed below:

1. Internal sovereignty: Internal Sovereignty means some persons, assembly of group of persons in every independent state have the final legal authority to command and enforce obedience. This sovereignty exercises its absolute authority over all individuals or associations of the individuals within the state.
2. External sovereignty: External sovereignty refers to the sovereign's ability to interact with other states and international organizations as an autonomous entity free of foreign rule or influence.

What are the Attributes of sovereignty?

The following are the characteristics or attributes of Sovereignty:

1. Permanence: It is the chief characteristic of sovereignty. Sovereignty lasts as long as an independent state lasts.
2. Exclusiveness: By exclusiveness we mean that there can be two sovereigns, in one independent state and if the two sovereigns exist in a state, the unity of that state will be destroyed.
3. Comprehensiveness: The State is all comprehensive and the sovereign power is universally applicable. Every individual and every association of individual is subject to the sovereignty of the state.
4. Inalienability: It is another characteristic of sovereignty. Sovereignty is inalienable. By inalienability we mean that the State cannot part with its sovereignty.
5. Unity: It is the very spirit of Sovereignty. The sovereign state is united just as we are united.

6. Imprescriptibly: By imprescriptibly, we mean that if the sovereign does not exercise his sovereignty for a certain period of time, it does not lead to the destruction of sovereignty.
7. Absoluteness: Sovereignty is absolute and unlimited. The sovereign is entitled to do whatsoever he likes.
8. Originality: By originality we mean that the sovereign wields power by virtue of his own right and not by virtue of anybody's mercy.

What are the limitations of Sovereignty?

1. Moral limitations: Many early thinkers contended that divine law, natural law, or moral law constrained sovereignty. They largely agreed on religious, moral, and legal values, all of which have an impact on the exercise of sovereignty.
2. Constitutional limitations: Some writers have contended that the state's constitution limits sovereignty. They distinguish between fundamental or constitutional law and ordinary government laws, claiming the former to be the higher law and the latter lawful only if it is consistent with the former.
3. International limitations: Many contemporary writers believe that a state's sovereignty is constrained by international law and the treaties and conventions it signs with other countries.

What is the impact of Globalization on State Sovereignty?

Globalization refers to 'a process of removing government-imposed restrictions on movements between countries in order to create an 'open', 'borderless', world economy'. National sovereignty and national borders have their limitations in the globalized economy.

There is a link between globalization and State sovereignty.

The general impact of globalization on national sovereignty is discussed below:

1. The interference of external state and non-state actors has been increasing in the functioning of sovereign nations, particularly in developing countries with the pretexts of human development.
2. The role of the State as protector and guarantor of human rights has also undergone significant change. The state's authority in this regard has been partially transferred to the universal codes regarding human rights thus greatly undermined national sovereignty and citizenship.
3. In the sphere of economy, multinational companies can also have significant influence with regard to policy formation in many national governments and in transnational bodies such as the European Union and the World Bank.
4. There has been rise in the interference of external actors in the domestic polity and society of a sovereign nation in the pretext of globalization, like in the case of dependency of the African nation on developed nation and consequent domestic turmoil.
5. The sovereignty of a nation in a globalized economy can be protected through strong democratic political institutions, civil societies, media etc. An appropriate distributive mechanism for the distribution of the benefits gained through globalized economy and extend welfare functions of the State.

According to the International Commission on Intervention and State Sovereignty, "national political authorities are responsible to the citizens internally and to the international community through the UN". Therefore, in the present time, it is appropriate to say that an authority's right to sovereignty is not unfettered.

H7- Socialism

Introduction

Socialism is an economic system where the means of production, such as money and other forms of capital, are owned to some degree by the public though the State. Under a socialist system, everyone works for wealth that is in turn distributed to everyone. Such a form of ownership is granted through a democratic system of governance.

What are the different types of socialism?

1. Democratic socialism: It promotes socialism as an economic principle well as democracy as a governing principle.
2. Reformist socialism: It believes 'socialism' by the ballot box', so it accepts basic liberal democratic principles like consent, constitutionalism, and party competition.
3. Revolutionary Socialism: This ideology advocates for central social change through revolution or insurgency rather than gradual reform.
4. Fundamentalist socialism: This ideology seeks to abolish and replace capital by recognizing socialism as qualitatively distinct from capitalism.
5. Scientific socialism: It entails a scientific investigation of historical and social development, which, in the form of Marxism, proposes that socialism, rather than 'should,' will inevitably 'would' replace capitalism.
6. Christian Socialism: It is a term used by those on the Christian left whose politics are both Christian and socialist, and who see the two as intertwined.
7. Eco-Socialism: Eco-Socialism is a philosophy that combines elements of Marxism, Socialism, Green politics, ecology, and the anti-globalization movement into one.
8. Market Socialism: This ideology describes an economic system in which a market economy is directed and guided by socialist planners, and prices are set by trial and error rather than by a free price mechanism.
9. Utopian Socialism: It was a term coined in the early nineteenth century to describe the first currents of modern socialist thought.

What is the meaning of Socialism in Indian context?

1. The term Socialist was added through 42nd amendment act, 1976 in the PREAMBLE of Indian constitution.
2. However, various provisions in the constitution existed that indicated the socialistic nature of our constitution. Ex: Directive Principles of State Policy (DPSP)
3. Indian style of socialism is a democratic socialism (both public and private enterprises is encouraged) as opposed to communist socialism (state decides everything under the sun concerning the distribution and usage of resources)
4. In India socialism is a blend of Marxist and Gandhian socialism, with heavy leanings towards the latter.

What are Supreme Court`s Judgments on Socialism?

1. D.S. Nakara v. Union of India (1982): The court observed that the basic reason to include the term Socialist was to brief the makers so that they can make provisions of the constitution that provide a decent life to the citizen and especially security from cradle to the grave.
2. Air India Statutory Corporation v. United Labour Union (1992): The court stated that the main purpose of the concept of socialism is to establish social order through the rule of law.
3. St. Xavier's College v. the State of Gujarat (1974): The Supreme Court, in this case, explained the concept of secularism. It does not mean anti-religion but it means that the state will respect every religion and should not interfere in their practices but does not follow any religion.

What Is Marxism?

1. Marxism is a social, political, and economic philosophy named after Karl Marx. Marxism posits that the struggle between social classes—specifically between the bourgeoisie, or capitalists, and the proletariat, or workers—defines economic relations in a capitalist economy and will inevitably lead to revolutionary communism.
2. Marxism is a social, political, and economic theory originated by Karl Marx that focuses on the

struggle between capitalists and the working class.

3. Marx wrote that the power relationships between capitalists and workers were inherently exploitative and would inevitably create class conflict.
4. He believed that this conflict would ultimately lead to a revolution in which the working class would overthrow the capitalist class and seize control of the economy, creating an egalitarian society, called communist society.

Marxism was first publicly formulated in 1848 in the pamphlet The Communist Manifesto by Karl Marx and Friedrich Engels, which lays out the theory of class struggle and revolution.

What is Communism, Socialism, Capitalism?

1. Communism advocates for a classless system in which all property and wealth are communally (rather than privately) owned like during communist rule in USSR.
2. Socialism predates communism by several decades. Its early adherents called for a more egalitarian distribution of wealth, solidarity among workers, better working conditions, and common ownership of land and manufacturing equipment. Socialism is based on the idea of public ownership of the means of production, but individuals may still own property. Rather than arising out of a class revolution, socialist reform takes place within the existing social and political structures, whether they're democratic, technocratic, oligarchic, or totalitarian.
3. Both communism and socialism oppose capitalism, an economic system characterized by private ownership and a system of laws that protect the right to own or transfer private property. In a capitalist economy, private individuals and enterprises own the means of production and the right to profit from them.
4. Communism and socialism aim to right the wrongs of capitalism's free-market system. These include worker exploitation and inequities between rich and poor.

What is Gandhian Socialism?

1. Gandhi accepted socialism as a part of his programme to do away with social and economic inequalities. Socialism to Gandhi was a religion wherein "the prince and the peasants, the wealthy and the poor, the employer and the employee, are all on the same level". In terms of religion, there is no duality in socialism.
2. "Gandhian Socialism", refers to Sarvodaya - upliftment of all according to him economic equality does not mean that everyone would literally have the same amount. It simply means that everybody should have enough for his or her needs". The real meaning of economic equality is "to each according to his need".
3. He shared with the Marxists their belief in the inevitability of the end of capitalism and agreed that socialism was the coming social order, but he did not accept their thesis that class war and violence were the only possible mid-wives of fundamental social change.
4. Gandhi's conception of socialism was basically different from that associated with communism or scientific socialism or the Russian or the Chinese experiment. The Gandhian alternative is Sarvodaya, a classless society based on the destruction of the class but not on the destruction of the individual who constitutes the classes.
5. Gandhi also claimed for his socialism of Sarvodaya and Trusteeship the ability to survive on a self-sustaining and permanent basis which, he held, was not possible in the case of socialism or communism of the Marxist conception.

What is the significance of socialism?

1. Reduces income inequality: In socialism, wealth is distributed among the population and helps in reducing poverty.
2. Social stability: With various State sponsored programs such as universal basic income, universal health care, individuals may be less likely to fall upon hard times.
3. Greater rights to workers: It protect workers from exploitation, because they own the means of production.
4. Democratic socialism reduces excess of free market through abolishing monopoly and promoting spirit of competition.
5. Better living standards, universal healthcare, and improved economic growth.
6. Increases labor productivity rates and helps implement environmental protections.

What are the challenges to Socialism?

1. Depends on cooperation: In socialism, the idea is that everyone is working together towards the same goal. There is no guarantee that individuals will want to cooperate with each other.
2. Abuse power: The government decides how wealth should be distributed, but a corrupt government could mean that resources and wealth are not distributed fairly.
3. Reward: Socialism does not depend on competition, which means that the workers and business might not be interested in continually improving their products and services.
4. Loss of consumer sovereignty: In a socialist economy, consumers do not have the freedom to purchase whatever goods they desire.
5. The Socialist economy does not provide necessary motivation for people to work hard.
6. Lack of competitiveness and innovation: Socialism does not reward entrepreneurial ventures or competitiveness. Consequently, a socialistic system does not encourage innovation as much as capitalism.

Socialism envisages the progress of individuals & society. It should be used to uplift the people from widespread poverty, malnutrition and hunger. Despite its contributions to Indian economy and society through welfare policies, cooperative societies, planned growth, land reforms etc., socialism in India is yet to achieve all its intended objectives.

H8- Secularism

What is the meaning of the term 'Secular'?

- The term "Secular" means being "separate" from religion, or having no religious basis.
- A secular person is one who does not owe his moral values to any religion. His values are the product of this rational and scientific thinking.

What is Secularism?

1. It is the principle of seeking to conduct human affairs based on secular, naturalistic considerations.
2. The term 'secular' was added to the Preamble of constitution of India by the 42nd Constitutional Amendment Act of 1976.

What are the constitutional provisions dealing with Secularism in India?

1. Article 14 grants equality before law and equal protection of the laws to all,
2. Article 15 enlarges the concept of secularism to the widest possible extent by prohibiting discrimination on grounds of religion, race, caste, sex or place of birth.
3. Article 16 (1) guarantees equality of opportunity to all citizens in matters of public employment and reiterates that there would be no discrimination on the basis of religion, race, caste, sex, descent, place of birth and residence.
4. Article 25 provides 'Freedom of Conscience', that is, all persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion.
5. Article 26: every religious group or individual has the right to establish and maintain institutions for religious and charitable purposes and to manage its own affairs in matters of religion.
6. Article 27: the state shall not compel any citizen to pay any taxes for the promotion or maintenance of any particular religion or religious institution.
7. Article 28: allows educational institutions maintained by different religious groups to impart religious instruction.
8. Article 29 & 30: provide cultural and educational rights to minorities.
9. Article 51A: Obliges all the citizens to promote harmony and the spirit of common brotherhood and to value and preserve the rich heritage of our composite culture.

What is the significance of Secularism?

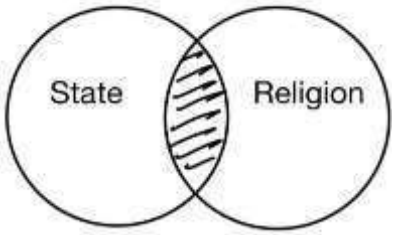
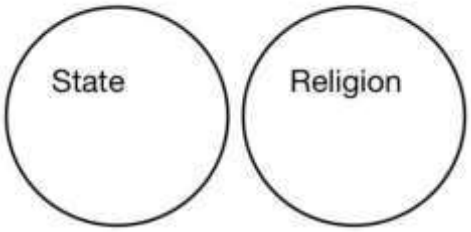
1. Protect freedom of religion: It seeks to ensure and protect freedom of religious belief and practice for all citizens.
2. Democracy and fairness: In a secular democracy all citizens are equal => No religious or political affiliation gives advantages or disadvantages and religious believers are citizens with the same rights and obligations as anyone else.
3. Equal access to public services: Secularism ensures that citizens should have equal access to all public services such as hospitals, schools, and local authorities.
4. Secularism is not atheism: Atheism is a lack of belief in gods. Secularism simply provides a framework for a democratic society.
5. Protects free speech and expression: Religious people have the right to express their beliefs publicly but so do those who oppose or question those beliefs.

What is the philosophy of Indian Secularism?

1. This concept is promoted by personalities like Vivekananda and Mahatma Gandhi is called 'Positive Secularism' which reflect ethos of Indian culture.
2. The term 'secularism' is akin to the Vedic concept of 'Dharma nirapekshata' that is indifference of state to religion.
3. This model of secularism is adopted by western societies where the government is totally separate from religion.
4. Indian philosophy of secularism is related to "Sarva Dharma Sambhava". Indian secularism is not an end in itself but a means to address religious plurality and sought to achieve peaceful coexistence of different religions.

How Indian concept is different from Western Model of Secularism?

The two major types of secularism are the Indian model and the western model. Over the years, India has developed its own unique concept of secularism that is fundamentally different from the parallel western concept of secularism in the following ways:

Indian Secularism	Western Secularism
Indian model  In India, the religion and state are not mutually exclusive and are separated by a permeable wall.	Western model  In the west, the religion and state are mutually exclusive and are separated by an impermeable wall.
Origin: The ancient Vedic period. It is based on religious pluralism promoting dharma nirapekshata.	Origin: during European Renaissance in response to rampant corruption in the Church and unwarranted interference in state affairs during the Dark Ages.
Application: Largely in a mutli-religious and mutli-ethnic society.	Application: Largely in a society with a single religion characterized by homogeneity

What are the threats to Secularism?

1. Mingling of religion and politics: The mobilization of votes on grounds of primordial identities like religion, caste, and ethnicity, have put Indian secularism in danger.
2. Communalization: It operates through communalization of social space, by spreading myths and stereotypes against minorities.
3. Competitive politization: Politicization of any one religious group leads to the competitive politicization of other groups, resulting in inter-religious conflict.
4. Religious Nationalism: Rise of religious nationalism in recent years have resulted into mob lynching etc.

Indian Secularism - a lesson for the west:

- Indian secularism promotes Unity in diversity over Unity in uniformity of west. Thus, advocates a peaceful co-existence while western model can lead to religious stereotyping leading to discrimination and a divided society.
- In India, State doesn't owe any loyalty to any particular religion. This gives equal freedom to all religions while providing equal protects all religions.
- Indian secularism recognizes both individual and community religious rights while west only recognizes individual rights.
- Indian model prefers Principled distance (state treat every religion with equal respect) to Equidistance in west. Thus, Indian government can financially support, regulate and administers the religious institutions like Wakf council (Islam), historic Hindu temples, Buddhist monasteries, etc.
- Indian Secularism provides space for religious symbols like kirpan, hijab etc unlike Western system which completely prohibits (France) wearing these in public.
- The Indian model allows scope of education through religious denominations, especially to start and maintain schools and impart religious education therein.
- Recognition of minority rights (articles 29, 30) which also enjoys state support in terms of special grants.

There is a need to identify a common framework or a shared set of values which allows the diverse groups to live together. Thus, Secularism is the best chance we have to create a society in which people of all religions or none can live together fairly and peacefully.

H9- Democracy

Introduction

Democracy is defined as a form of government in which the supreme power is vested in the people and is exercised by them directly or indirectly through a system of representation, usually involving periodic free elections. In essence, democracy is a form of government that is run by the elected representatives of the people.

What is Democracy?

1. The term 'democracy' is derived from two Greek word "demos" meaning people and democracy means "the power of the people".
2. The fulfilment of the political conditions leads to political democracy. To achieve the conditions of political democracy, it is essential to adopt a constitution and laws that vest supreme power in the people.
3. According to Abraham Lincoln, "Democracy is a government of the people, by the people, and for the people."

What are the types of Democracy?

Direct and indirect democracy

1. **Direct democracy**: When the people themselves directly express their will on public affairs, the type of government is called pure or direct democracy. For example, Ancient Greek city-states.
2. **Indirect democracy:** When the people express their will on public affairs, through their elected representatives, the type of government is called indirect democracy. This type of democracy, also known as representative democracy, is of two kinds—parliamentary and presidential. Example: The prevailing system of democracy in India, USA and UK.

Participatory & Representative democracy

1. **Participatory democracy or participant democracy** is a form of government in which citizens participate individually and directly in political decisions and policies that affect their lives, rather than through elected representatives. Such as in Switzerland, where major decisions are made by popular voting.
2. **Representative democracy:** It is also known as indirect democracy, is a type of democracy where elected persons represent a group of people, in contrast to direct democracy., like in India.

What are the features of Democracy?

1. Free and fair elections, to elect representatives of the people and final decision-making power to the representatives.
2. Universal adult franchise, I.e., in general equal voting right to all individuals.
3. Fundamental rights and protection of individual freedom.
4. Individual liberty and adherence to values like equality, social justice etc.

What is meaning of "Democracy" under Indian Constitution?

1. The Indian Constitution provides for representative parliamentary democracy under which the executive is responsible to the legislature for all its policies and actions.
2. Universal adult franchise, periodic elections, rule of law, independence of judiciary, and absence of discrimination on certain grounds are the manifestations of the democratic character of the Indian polity.
3. The term 'democratic' is used in the Preamble in the broader sense embracing not only political democracy but also social and economic democracy.

What does Social Democracy mean?

1. It means a way of life which recognizes liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity. They form a union of trinity in the sense that to divorce one from the other is to defeat the very purpose of democracy.
2. Liberty cannot be divorced from equality; equality cannot be divorced from liberty. Nor can liberty and equality be divorced from fraternity.
3. Without equality, liberty would produce the supremacy of the few over the many. Equality without liberty, would kill individual initiative".
4. The Constitution of India envisions to establish an egalitarian social order rendering to every citizen

social, economic and political justice in a social and economic democracy of the country.

What is Dr B R Ambedkar's view on Democracy?

1. Dr. B R Ambedkar believed that Political democracy cannot last unless there lies at the base of its social democracy
2. According to him 'Democracy means a way of life which consists of the basic principles of freedom, equality, and fraternity.'

- It means a way of life which recognizes liberty, equality and fraternity. The principles of liberty, equality and fraternity are not to be treated as separate items in a trinity.

What is the significance of Democracy?

1. Accountability: Democracy is more accountable than other governments to its people, responding to their needs, sensitivities e.g., post-Independence India did not face any famine due to focus on food security while Communist China faced it in the late 1950s.
2. Better decision making: Rigorous consultation and discussions in a democracy help in better quality of decision making e.g., special status given to scheduled areas and North-East in Constitution of India reflecting their culture.
3. Accommodation of differences: Democracy allows for methods to deal with differences and conflicts e.g., protection to minorities and depressed classes in India.
4. Enhances dignity of individuals: It enhances the dignity of citizens. Rights allow one to develop to their fullest potential and be responsible for their own actions. This removes the potential of any violent fallout in case citizens are disaffected by the ruling government.
5. Course corrections: Democracy allows for course corrections by allowing to rectify mistakes e.g., Indian PM apologizing to Sikh community for atrocities in the mid-1980s, Japanese PM doing same for atrocities in Manchuria and South Korea during world war.
6. 6.Social Diversity: Democracy accommodates social diversity by ensuring equality and fair representation for all, regardless of caste, creed, color, race, religion, language, or place of residence
7. Dignity of individuals: Democracy is a long way ahead of other forms of government in accepting the Dignity and Freedom of Individuals. For example, in India, democracy has strengthened the claims of the oppressed and discriminated castes to equal reputation and equal opportunity.

What is the Doctrine of popular sovereignty?

1. Popular sovereignty is the principle that the authority of a state and its government are created and sustained by the consent of its people, through their elected representatives (rule by the people), who are the source of all political power.
2. It is one of the underlying ideas of the United States Constitution, and it argues that the source of governmental power (sovereignty) lies with the people (popular).
3. The principle of popular sovereignty denotes that the source of governmental power or sovereignty lies with the people. The concept of the social contract is the base of this principle as it believes that the government should work for the benefit of the people governed.

What are the features of democratic government in India?

Features of democratic government in India from the beginning of the democratic system in India are as follows –

1. Collective Responsibility: In the democratic government in India, both the center and state, the Council of Ministers to their respective legislatures are collectively responsible. For any act by the government, the entire ministers of the council are responsible and not a single minister alone.
2. Majority Rule: The majority rule is one of the main features of Indian democracy. The party which forms the government needs to get the majority number of votes in the election. This is the majority rule and every citizen of the country must support and accept the government that got the majority number of votes from the citizens.
3. Opinions of the minority are respected: Though Indian democracy has the feature of majority rules opinions of minorities are also considered. Minorities are also asked to give their opinions on any field.

4. Provisions for Right: Indian democratic government provides several rights to the individual. These rights include the Right to Education, Freedom of speech and expression, the Right to form a union or association, etc.
5. Government that Compromise: Indian democracy is a form of government that considers the opinion of the ruling party as well as the other parties. It is a type of government that compromises and adjusts.
6. Independent Judiciary: The Independent judiciary is another feature of democratic government. Independent judiciary means that in a democratic form of government the judiciary need not depend on the legislature or executive.
7. Political equality: Indian democracy is based on political equality, which means every citizen of India is equal before the law and has the right for voting irrespective of class, creed, caste, race, sex, and religion.

What are the challenges to Democracy?

1. Clash in ideology: Frequent elections and incongruent political ideologies lead to unstable and weak governments.
2. Crony Capitalism: Competitive politics and power play leads to low moral values e.g., crony capitalism: the case of 2G spectrum scandal, bureaucracy-politics-crime nexus.
3. Delay in decision making: Democratic processes lead to delay in decision making e.g., long-drawn process at arriving consensus on Climate Agenda in UNFCCC despite the pressing nature of the issue.
4. Clash with individual interest: Elected rulers may not take decisions in the best interest of people, rather cater to their immediate political needs and advantages e.g., inequalities based on caste, class, gender etc.
5. Bureaucratic hurdle: Along with this, concepts like patriarchy and khap panchayat have weakened democracy in the country. There is also a concern that both the family and society, the primary unit of the group in India, are no longer democratic.

Way ahead:

1. For political democracy to succeed, its alliance with economic democracy and social democracy is necessary. There should not be much economic disparity between people and one person cannot exploit another person.
2. Criminalization of politics and use of money power in elections has been a major problem of Indian elections. Along with this, poverty and corruption tricks in the country have affected the election system, spreading despair in the daily life of the people. The increasing importance of muscle power, money power, the effects of casteism, communalism, and corruption in political life have made the political scenario toxic
3. It is true that India has achieved great democratic achievements, but after independence, the high ideals that we should have established in this country and society, we are going in exactly the opposite direction today and corruption, dowry, human hatred. Problems such as violence, obscenity, and rape are now becoming a part of life.

Thus, democracy may not be the best form of government but definitely better than others, as W. Churchill illustrated in the face of Nazi aggression. Need is for continuously improving upon lacunas and make it more inclusive e.g. Right to Education, Forest Rights Act, Electoral Reforms etc. in India.

H10- Republic

A democratic polity can be classified into two categories – monarchy and republic. In a monarchy, the head of the state (usually king or queen) enjoys a hereditary position (example: Britain, Japan). In a republic, the head of the state is always elected directly or indirectly for a fixed period (example: US, India)

What is a Republic?

1. The term 'Republic' is derived from the Latin term 'Res Publica' - republic is state in which people choose their representatives. These elected representatives decide the laws to be made by the government.
2. In republics, the country is considered a "public matter", not the private concern or property of the rulers.
3. The primary position of power within a republic are attained through democracy or a mix of democracy with oligarchy or autocracy, rather than being unalterably occupied by any given family lineage or group.
4. There are some limits and restrictions in a Republic form of government.
5. Examples: Federal Republic of Nigeria, Argentine Republic, the Federal Republic of Germany, etc.

What are the types of Republics?

1. Constitutional Republic: It is one in which, rather than directly governing, the people select some of their members to temporarily serve in political office.
2. Theocratic Republic: Theocracy is a form of government in which one or more deities of some type are recognized as supreme ruling authorities, giving divine guidance to human intermediaries who manage the day-to-day affairs of the government.
3. Presidential Republic: A presidential system, or single executive system, is a form of government where the executive branch is headed by a President with due separation of powers.
4. Parliamentary Republic: It operates under a parliamentary system of government where the executive branch (the government) derives its legitimacy from and is accountable to the legislature (the parliament).
5. Federal Republic: A constitutional government in which the. powers of the central government are limited by laws to create states or provinces with certain degrees of self- governing powers.

What is the difference between a Democracy and Republic?

Democracy	Republic
In Democracy the people have the power to themselves.	In the Republic form of Government, the power belongs to individual citizens
There are 3 major types of democracy - Direct Democracy, Representative Democracy and Constitutional Democracy	There are 5 types of Republics - Constitutional Republic, Parliamentary Republic, Presidential Republic, Federal Republic and Theocratic Republic
In a democratic system of Government all laws are made by the majority (representatives/ people)	In the Republic form of Government, the laws are made by those who are elected representatives of the people of the land.
A country can have more than 1 type of democracy	A country can also have more than 1 type of Republic
It is the will of the majority that has the right to override the existing rights.	In the Republic system of Government, the Constitution protects the rights so no will of people can override any rights.
Democracy majorly focuses on the general will of the people.	Republic mainly focuses on the Constitution
There are no constraints on the Government in a Democracy.	There are constraints on the Government in a Republic (bound by the Constitution)

The Republic Day of India, celebrated on 26th January, marks the transition of India from a British Monarch to a republic in the Commonwealth of Nations. From Dr. Rajendra Prasad as the first President of India to the recent election of self-made tribal women, Shri Droupadi Murmu, as the President is the living testimony of the 'Republic' of India.

H11- JUSTICE

Introduction:

In a democratic system, the concept of justice is given the highest place. The word justice is derived from the Latin word 'jus' which means to bind to contract. Different interpretations are given to the concept of justice across societies from time to time.

What is Justice?

1. Justice involves fair, moral, and impartial treatment of all persons. In its most general sense, it means according to individuals what they deserve or merit, or are in some sense, entitled to.
2. The concept of justice occupies center stage both in ethics, and in legal and political philosophy. From Plato to John Rawls, everyone's central concern has been justice.
3. Justice has to do with how individual people are treated. It gives way to values of equality, liberty, freedom, opportunity, etc.

What are the different types of justice?

1. Distributive: Justice here requires that the resources available to the distributor be shared according to some relevant criterion. It assumes a distributing agent, and a number of people who have claims on what is being distributed.
2. Procedural: Determining the level of fairness between the members of society.
3. Retributive: Looking at the wellbeing of society by implementing punishments for wrongdoings. Retributive justice implies punishing an action which was illegal with an aim to deter it.
4. Restorative: Restoring the relations based on rightness.

What is John Rawl's concept of Justice?

John Rawl's concept of Justice is based on the principle of equality and difference as discussed below.

1. **Equality Principle:**

- The first of Rawls' two principles says that every citizen has the same claim to a scheme of equal basic liberties, which must also be compatible with those of every other citizen.
- Rawls enumerates an extensive list of basic civil and political rights, including a person's freedom of conscience, expression and association; the right to a basic income; and the right to exercise the franchise

2. **Difference Principle:**

- The second of Rawls' two principles grapples with the underlying inequalities of social and economic institutions. Rawls posits that in order to be morally defensible, these institutions must satisfy two conditions.

1. They must guarantee fair equality of opportunities for competition to positions of public office and employment.
2. Social and economic inequalities must be arranged in a manner that they work to the greatest benefit of the least advantaged members of society.
3. Further, the first principle ensures civil liberties to all and the second principle is similar to what is called 'positive discrimination'. Rawl's tries to show how such principles would be universally adopted, and in this way, moves partly towards general ethical issues. He introduces a theoretical "veil of ignorance". It ensures that all the "players" in the social game would be placed in a particular situation. Rawls calls it the "original position". In this position, everyone only has general knowledge about the facts of "life and society". Therefore, each player is to make a "rationally prudential choice" concerning the kind of social institution they would enter into contract with. Rawls argues that given his assumptions people would prefer liberal societies with freedom and liberties based on equality of opportunities, but with due allowance to the problems of various disadvantaged groups.
4. In India , Rawlsian concept of justice has assumed significant place. Certain provisions in the constitution and legislative actions concur with the idea of John Rawls concept of Justice. Such as PRINCIPLE OF EQUALITY as enshrined in the Preamble, provisions of Fundamental Rights like Right to Equality, Right to safe environment, Right to Vote and DPSPs. PRINCIPLE OF DIFFERENCE is embedded in Special Provision for SC, ST, Women, in terms of policy of reservation, Tribal specific provisions, Minorities specific law and so on.
5. India being a country of religious and economic diversity ensures to implements social distributive

justice in its true spirits following John Rawl's principle of egalitarian society.

What are the Various Dimensions of Justice?

1. Social justice: It means a fair and just relationship between an individual and society. It refers to justice in terms of the distribution of wealth, opportunities, and privileges within a society. It aims to meet the challenge of socio-economic inequality by rule of law.
2. Political justice: It refers to the use of the judicial process for the purpose of power sharing in politics. For example, the provision of universal adult suffrage, separate electorate, reservation policy etc. deal with political justice.
3. Economic justice: The theory of justice aimed at achieving equal economic opportunities for all individuals and to establish a foundation to lead a life of dignity and opportunity. It mainly deals with the economic policies of the state.
4. Legal justice: It stands for justice as it is enforced by legal entities, in accordance with the laws established. It is more concerned with following the just procedures (procedure established by law) than upholding the value of justice.

What is Dr. B. R. Ambedkar`s views on Social Justice in India?

1. According to Dr. B. R. Ambedkar, social justice is a means to create an ideal or a just society. To him a just society is a casteless society, based on the principles of social justice. The key components of Ambedkar's concept of social justice are liberty, equality and fraternity.
2. He believed that the three essential conditions that make liberty real were: social equality, economic equality and access to knowledge. He believed that there could be no real liberty in ancient societies and under Hinduism because of the absence of these three conditions.
3. The second component of social justice is equality. It means all men are of the same essence, all men are equal and everyone is entitled to the same fundamental rights and to equal liberty.
4. Ambedkar believed that it is only fraternity which prevents anarchy and helps to sustain the moral order among men.
5. Ambedkar's concept of social justice included: unity and equality of all human beings, equal worth of men and women, respect for the weak and the lowly, regard for human rights, benevolence, mutual love, sympathy, tolerance and charity towards fellow beings, humane treatment in all cases, dignity of all citizens, abolition of caste distinctions, education and property for all and good will and gentleness.
6. He believed that social justice alone could lead to social harmony, social stability and patriotic feelings of all individuals in society.

What are the criticisms related to justice?

1. Critics have argued that it creates a situation where citizens are compelled to obey the rule. It does not talk about the content of the law.
2. The rule of law was even observed in Third Reich (Nazi Germany) and in Soviet Union to justify the oppression.
3. Marxists consider law to be a part of superstructure, only to protect the property of capitalist class, and communitarians argue that law only represents the values and attitudes of dominant group.

However, the term assumed major significance for the further reasons mentioned below:

1. Dignity: To ensure life to be meaningful and livable with human dignity.
2. Mitigate Sufferings: It is a dynamic device to mitigate the sufferings of the poor, weak Dalits, tribals' and deprived sections of society.
3. Human Resources: It will help in the conservation of human resources by provision of health and education facilities.
4. Freedom to form political, economic or religious institutions: It will help to eradicate the challenges of caste system, untouchability and other discrimination in the society.
5. Improved status of women: Ill practices of dowry, female foeticide would decline. It can also address the issues declining sex ratio and limited education opportunities for girls.

H12- Equality

Rights have no meaning if they cannot be enjoyed equally by all members of the community. To ensure that it is possible for all to enjoy these rights, social and economic equality is sought to be achieved.

What is Equality?

1. The term 'equality' means the absence of special privileges to any section of society, and the provision of adequate opportunities for all individuals without any discrimination.
2. The Preamble secures to all citizens of India equality of status and opportunity. This provision embraces three dimensions of equality - civic, political and economic.
3. The Constitution of India has granted the right to equality (under Article 14) to all citizens. All are equal before the law and there can be no discrimination on the basis of religion, race, caste, gender, place of birth, etc.
4. 'Equality before law' and 'Equal protection of laws' are guaranteed as Fundamental Rights under the Constitution.

What provisions under the Indian constitution deal with equality?

I. Civic Equality: The following provisions of the chapter on Fundamental Rights ensure civic equality:

1. Equality before the law (Article 14): It seeks to establish that "All are same in the eyes of the law.
   - The law of the country protects everybody equally and all citizens will be treated equally before the law.
   - Under the same circumstances, the law will treat people in the same manner.

2. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15): This article prohibits discrimination in any manner.
   - No citizen shall, on grounds only of race, religion, caste, place of birth, sex or any of them, be subject to any liability, disability, restriction or condition with respect to:
     a) Access to public places
     b) Use of tanks, wells, ghats, etc. that are maintained by the State or that are meant for the general public
     c) Although, special provision can be made for women, children and the backward classes notwithstanding this article.

3. Equality of opportunity in matters of public employment (Article 16): It provides equal employment opportunities in State service for all citizens.
   - No citizen shall be discriminated against in matters of public employment or appointment on the grounds of race, religion, caste, sex, place of birth, descent or residence.
   - Exceptions to this can be made for providing special provisions for the backward classes.

4. Abolition of untouchability (Article 17): It prohibits the practice of untouchability.
   - Untouchability is abolished in all forms.
   - Any disability arising out of untouchability is made an offence.

5. Abolition of titles (Article 18)
   - The State shall not confer any titles except those which are academic or military titles.
   - The article also prohibits citizens of India from accepting any titles from a foreign State.
   - The article abolishes the titles that were awarded by the British Empire such as Rai Bahadur, Khan Bahadur, etc.
   - Awards like Padma Shri, Padma Bhushan, Padma Vibhushan, Bharat Ratna and military honours like Ashok Chakra, Param Vir Chakra do not belong to this category.

II. **Political Equality**: The Constitutional provisions that seek to achieve political equality include:
   - Article 325: No person is to be declared ineligible for inclusion in electoral rolls on the grounds of religion, race, caste or sex.
   - Article 326: Elections to the Lok Sabha and the state assemblies to be on the basis of adult suffrage.

III. **Economic Equality**: Article 39, under DPSPs, directs the state to secure to men and women equal right to an adequate means of livelihood and equal pay for equal work.

What are the challenges in achieving equality?

1. Gender discrimination, especially concerning the lower social status of women, has been a topic of serious discussion not only within academic and activist communities but also by governmental agencies and international bodies such as the United Nations.

2. Cultural ideals about women's work can also affect men whose outward gender expression is considered "feminine" within a given society.
3. A variety of global issues like HIV/AIDS, illiteracy, and poverty are often seen as "women's issues" since women are disproportionately affected .
4. Women are underrepresented in political activities and decision-making processes throughout most of the world.
5. Racial or ethnic inequality is the result of hierarchical social
   distinctions between racial and ethnic categories within a society and often established based on characteristics such as skin color and other physical characteristics or an individual's place of origin.
6. Minimal access to knowledge and skills for all youth and substanial population of adults achieving literacy and to obtain the job of the future.
7. Unprotected labour rights , unsecure and unsafe working environment of migrant worker and women.

What are the ways to promote Equality?

1. Establishing Formal Equality: Equality can be attained only when all of these privileges and restrictions are ended.
2. Equality Through Differential Treatment: In order to make sure that people can reap the benefit of the rights conferred on them, they sometimes need to be treated differently.
3. Affirmative Action: It can take many forms, from preferential spending on facilities for disadvantaged communities, such as scholarships and hostels to special consideration for admissions to educational institutions and jobs.

Equality means that no one is disadvantaged or discriminated against in any way. The Preamble guarantees all citizens of the country equal status and opportunities. Therefore it is necessary to take affirmative action in order to preserve equality.

H13- Liberty

Democracy is closely connected with the idea of liberty; certain minimal rights must be enjoyed by every person in a community for a free and civilized existence. These basic rights are spelt out by the Preamble as freedom of thought, expression, belief, faith and worship.

What is the meaning of Liberty?

1. Liberty comes from the Latin root word "liber" meaning freedom.
2. The term 'liberty' broadly means the absence of restraints on the activities of individuals. At the same time, it provides opportunities to develop oneself fully.

How is Liberty different from Freedom?

In the modern context, Both Liberty and Freedom are synonyms. Therefore, both are used interchangeably sometimes. However, there is a difference between the two:

Liberty	Freedom
Liberty is the state of being free from oppressive restrictions or control imposed by authority on a person's way of life, thoughts and behavior.	Freedom is the power or right to act, speak, or think as one wants.
Liberty is the responsible use of freedom without depriving anyone else of their freedom	Freedom is the ability to do as one will and what one has the power to do
No such challenge occurs with liberty	Freedoms may get a setback after encountering a contradictory freedom.
Granted by the authority to people in common	Extracted from government

What are the different kinds of liberty?

1. Natural liberty is natural to man who is born free with it. But it has no existence in civilized society.
2. Individual liberty refers to enjoying complete freedom in their personal and individual matters, i.e., food, clothing, religion, shelter, etc. But an individual should get the liberty up to the extent not to harm any other individual.
3. Political freedom refers to the complete freedom for citizens to participate in the formation of government and to elect their representatives as well as to be elected as a representative.
4. Economic liberty refers to equal wages and work opportunities to all and absence of exploitation, unemployment, unfair wage, insecurity, etc.
5. Religious liberty refers to the right to adopt and preach any religion of their choices and no interference from the state in this matter.
6. Civil liberty refers to enjoying all liberties to be permissible under the laws and everybody should be treated as equal before law.

What is the difference between the negative and positive conception of liberty?

The idea of distinguishing between a negative and a positive sense of the term 'liberty' goes back at least to Kant, and was examined and defended in depth by Isaiah Berlin in the 1950s and '60s. The differences between the two are given below:

Negative liberty	Positive liberty
It is freedom from interference by other people. Negative liberty is primarily concerned with freedom from external restraint. It is the absence of obstacles, barriers or constraints.	It is understood as the possession of power and resources to act in an environment that overcomes the inequalities that divide us.
It defines and defends the area of an individual's life where no external authority can interfere.	It defines the area of society where an individual can be free with some constraints made by the society and the government
It is not concerned with the conditions of society.	It is concerned with the enabling conditions of society.
It is concerned with explaining the idea of 'freedom from'.	It is concerned with explaining the idea of 'freedom to'.
This area comes into the personal domain of the individual.	This area comes into the social domain of the individual.
More negative liberty leads to more freedom.	More positive liberty checks excess of freedom to an individual, which could be an obstruction for social stability.

What are the constitutional provisions containing liberty?

1. The Constitution secures to all citizens' freedom of thought, expression, belief, faith and worship through Fundamental Rights, which are enforceable in the Court of Law. (Art.19).
2. Indian Constitution embodies the concept of Positive liberty. For liberty to be enjoyed by everyone there should be reasonable restraints. The freedom of many requires restraint of law on freedom of some, hence it is said that "If there are no laws, there is no liberty".
3. The Ideals of "Liberty, Equality and Fraternity" are taken from the French Revolution. "Liberty, Equality, Fraternity" has also given an influence as natural law to the First Article of the Universal Declaration of Human Rights. In Indian constitution apart from preamble these are well reflected in fundamental rights and directive principles as well.
4. Liberty as elaborated in the Preamble is very essential for the successful functioning of the Indian democratic system. However, liberty does not mean 'license' to do what one likes, and has to be enjoyed within the limitations mentioned in the Constitution itself.
5. The liberty conceived by the Preamble or fundamental rights is not absolute but qualified. The ideals of liberty, equality and fraternity in our Preamble have been taken from the French Revolution (1789–1799).

What has been the opinion of Judiciary on liberty?

1. In a recent judgement in the Arnab Goswami case, SC remarked that liberty survives in the cacophony of media and courts which uphold the rule of law.
2. SC also referred to the Justice Krishna Iyer Judgement (Rajasthan vs Balchand) where he had put that rule is bail, not jail.
3. Earlier, Justice Bhagwati had remarked that the right to Liberty is enshrined in our constitution and thus must be upheld in every case.

What is the excess of liberty enjoyed by individuals and society?

EXCESS OF LIBERTY - BY INDIVIDUALS	EXCESS OF LIBERTY - BY STATE
1. Gender bias: Excess of liberty assumed by male chauvinists of the society has resulted in social issues such as gender bias, domestic violence and female infanticide. 2. Economic inequality: A few rich people exploit poor people with the influence of money 3. Child labour: Child labour and bonded labour is an exploitation by the excess of liberty of a few individuals of society. 4. Drug, alcohol and social media addiction: Excess of liberty available to some individuals make them addicted to drugs, alcohol and social media. 5. Endangering Wildlife: Man being the most powerful on earth takes excess liberty in utilizing natural resources thereby endangering wildlife. 6. Dictatorship and Discrimination: Excess of liberty assumed by few dominators has kept people constrained by chains of slavery for decades Eg: Hitler's dictatorship, apartheid policy, Untouchability	1. Armed Forces Special Powers Act: Excess of liberty given to military in disturbed areas have led to human right violations in Jammu and Kashmir and north eastern state. 2. Corruption: Excess of liberty available to politicians has resulted in the nation being enslaved by corruption. 3. Increased emissions by developed countries: Since the colonial era, excess of liberty of power assumed by developed countries has resulted in exploitation of developing countries in terms of trade and environment.

What are the drawbacks of providing excess of liberty?

Excess of liberty available to either individuals or State allow them to assert their dominance over

weaker sections thereby resulting in exploitation or rights violation of the weaker sections

1. According to Plato, Self-control means controlling inferior soul by superior soul of the person. Without this, there will be an excess of liberty which will lead to inferior virtues of greed, indolence, carelessness.
2. Not only an individual, but a state without any Check and Balance system is bound to fail and turn tyrannic, thus turning its citizens into slaves
3. Without imposing any restrictions of fundamental freedom and liberty of citizens, there will be chaos and unlawfulness.
4. According to Deen Dayal Upadhaya, if every person and state perform their duties with diligence, there will be no conflict over rights and hence no one will be enslaved by another person.

Liberty is necessary at every level for a good and effective decision-making process, for effective implementation of policy and to spend a free life. The fore, it is crucial that liberty has to be balanced with tolerance and awareness of duties. Although, Indian Constitution is supreme law repository but parliament can make amendment in it. There should be reasonable restrictions on liberty.

H14- Preamble

The 'Preamble' of the Constitution of India is a brief introductory statement that sets out the guiding purpose and principles of the document. It largely indicates the source from which the document derives its authority (we the people of India). It was adopted on 26 November 1949 by the Constituent Assembly and came into effect on 26th January 1950.

What is Preamble?

1. The term 'Preamble' refers to the introduction to the Constitution embodying the essence, objectives, basic philosophy and the fundamental values of the Constitution.
2. The ideals behind the Preamble to India's Constitution were laid down by Jawaharlal Nehru's Objectives Resolution, adopted by the Constituent Assembly on January 22, 1947
3. It is a key to - the minds of the makers of the constitution, the history behind its creation and the core values and principles of the nation.
4. N.A. Palkhivala, a constitutional expert, called the Preamble the 'identity card of the Constitution.'
5. Ideals in the Preamble are borrowed from different nations -
    a. Justice (social, economic and political) from the Soviet Union.
    b. Republic, liberty, equality and fraternity are borrowed from the French Constitution.
6. The court in Union of India v. Madangopal Case (1953) observed that the preamble itself derives its authority from 'We, the people of India' i.e., citizens of India.

Which is the first country to have Preamble in Constitution?

1. When the USA got independence in 1775, it became the first country to have a written Constitution in the world. It is also the first country to have Preamble in Constitution.
2. When the United Nations was formed in 1945, it took reference to the USA's Preamble and released an UN Charter with reference to UN's objectives.

What is the significance of the Preamble?

1. It lays down the main ideals and objectives which the legislation intends to achieve while giving direction and purpose to the Constitution.
2. It embodies the basic philosophy and fundamental values - political, moral and religious - on which the Constitution is based.
3. Preamble contains a noble vision of the Constituent Assembly, and reflects the dreams and aspirations of the founding fathers of the Constitution.
4. It expresses what we had thought or dreamt for so long. The Preamble is neither a source of power nor a prohibition upon the powers of legislature.
5. It also enshrines the grand objectives and socio-economic goals which are to be achieved through constitutional processes.

Whether Preamble is a part of constitution or not?

1. **Berubari Union Case (1960):** Supreme Court opined that Preamble is not a part of the Constitution. Preamble shows the general purposes behind the provisions in the Constitution.
2. **Kesavananda Bharati case (1973**): SC held that preamble is a part of the Constitution. The Constitution should be read and interpreted in the light of the grand and noble vision expressed in the Preamble.
3. **LIC of India case (1995):** Preamble is the integral part of the Constitution but is not directly enforceable in a court.

Can the Preamble be amended or not?

1. Kesavananda Bharati case (1973): the Court stated that Preamble can be amended as it is a part of the Constitution. But without altering the basic features.
2. The Preamble has been amended only once so far. By the 42nd Constitutional Amendment Act 1976 three new words – Socialist, Secular and Integrity, were added to the Preamble.

The Preamble's scope might be limited but it becomes critical in cases of ambiguity in the provisions. It limits the power of the legislation to avoid arbitrariness. As K.M. Munshi highlighted, Preamble truly is a horoscope of the Constitution of India.

Note: The objectives enshrined in the Preamble are discussed in separate handouts.

H15- Significant Amendments to constitution

"'The amending process has proved itself one of the most ably conceived aspects of the constitution. Although it appears complicated, it is merely diverse'- Granville Austin.

The constitution is a blend of rigidity and flexibility. However, the constitution-makers were aware of the fact that the social life is dynamic, and hence the constitution should have space to accommodate new needs. Article 368 in Part XX of the constitution provides the amending powers to the parliament. The various amendments made so far highlight the fact that our constitution is a living document.

What are the different kinds of majorities needed for different types of amendments?

Parliament under Article 368 can amend any part of the Constitution including the Fundamental Rights but without affecting the 'basic structure' (discussed later) of the Constitution. There are four major types of majorities for amending different provisions of the constitution:

Types of Majorities	Definition and Application (For amending certain provisions and otherwise)
1. Simple / Functional / Working Majority	• It refers to a majority of >50% of the members present and voting in the House of Parliament. • Application: a. To pass money, financial and ordinary bills b. To declare a financial and State emergency) c. To elect the Speaker and Deputy Speaker of the Lok Sabha d. To pass resolution of 'Removal of Vice-President' in Lok Sabha. e. To pass Adjournment Motion/Non-Confidence Motion/Censure Motion/Confidence Motion (discussed in different Plan) f. Constitution Amendment Bill under Article 368 which needs to be ratified by the states needs only a simple majority at the State Legislatures. g. Creation/abolition of Legislative Council by Parliament under Article 169 (State resolution require special majority as mentioned below) h. creation of new states, alteration in the size of states, qualification of citizenship etc.
2. Absolute Majority	• It refers to a majority of >50% of the House's total membership. In Lok Sabha it is 273 and for Rajya Sabha it is 123. • Application: Not used directly but used during the general election, for the formation of government at Center and States.
3. Effective Majority	• It refers to a majority of >50% of the effective strength off the House. • Here, Effective strength = [Total strength of the House – Vacancies], i.e., all the then members. • E.g., If Rajya Sabha has 23 vacancies, Effective Majority = 245 (total strength of RS) - 23 (vacancies) = 222. So, Effective majority = >50% of 222 = 112 (not 111). • Application: Removal of Vice-President in Rajya Sabha, (Article 67(b); Removal of Speaker and Deputy Speaker of Lok Sabha and State Legislative Assembly.

4. Special Majority	All types of majorities other than the absolute, effective or simple majority are known as the special majority. It is of 4 types: a. **Special Majority - as Per Article 249**. It means a majority of **not less than 2/3rd** of the members present and voting. Application: This is used to pass a Rajya Sabha resolution to empower the Parliament to make laws in the State List. b. **Special Majority - as per Article 368**. This refers to a majority of members present and voting + supported by >50% of the total strength of the House. Application: It is required for ➢ Passage of a constitutional amendment bill which does not affect federalism. ➢ Removal of judges of SC & HC, CEC, CAG. ➢ Approval of national emergency in both houses. ➢ Passing a resolution by the state legislature for the creation / abolition of Legislative Council (Article 169). c. **Special Majority - as per Article 368 + >50 percent state ratification** (by a simple majority). It is needed for the passage of the Constitutional Amendment Bill in Parliament. Application: It is required to amend: ➢ Article 54, Article 55, Article 73, Article 162 or Article 241, ➢ Chapter IV (Part V), Chapter V (Part VI), or Chapter I (Part XI) ➢ 4th or 7th Schedule ➢ Article 368 itself d. **Special Majority - as per Article 61.** This refers to a majority of 2/3rd of the total strength of the House (Toughest majority). Application: This is needed for impeachment of President of India.

What is the Process for Constitutional Amendments under Article 368?

1. It can be can be initiated only by the introduction of a bill for the purpose in either House of Parliament (Lok Sabha & Rajya Sabha) and not in the state legislatures.
2. The bill can be introduced either by a minister or by a private member and does not require prior permission of the President.
3. The bill must be passed in each House separately by a special majority. (No provision for holding a joint sitting in this case)
4. If the bill seeks to amend the federal provisions of the Constitution, it must also be ratified by the legislatures of half of the states by a simple majority (members present and voting).
5. After passed by both the Houses, the bill is presented to the President for assent. After 24th CA Act, President is bound to give his assent to the bill. (He can neither withhold his assent nor return the bill for reconsideration).
6. After the president's assent, the bill becomes Act.

What are the criticisms of amending procedure?

1. An amendment can be invoked in Parliament only.
2. The procedure is very rigid if a private member of the parliament wants to move a constitutional amendment bill
3. Vesting of even the constituent power in the Parliament gives the ruling party a greater probability to pass amendments if they have requisite numbers in both the Parliament. This might result in bills being passed in a hasty manner.
4. The consent of the states is limited to just a few provisions.
5. No time frame has been prescribed in the constitution for states to ratify or reject the amendment bill.

What are some significant amendments of the Indian Constitution?

Some of the important amendments and their key features are discussed below.

First Amendment Act, 1951:

1. It empowered the State to make special provisions to advance socially and economically backward classes.
2. It was aimed at land reforms and Zamindari abolition.

3. Added ninth schedule to protect anti-Zamindari laws from judicial review.

2. **Articles 31A** and **31B** were added after Article 31, respectively.
   a) Article 31: It provided that "no person shall be deprived of his property saved by authority of law." It also provided that compensation would be paid to a person whose property has been taken for public purposes.
   b) Article 31A: It saves five categories of laws from being challenged and invalidated on the ground of contravention of the fundamental rights conferred by Article 14 and Article 19.
   c) Article 31 B: It protects the acts and regulations included in the Ninth Schedule from being challenged and invalidated on the ground of contravention of any of the fundamental rights.
3. Added public order, friendly relations with foreign states, and incitement to an offense as a ground of reasonable restrictions on the freedom of speech and expression.
4. It provided that state trading and nationalization of any business would be not be considered against the right to trade or business.

Seventh Amendment Act, 1956

1. Recognized the Indian states as 14 states and 6 UTs. It abolished the old A, B , C and D categorization of states.
2. Provided the common high court for two or more states, and extended the jurisdiction of HC to UTs.

The Constitution (24th Amendment) Act, 1971

- Affirmed the power of Parliament to amend any part of the Constitution including Fundamental Rights.
- The act made it, compulsory for the president to give his assent to a constitutional Amendment Bill.

Forty-second Amendment Act, 1976

- It is also known as the 'Mini-constitution', as it made very comprehensive changes to the constitution of India.
- It amended the preamble and added the words - socialist, secular and integrity.
- The amendment established the supremacy of the Parliament over the other wings of the Government.
- The act provides Directive Principles precedence over the fundamental rights.
- The act laid down that no Constitutional Amendment could be questioned in any court of law.
- Added Fundamental Duties by the citizens (new Part IV A).
- Made the president bound by the advice of the cabinet.
- Provided for administrative tribunals and tribunals for other matters (Added Part XIV A).
- Curtailed the power of judicial review and writ jurisdiction of the Supreme Court and high courts.
- Raised the tenure of Lok Sabha and state legislative assemblies from 5 to 6 years.
- Empowered the Parliament to make laws to deal with anti-national activities and such laws are to take precedence over Fundamental Rights.
- Added three new Directive Principles viz., equal justice and free legal aid, the participation of workers in the management of industries.
- Facilitated the proclamation of national emergency in a part of the territory of India.
- Extended the one-time duration of the President's rule in a state from 6 months to one year.
- Empowered the Centre to deploy its armed forces in any state to deal with a grave situation of law and order.
- Did away with the requirement of quorum in the Parliament and the state legislatures.
- Empowered the Parliament to decide from time to time the rights and privileges of its members and committees.
- Provided for the creation of the All-India Judicial Service.
- Shortened the procedure for disciplinary action by taking away the right of a civil servant to make representation at the second stage after the inquiry.

The Constitution (44th Amendment) Act, 1978

- The Act removes major distortions in the Constitution introduced during the Emergency.
- The duration of the Lok Sabha and State Legislative Assemblies has been reduced from six to five years—the normal term which was extended during the Emergency under the 42nd Amendment to achieve some political purposes.
- The Right to Property ceases to be a Fundamental Right and becomes only a legal right according to the Constitution 44th Amendment.
- The act extends constitutional protection for publication of the proceedings of Parliament and State legislature except in cases where it is proved to be "malicious".
- It also provides safeguards against future subversion of the Constitution for establishing an authoritarian regime.
- The act provided that a proclamation of Emergency needs henceforward, be issued by the President only after receiving the advice of the Cabinet as a whole in writing.
- It replaced the term 'internal disturbance' with the term 'armed rebellion' concerning the national emergency.
- It deleted the right to property from fundamental rights register, and made it a legal right instead.
- The act provided suspension of fundamental rights under article 20 and 21.
- It Restored the rules in Parliament and state legislatures on quorum.
- It gives fundamental immunity to the publishing of trustful accounts of legislative trials and state assemblies.
- The President was allowed to give the cabinet 's recommendations back once for reconsideration.

The Constitution (52nd Amendment Act), 1985

- The act provided for disqualification on the ground of defection of parliamentary members and state legislatures, and added a new Tenth Schedule containing the details in this regard.
- It introduced anti-defection laws through the addition of a new Tenth Schedule in order to prevent the mischief of political defections lured by power or material benefits.
- The Act made defection of another party unlawful after elections. Any member who defects after elections to another party will be disqualified from being a member of parliament or a legislature of the state.

The Constitution (73rd Amendment) Act, 1992

- The Constitution (73rd Amendment) Act was passed in 1992 and it came into effect on 24 April 1993.
- This Act added a new chapter into the Constitution called 'Part IX: The Panchayats'.
- The Act empowered state governments to take the necessary steps that would lead to the formalisation of the gram panchayats and help them operate as units of self-governance.
- This Act made the Panchayati Raj institutions in the country constitutional bodies.

The Constitution (74th Amendment) Act, 1992

1. The Act was passed to constitutionalize the system of Urban Local Government, also known as the Municipalities. It provides a framework for the decentralization of obligations and duties to the Municipal bodies at different levels of a state
2. Part IX-A was added under the Amendment as the municipalities.
3. The main aim was to strengthen and revitalize the urban local bodies so that developments can occur at all the levels of the nation.
4. The Amendment Act added a new part to the Constitution, Part IX-A, which consisted of Articles from 243-P to 243-ZG, ensuring uniformity in the laws made for the municipalities.
5. Twelfth Schedule was introduced which contains 18 functional duties to be executed by the municipalities.

The Constitution (86th Amendment Act), 2002

- In order to make the right to free and compulsory education a fundamental right, the Act inserts a new Article, namely Article 21A, which confers the right to free and compulsory education on all children aged between 6 and 14 years.
- The Law amends the Constitution in Part-III, Part -IV, and Part-IV (A).

- The government forced private schools to accept 25 percent of their class size from socially vulnerable or deprived classes in society by a random allocation process. This move was taken to seek to offer quality education to everyone.

The Constitution (91st Amendment) Act, 2003

1. The amendment sought to limit the number of Council of Ministers, to debar defectors from holding public offices and to strengthen the anti-defection laws introduced by fifty second amendment.
2. It restricted the size of the Council of Ministers shall not exceed 15% of the total strength of Lok Saba as laid down in Article 75(1A).
3. A member of Parliament disqualified under defection is also disqualified to get an appointment as minister, as provided in Article 75(1B).
4. A member of any state legislative assembly who is disqualified on the ground of defection shall also be disqualified for the appointment as minister under Article 164 (1B).
5. Under Article 361B, a person disqualified on the ground of defection is also disqualified from holding any remunerative political post, office wholly or partially.

The Constitution (99th Amendment Act), 2014

- The amendment provides for the formation of a National Judicial Appointments Commission.
- This amendment replaced the collegium system of appointment of judges with National Judicial Appointment Commission (NJAC) for the appointment of judges.
- The act amended Article 124(2) regarding the appointment of Supreme Court judges and added Article 124A, 124B and 124C describing the constituent members, functions and Parliament's power.

The Constitution (100th Amendment Act), 2015

- Exchange of other enclave lands with Bangladesh. Conferring citizenship rights to enclave residents arising from the signing of the Treaty of Land Boundary Agreement (LBA) between India and Bangladesh.

The Constitution (101st Amendment Act), 2016

- Goods and Services Tax (GST) commenced on 8 September 2016 with the enactment and subsequent notices of the 101st Constitution Amendment Act, 2016.
- The constitution incorporated Articles 246A, 269A, and 279A. The amendment allowed amendments to the constitution's 7th cycle.

The Constitution (102nd Amendment Act), 2018

The act gives the National Commission on Backward Classes a constitutional status. It seeks to insert into the constitution a new Article 338B which provides for NCBC, its mandate, composition, functions, and various officers.

The Constitution (103rd Amendment Act), 2019

- Two constitutional freedoms were changed: Articles 15 and 16.
- It provided a maximum of 10% Reservation for Economically Weaker Sections (EWSs).
- A significant 10 percent of all government positions and college seats will also have a quota beyond the high-income class for voters.
- This bill is drafted with a commitment to enforce Article 46 of India's Constitution, a Directive Principle which urges the government to protect the educational and economic interests of the weaker sections of society.

The Constitution (104th Amendment Act), 2020

- This expanded seat quota in the Lok Sabha for SCs and STs, and state legislatures.
- Amended Article 334 to extend the reservations of seats for Scheduled Castes and Scheduled Tribes in Lok Sabha and State assemblies.

The Constitution (105th Amendment Act), 2021

- The 105th amendment was introduced based on the Supreme Court ruling in the Maratha reservation case which had by a 3:2 majority.
- A list of socially and economically backward classes (SEBCs)should be prepared and maintained by the Central government under the central list.

- The amendment restores the power of states and Union Territories to identify socially and economically backward communities (SEBCs) and maintain a separate list of other backward communities other than the central list.

The Constitution is the backbone of Indian democracy. While it was revolutionary of the fathers of our constitution to provide provisions to amend the constitution, it is essential that such provisions are not misused. Misuse could result in excessive power of the legislative or the executive which could tear the fabric of our democracy.

H16- Citizenship (Amendment) Act (CAA) & National Register of Citizens (NRC)

Introduction

The term citizenship refers to the full membership of any community or state in which a citizen enjoys civil and political rights. It can be defined as a legal relationship of an individual with a particular state which is expressed by pledging his loyalty towards state and by carrying out duties like paying taxes, serving in the army during need, respecting national principles and values etc.

What are the constitutional provisions related to Citizenship in India?

Articles 5 to 11 under **Part II** of the Constitution deal with citizenship.

Article	Description
Article 5 -	Citizenship at the commencement of the Constitution
Article 6	Rights of citizenship of certain persons who have migrated to India from Pakistan
Article 7	Rights of citizenship of certain migrants to Pakistan
Article 8	Rights of citizenship of certain persons of Indian origin residing outside India.
Article 9	Persons voluntarily acquiring citizenship of a foreign State not to be citizens
Article 10	Continuance of the rights of citizenship
Article 11	Parliament to regulate the right of citizenship by law

What are the key features of the Citizenship Act 1955?

The Citizenship Act of 1955 deals with the acquisition and termination of citizenship after the commencement of the Constitution. The provisions under it include:

1. A person born in India after 26th January 1950 would-be citizen of India except those of children of diplomats and enemy aliens cannot be citizens of India by birth
2. Any person born after 26th January 1950 would-be citizen of India subject to certain requirements, for example, either parent (mother or father) to be a citizen of India
3. Certain categories of citizens can acquire citizenship by registration in the prescribed manner
4. Foreigners could acquire Indian citizenship by naturalization on certain conditions
5. If any territory becomes part of India, the Government of India could specify the conditions for them becoming citizens
6. Citizenship could be lost by termination, renunciation, deprivation on certain grounds
7. Citizen of a Commonwealth country would have the status of a Commonwealth citizen in India.

Acquisition of Citizenship

1. **By birth** – a person born in India after 26 January 1950 and before 1 July 1987 is a citizen irrespective of the nationality of his parents. Those born after or on 1 July 1987 are citizens only if either parent is a citizen at the time of his birth. Those born on and after 3rd December 2004 are citizens if both parents are citizens or if one is citizen and other isn't illegal immigrant.
2. **By descent:** A person born out of India after 26 January 1950 but before 10 December 1992 is a citizen by descent if his father was a citizen at the time of his birth. A person born out of India after 10 dec 1992 is a citizen if either of his parent is an Indian citizen.
3. **By registration**: Central government can register a person as citizen if he has been resident of India for at least 7 years. He has minor children who are citizens of India.
4. **By naturalization:** Central government can grant on application a certificate of naturalization to a person who is not a citizen of a country where Indians can't be naturalized citizens.
5. **By incorporation of territory**: If a foreign territory becomes part of India, then the Govt

of India can specify who amongst the people of that territory can become citizens of India.

Loss of Citizenship

- **By renunciation:** When a person makes a declaration renouncing citizenship, upon registration of that declaration by Govt of India his citizenship is null and void. Also, all minor children of that person also lose their citizenship. Such minor can resume citizenship after 18 years of age.
- **By termination:** If a citizen acquires voluntarily the citizenship of another country, then he loses his Indian citizenship automatically.
- **By deprivation:** Govt of India can cancel citizenship if it's obtained by fraud, citizen communicates with enemy during war, he is not resident in India for 7 years, he has within 5 years of registration or naturalization been in jail for 2 years, he has shown disloyalty to the constitution.

What is National Register of Citizens (NRC)?

National Register of Citizens (NRC) is a record of the citizen of India. The Citizenship Act, 1955, provides for compulsory registration of every citizen of India and issuances of National Identify Card to him.

What are the concerns to CAA?

The Citizenship (Amendment) Act, 2019 (CAA) enables migrants/foreigners of six minority communities from three specified countries who have come to India because of persecution on grounds of their religion to apply for Indian citizenship, those are minority religious groups (all except Muslims) who face the fear of persecution in Afghanistan, Bangladesh, and Pakistan.

What's the difference between CAA and NRC?

CAA is applicable for illegal migrants residing in India and does not apply to any Indian citizen at all. NRC consists of a record of citizens of India only excluding others. CAA does not apply to Indian citizens. They are completely unaffected by it. It seeks to grant Indian citizenship to particular foreigners who have suffered persecution on grounds of their religion in three neighbouring countries.

Assam Accord:

1. It was a tripartite accord signed between the Government of India, State Government of Assam and the leaders of the Assam Movement in 1985.
2. The signing of the Accord led to the conclusion of a six-year agitation that was launched by the All-Assam Students' Union (AASU) in 1979, demanding the identification and deportation of illegal immigrants from Assam.
3. It sets a cut-off of midnight of 24th March 1971, for the detection of illegal foreigners in Assam.

However, the demand was for detection and deportation of migrants who had illegally entered Assam after 1951.

Clause 6 of the Accord:

1. It says that constitutional, legislative and administrative safeguards, as may be appropriate, shall be provided to protect, preserve and promote the cultural, social, linguistic identity and heritage of the Assamese people.

Recommendations of Biplab Kumar Sarma Committee:

1. It was constituted to define 'Assamese People' and institute safeguards for them. Its recommended people who migrated between 1951 and 1971, including large sections of post-Partition refugees, would be Indian citizens under the Assam Accord and the National Register of Citizens (NRC), but they would not be eligible for safeguards meant for "Assamese people" under Clause 6 of the Accord.
2. East Bengal migrants who entered Assam before 1951 would be considered Assamese.

These recommendations were contested as there is no mechanism to prove that a person has been in Assam prior to 1951. The 1951 NRC is not available in several parts of the state and the current NRC being made uses 1971 as a cut-off.

What are the present issues related to NRC?

1. Lakhs of people were left out of the complete draft of Assam's National Register of Citizen's (NRC) published in 2018.
2. As per the Supreme Court mandated rules, those left out of the draft NRC list had to mandatorily submit their biometrics during the hearings of 'claims' and 'objections'.
3. Lack of clarity and inability to enjoy the full benefits emanating from Aadhar has caused significant mental pressure on individuals.
4. This situation has arisen primarily due to the lack of clarity over the NRC exercise since the government is withholding assigning Aadhar to these newly added individuals since the complete and final NRC list is yet to be published
5. The parallel processes of NRC, the voters list of the Election Commission, and the Foreigners' Tribunals have led to utter chaos, as none of these agencies are sharing information with each other.
6. The associated costs and scarcity of resources to frame such nationwide NRC is a big challenge before the government.
7. The NRC would give rise to the practice of "paper citizenship" acquired through the networks of kinship.
8. The exercise would lead to enhanced anxiety in the minds of excluded sections of society, especially the minorities.

What is the debate on CCA and NRC?

- India has witnessed widespread protests against the Citizenship Amendment Act (CAA), especially in combination with the proposed all-India National Register of Citizens (NRC).
- On one hand NRC carves out a framework to eliminate illegal immigrants, on the other hand, the Citizenship Amendment Bill (2016) creates a path to grant citizenship to preferred groups of the immigrants.
- For example, the implicit assumption in the case of Assam NRC was that the infiltrators were Bangladeshis (primarily Muslims) who must be disenfranchised. Whereas the Citizenship Amendment Bill explicitly promises to grant citizenship to migrants belonging to specified minority religious groups (all except Muslims) who face the fear of persecution in Afghanistan, Bangladesh, and Pakistan.
- From the perspective of India's ambitious development plans and strategic diplomacy, the question that arises is whether the Central government factored in the ramifications of the CAA on India's Act East Policy and its potential side effects on the country's relationship with foreign stakeholders heavily invested in the Northeast.

Way forward

1. Address the issue of giving citizenship to the persons from Pakistan, Bangladesh and Afghanistan, who have taken shelter in India because of persecution on religious grounds, without giving it a perceived communal color.
2. Deal with the problem of illegal immigration to India from neighbouring countries in a comprehensive, legally tenable and internationally acceptable manner
3. Avoid confrontation between the center and the states on the issue.
4. Allay the fear in the minds of the Muslims in India.
5. There is a need to address the problems of the people of Assam in a holistic manner. The key legal and constitutional issue that needs to be considered is whether the definition of an Assamese or a Bengali or a Punjabi or a Tamil define her/his Indian-ness or an Indian citizenship

The need of the hour is that Union Government should clearly chart out the course of action regarding the fate of excluded people from final NRC data and political parties should refrain from coloring the entire NRC process through electoral prospects that may snowball in to communal violence. The NRC-CAB combination signals a transformative shift from a civic-national conception to an ethnonational conception of India.

H17 - Single Citizenship

Introduction

In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country. Indian Constitution provides for only Single citizenship, that is, the Indian citizenship. But federal states like USA and Switzerland have dual citizenship (National citizenship and the State citizenship).

Who is a citizen of India?

A person born outside India on or after January 26, 1950, but before December 10, 1992, is a citizen of India if his/her father was a citizen of India at the time of his/her birth.

What is citizenship?

- The Constitution does not define the term 'citizen' but details of various categories of persons who are entitled to citizenship are given in Part 2 (Articles 5 to 11).
- The Citizenship Act 1955 deals with the acquisition and loss of citizenship in India and concerning the Overseas citizen of India.
- Single citizenship for all citizens is provision made in our constitution unlike USA, Switzerland but same as Canada. This is to prevent discrimination and promote equality and fraternity.
- Citizenship is listed in the Union List under the Constitution and thus is under the exclusive jurisdiction of Parliament.

What is single citizenship?

- The Constitution of India has established a single and uniform citizenship for the whole of the country. This feature appears to have been borrowed from the UK but today, the UK itself has Dual citizenship.
- The term "single citizenship" refers to the fact that all Indians, regardless of where they live, are citizens of India. The Indian constitution is federal in nature, yet it grants Indians single citizenship.
- A citizen belongs to the State where he is born and also enjoys the citizenship rights of the Federation, to which his state has joined as a unit. This is on the basic fact that the states in a federation are of course units, but do not at the same time, give up their individual entity. But in India, there is single citizenship.
- The citizens of the country belong to the Indian Union and not to any respective state.

What is the significance of single citizenship?

- This helps in increasing the feeling of nationality and encourages patriotism as it forges unity amidst regional and cultural differences.
- It also encourages fun fundamental rights such as the freedom of movement and residence in any part of the nation.
- Single Citizenship also inspires the fundamental rights and responsibilities of each citizen.
- It also promotes fundamental rights such as the freedom to move and reside in any part of the country.
- Single citizenship has fostered a sense of unity among Indians, and this reflects the image of a united India.
- It fosters a sense of nationalism and patriotism while promoting unity among regional and cultural differences.
- In India, all citizens, regardless of the state of birth or residence, enjoy the same political and civil rights of citizenship throughout the country, and there is no discrimination between them.

What are Exceptions to this rule?

- Govt of India can prescribe residence of state or UT for employment in public service for that state or UT.
- Constitution doesn't prohibit discrimination on grounds of residence hence states or UT can give preference or concessions to its residents.
- Freedom of residence can be curtailed to protect rights of ST.
- The state of J&K can give special rights to its residents in matters of employment, acquisition of immovable property, settlement and scholarships.

What is the rationale behind single citizenship?

- Indian Constitution is federal and envisages a dual polity (Centre and states), but it provides for only a single citizenship – the Indian citizenship.

- The citizens in India owe allegiance only to the Union. There is no separate state citizenship (unlike USA which adopts dual citizenship)
- In the USA, each person is not only a citizen of the USA but also of the particular state to which he belongs. Thus, he owes allegiance to both and enjoys dual sets of rights – national government and state government.
- This system creates the problem of discrimination. A state may discriminate in favour of its citizens in matters like right to vote, right to hold public offices, right to practice professions etc.
- Problem of discrimination avoided in the system of single citizenship of India.
- In India, all citizens irrespective of the state in which they are born or reside enjoy the same political and civil rights of citizenship all over the country and no discrimination is made between them.

Why India adopted single citizenship?

- Provision for single citizenship for the whole of India was conceivably intentional.
- The constitution fathers did not like that regionalism and other disintegrating tendencies which had already raised their ugly heads and were endangering the very security and integrity of the country, should be further encouraged by providing double citizenship.
- Provision for double citizenship would normally stand on the way of emotional and national integration.
- The people in the State would have thought more in terms of the State than the country as a whole.
- Single citizenship has undoubtedly forged a sense of unity among the people of India and the image of United India is reflected by this provision.

With single citizenship, the cherished goal of the founding fathers and the Constitution-makers was to ensure that regionalism and other disintegrating tendencies should not raise their ugly heads and endanger the unity and integrity of the nation which would be further encouraged by providing double citizenship.

H18- Diaspora

The Indian diaspora is quite a heterogeneous group and comprises people from different economic and social classes, speaking a diversity of languages, professing a multitude of cultural practices, and can also be divided along the lines of the time of their migration into foreign lands.

What is Diaspora?

- The term "diaspora" is derived from the Greek word diaspeirein, which means "dispersion".
- It is a scattered population whose origin lies in a separate geographic locale.
- India has the world's largest diaspora, about 17.5 million and receives the highest remittance of $78.6 billion from Indians living abroad (Global Migration Report 2020).

Indian diaspora

- The Indian diaspora around the world now stands at 31.2 million, of which PIOs were 17 million and NRIs were 13 million, spread across 146 countries in the world.
- The US, Saudi Arabia, the United Arab Emirates, Malaysia, Myanmar, the UK, Sri Lanka, South Africa and Canada host an Indian diasporic population of at least one million each.
- According to Global Migration Report 2020, India continues to be the largest country of origin of international migrants with a 17.5 million-strong diaspora across the world, and it received the highest remittance of $78.6 billion (this amounts to a whopping 3.4% of India's GDP) from Indians living abroad.
- The Indian diaspora, is the largest in the world, with 18 million people (UN, report)
- UAE (3.5 million), the US (2.7 million) and Saudia Arabia (2.5 million) host the largest numbers from India.
- Other countries with a large diaspora included Mexico and Russia (11 million each), China (10 million) and Syria (8 million).
- nearly 75% of all high-skilled migrants reside in the US, the UK, Canada, and Australia.

What is the significance of the Diaspora?

1. **Economic Front:** Indian diaspora is one of the richest minorities in many developed countries, this helped them to lobby for favorable terms regarding India's interests.
2. **Political Front:** Many people of Indian origin hold top political positions in many countries, in the US itself they are now a significant part of Republicans and Democrats, as well as the government.
3. **Remittances:** One of the greatest economic contributions of Indian diaspora has been in terms of remittances.
4. **Help in technology transfer**: Diasporas are mostly based in foreign countries which are developed and hence are technologically advanced and rich in innovations.
5. **Diplomacy:** An important advantage in having a large emigrant group is furthering of nation's diplomacy through people to people contact.
6. **Indigenous culture and traditions:** Cultural spread helps in export of domestic cuisines and merchandise which open the room for investment in the host countries to feed the local tastes of people for those cuisines.
7. **Bilateral ties**: Diaspora increasingly becoming prominent with getting prominent places in the high offices of their residing nations like UK, USA which further helps in building their economic linkages.

What is Overseas Citizen of India (OCI)?

1. The Overseas Citizenship of India (OCI) is an immigration status authorized for a foreign citizen of Indian origin to live and work in the Republic of India indefinitely.
2. The OCI was introduced in response to demands for dual citizenship by the Indian diaspora, particularly in developed countries.
3. According to the Citizenship (Amendment) Act of 2003, an overseas citizen of India includes a person:
   a) Of Indian origin being a citizen of a specified country
   b) Was citizen of India immediately becoming a citizen of other country and registered as OCI by the central government.
   c) They can also buy non-farm property and exercise ownership rights.
   d) They get the same economic, financial and educational benefits as NRIs and they can also adopt children.

Who are Persons of Indian Origin (PIO)?

1. A PIO is a person of India origin whose parents or grandparents are citizens of India but he is not a citizen of India but of other countries.
2. PIO card holders do not require a visa to visit India for a period of 15 years from the date of issue of the PIO card. They enjoy parity with NRIs in economic, financial and educational benefits.

What is the difference between PIO and OCI?

Persons of Indian Origin (PIO)	Overseas Citizen of India (OCI)
All are eligible except SAARC countries.	All are eligible except Pak and Bangladesh.
No separate visa required to visit India	Multipurpose, lifelong entry visa
Parity with NRI on economic, financial and educational spheres but can't buy agro land. No political rights	Parity with NRI on economic, financial and educational spheres but can't buy agro land. No political rights
All activities except mountaineering, missionary, research work and visiting protected / restricted Areas which require specific permit.	All activities except mountaineering, missionary, research work and visiting protected / restricted Areas which require specific permit.
Needs to reside in India for 7 years before making application for citizenship	Need to stay in India for 1 year before making application. This can be granted after 5 years of registration.

Merger of PIO into CIO cards

On 09 January 2015, the Government of India discontinued the PIO card and merged it with OCI card. The PIO and OCI were merged to maximize benefits and reduce immigration procedures for non-resident Indians (NRIs) visiting India.

Now, PIOs will get all the benefits on par with OCI such as exemption from reporting to police station, easy norms for buying property in India, lifelong visa etc. Further PIO cardholders now receive greater work, residence, and political benefits and are no longer required to undergo registration protocols through Foreigner Regional Registration Offices (FRROs).

Who is an NRI?

- A 'Non-resident Indian' (NRI) is a person resident outside India who is a citizen of India
- As per the I-T Act, one qualifies as a resident of India if he or she:
  a. has been in India for 182 days or more during the previous year (i.e., financial year gone by), or
  b. has been in India for 60 days or more in the previous financial year, in addition to having lived there for 365 days or more in the 4 years immediately preceding the said financial year.

Significance of NRI:

- One of the greatest benefits Indian diasporas has been in terms of remittances.
- NRIs are more prone to donating to domestic charities because of the strong cultural and emotional feelings that they nurse.
- Diaspora acts as 'agents of change' facilitating and enhancing investment, accelerating industrial development, and boosting international trade and tourism.

What is the difference between NRI and OCI?

Description	NRI	OCI Card Holder
Eligibility	An individual automatically acquires the status of an NRI, if he has resided in India for less than 182 days.	A Foreign subject who was eligible to become an Indian Citizen on or at any given time post-1950 or who belonged to a territory that became part of India after 1947.
Investment options	An NRI can invest in various financial investment opportunities available in India.	An OCI holder too can invest in residential/commercial properties but is not allowed to invest in agricultural or plantation property or a farmhouse
Taxation	Income earned through investments and receipts in India is taxable in India.	An OCI cardholder is liable for taxation on his/her global income and is subject to the conditions of DTAA (Double Tax Avoidance Agreement).
Admissibility to reside in India	For 182 days or less.	For an indefinite period

Pravasi Bharatiya Divas

1. Pravasi Bharatiya Divas is celebrated every two years on 9 January.
2. It also known as Non-Resident Indian (NRI) Day is celebrated to strengthen the engagement of the overseas Indian community with the Government of India and reconnect them with their roots. First Pravasi Bharatiya Divas was celebrated on 9 January 2003, to mark arrival of Gandhiji back to India on same day in 1915.

Significance of Pravasi Bharitya Divas:

1. This day plays a significant role as the overseas Indian community gets a shared platform to get themselves engaged with the government and the native people of the land.
2. The conventions are very useful in networking among the overseas Indian community residing in various parts of the world and enable them to share their experiences in various fields.

The diaspora can serve as bridges by providing access to markets, sources of investment, expertise, knowledge and technology; they can shape, by their informed participation, the discourse on migration and development, and help articulate the need for policy coherence in the countries of destination and origin. same is true regarding Indian diaspora.

H19 - Refugee Crisis

Introduction

According to UNHCR, a refugee is someone who has been forced to flee his or her country because of persecution, war or violence. In India, the provisions of the Constitution mainly govern the law relating to citizenship or nationality.

India is home to diverse groups of refugees, ranging from Buddhist Chakmas from the Chittagong Hill Tracts of Bangladesh, to Bhutanese from Nepal, Muslim Rohinygas from Myanmar and small populations from Somalia, Sudan and other sub-Saharan African countries.

Who are Refugees?

- A person forced to flee their country because of violence, war or persecution and has crossed an international border to find safety in another country.
- Such a person may be called an asylum seeker until granted refugee status by the contracting state or the United Nations High.
- A refugee has a well-founded fear of persecution for reasons of race, religion, nationality, political opinion or membership in a particular social group.
- They cannot return home or are afraid to do so. War and ethnic, tribal and religious violence are leading causes of refugees fleeing their countries.

Global Trends At-a-Glance

In the first months of 2022, more than 100 million individuals were displaced worldwide as a result of persecution, conflict, violence or human rights violations. This accounts for an increase of 10.7 million people displaced from the end of the previous year. In a matter of a few months, the world's forcibly displaced population reached the highest ever on record. This includes:

- 26.6 million refugees in the world—the highest ever seen;
- 50.9 million internally displaced people; and
- 4.4 million asylum-seekers.
- 4.1 million Venezuelans displaced abroad

Although the COVID-19 pandemic slowed the rate of new displacement in 2021, new asylum claims still remain high. In the first half of 2021, asylum-seekers submitted 300,000 new claims.

What are the different international conventions and forums for Refugees?

1. The 1951 Refugee Convention or Geneva Convention is a United Nations multilateral treaty for the protection of refugees.
2. The convention defines a refugee as a person who fled their homes and countries. Especially due to a well-founded fear of persecution of his/her race, religion, nationality, membership of a particular social group or political opinion.
3. The Convention also mentions people who do not qualify as refugees, such as war criminals.
4. The Convention builds on Article 14 of the Universal Declaration of Human Rights 1948. The article recognizes the right of persons to seek asylum from persecution in other countries.
5. non-refoulement: The cornerstone of the 1951 Refugee Convention is the principle of non-refoulement. According to this principle, a refugee should not be deported to a country where he or she faces serious threats to his or her life or freedom.
6. The 1967 protocol of the convention allowed even the non-Europeans to get refugee status. Thereby making the convention more comprehensive.

United Nations High Commissioner for Refugees (UNHCR)

1. It was created in 1950, during the aftermath of the Second World War, to help millions of Europeans who had fled or lost their homes.
2. It is a global organization for saving lives, protecting rights and building a better future. The organization covers refugees, forcibly displaced communities and stateless people.

Global Refugee Forum (GRF)

1. The United Nations High Commissioner for Refugees (UNHCR), the UN Refugee Agency, and the government of Switzerland together host the GRF.
2. It aims to debate and discuss the response of the world's countries to the global refugee situation.

The Central Adverse List

- The Ministry of Home Affairs maintains a list of individuals who supported the Khalistan movement in 1980s and 90s but left India to take asylum in foreign countries.
- Many of the listed fled India to escape the authorities, acquired foreign nationality and took asylum outside India.
- This list included the name of "hardliners" who were in favour of a separate state and had opposed the Operation Blue Star. However, the list is not restricted to Punjab or the Khalistan movement.
- The list has names of those individuals who are suspected to have links with terrorist outfits or have violated visa norms in their previous visit to India.
- The list also includes the names of those persons who have indulged in criminal activities or have been accused of sexual crimes against children in their respective countries.

Purpose of the list

- This list is constantly used by all Indian Missions and Consulates to stop the individuals named in it from entering India.
- This is done by not granting visas to such people. It is a step taken by the Indian government to maintain internal security.
- The list is also used to keep serious offenders outside India as somebody may commit a crime in his native nation and then apply for an Indian visa to escape prosecution.

What are the causes of refugee problems in India?

1. Prevent persecution: Refugees often face a grave threat of persecution in their native countries that induce them to migrate towards safe havens like India.
2. Accommodative approach: Despite being a non-signatory to the 1951 refugee convention, India has welcomed refugees since 1947. This includes Tibetans, Bangladeshis, Afghanis etc.
3. Diversity: The multi-religious, multicultural and multi-ethnic diversity of India creates social bonds with numerous foreign citizens. For example, The kinship between Myanmar people and Manipur people is attracting the Myanmar refugees towards India.
4. Open Borders: This is not a direct factor but it facilitates movement towards India. Many people from Myanmar were able to enter India due to the open border.
5. A deficiency of Personnel: The government's order to curb the refugee influx from Myanmar was not implemented effectively.
6. Favourable Agreements: The majority of refugees from Myanmar are holding their position around the Free Movement Regime.
7. Unstable Neighbourhood countries: India's neighbourhood countries are facing one or other problems since their formation. Eg- Civil war followed by Human Rights Violation in Sri Lanka.

What is the Rohingya Crisis?

- Rohingya are an ethnic group largely comprising Muslims who predominantly live in the Western Myanmar province of Rakhine.
- They have their own language and culture and say they are descendants of Arab traders and other groups who have been in the region for generations.
- But the government of Myanmar denies the Rohingya citizenship and even excluded them from the 2014 census refusing to recognize them as a people. It sees them as illegal immigrants from Bangladesh.
- Hence, lakhs of Rohingyas have fled to neighboring countries like Bangladesh and India after facing religious and ethnical persecution in Myanmar.
- This has led to a historic migration crisis and a large humanitarian crisis.
- Refugee crises may be caused by any number of reasons but the most common are war (Bangladesh), domestic conflicts (Tibet, Sri Lanka), natural disasters (famine), environmental displacement, human trafficking and—this one will turn up at all our doorsteps soon—climate change.

Why India has not signed United Nations Refugee Convention or Protocol?

- India has signed neither the 1951 United Nations Refugee Convention nor its 1967 Protocol, which has 140 signatories, an overwhelming majority of the world's 190-odd nations.
- The Convention requires the signatory nation to accord a minimum standard of hospitality and housing towards those it accepts as refugees. The porous nature of borders in South Asia, continuous demographic changes, poverty, resource crunch, and internal political discontent made it impossible for India to accede to the Protocol.
- India retains a degree of skepticism about the UNHCR. This apparently flows from the Bangladesh war of 1971.
- India's refugee policy can be termed as ad hoc refugee policy that allows New Delhi to differentiate between different groups in its treatment toward refugees and put other interests over humanitarian concerns.
- Recently, Rohingya crisis and CAA, 2019 has been criticized for not including Muslims of some countries to provide early citizenship benefits.
- Narrow Definition of Refugee: India stated that the definition fails to recognize "the fundamental actors which give rise to refugee movements".
- Fear of uncontrolled infiltration of terrorists and criminals.
- India which is still a developing country does not have enough resources to support refugees and cannot be considered as a place of permanent safety for refugees

What is the legal framework for Refugees in India?

1. Article 51 of the Indian constitution: This provision states that the state shall endeavor to foster respect for international law and treaty
2. As per the Citizenship Act of 1955, an illegal immigrant can be of two types.
    a. Foreign national enters into India with valid travel documents but stays beyond their validity, or
    b. Foreign national entered India without any valid travel documents.
3. As per, the Foreigners Act, 1946, the central government have the right to deport any foreign national
4. Apart from that, India is also not a signatory to the 1951 United Nations Refugee Convention and the 1967 UN refugee Protocol

What are the constitutional safeguards for refugees in India?

Constitutional Safeguards:

1) **Article 14:** Requires India to "not deny to any person equality before the law or the equal protection of the laws within the territory of India."
2) **Article 21:** prevents the state from allowing any person to be "deprived of his life or personal liberty except according to procedure established by law."
3) **Article 51(c):** State is to foster respect for international laws and treaties.

SC Judgements:

1) In Dongh Lian Kham vs. Union of India (2016), the Supreme Court stated that the principle of non-refoulement is part of the guarantee under Article 21 of the Constitution of India irrespective of nationality.
2) In NHRC vs. Arunachal Pradesh (1996), the Supreme Court held that the state is bound to protect the life and liberty of every human being, citizen or otherwise.

What can solutions to solve Refugee Problems in India?

1. India should put forward its constructive arguments in the upcoming UNSC meeting related to the Myanmar coup.
2. There is a need to formulate a comprehensive refugee policy that would provide greater clarity in differentiating between a refugee/illegal migrant.
3. A National Immigration Commission can be appointed to frame a National Migration Policy and a National Refugee Policy for India.
4. The government has to strengthen the Foreigners Act 1946 and also sign bilateral agreements with neighbourhood countries regarding deportation.
5. The states must cooperate with the center on the refugee problem. As law and order is a state list

while international relations come under the Union list.

6. India also needs to strengthen the border areas as the borders are porous and the neighbourhood countries are facing political vulnerabilities constantly.

India is facing the issue of illegal immigrants right since independence. It is high time for India to define a clear-cut refugee policy. This will not only prevent the state governments from taking a different stand from that of the center. But also prevent India from the large influx of illegal immigrants.

H20- Census

Introduction

The Census of India is one of the largest exercises which counts and collects demographic and socio-economic information on the Indian population. It has its own history, context, and purpose. It was a colonial exercise practiced since 1881. It has evolved with time. It is used by the government, policymakers, etc. to estimate the Indian population and its access to resources.

What is Census?

- The census provides information on size, distribution demographic, socio-economic and other characteristics of the country's population.
- A systematic and modern population census in its present form was conducted non synchronously between 1865 and 1872 in different parts of the country.
- However, the first synchronous census in India was held in 1881.Since then, census have been undertaken uninterruptedly once every ten years.
- Since 1949 the census has been conducted by the Registrar General and Census Commissioner of India under the Ministry of Home Affairs, Government of India.
- India's last census was carried out in 2011 when the country's population stood at 121 crores. The Indian Census is one of the largest administrative exercises undertaken in the world.

Why is a census essential?

- The census provides a lot of useful information. It categorizes the data into the residence, age, gender etc.
- It also provides two units or levels of analysis – individual level and household level. So, the census has great utility as the data generated can be used for evidence-based policymaking.

Why is population data of a region significant?

- Population data, especially for districts and blocks, is essential for policymaking. Lawmakers and bureaucrats use population size to determine the share of states and districts in welfare schemes.
- Infrastructure, investments in electricity, water, health and education are based on the requirements of a region, which can be accurately estimated only if the latest population of that region is known.
- A big factor in deciding the priorities in budgetary spending of central and state governments is the share of rural and urban population.
- The official keeper of national population data, the Registrar General of India (RGI), delayed its data collection for Census 2021 due to the difficulties posed by the second wave of Covid-19.

Census 2021

- Census 2021 is a two-phase exercise. It was postponed indefinitely due to the coronavirus pandemic.
  1. First phase involves house listing, in which details of all buildings, permanent or temporary are taken with their type, amenities and assets.
  2. The second phase known as Population Enumeration includes more detailed information on each individual residing in the country, Indian national or otherwise.
- This census will be the first digital census where an enumerator would collect and submit data directly through a Mobile App using her or his smartphone. T
- The data collected by the Registrar General and Census Commissioner of India during the 2021 Census will be stored electronically.
- The Census 2021 will be conducted in 18 languages out of the 22 scheduled languages (under 8th schedule) and English.
- The Census data would be available by the year 2024-25 as the entire process would be conducted digitally and data crunching would be quicker.

What is Socio-Economic Caste Census (SECC)?

- The Census was conducted in 2011. It was the largest exercise of the listing of castes and has the potential of finding inequalities at a broader level.
- It was conducted by the Ministry of Rural Development in rural areas and the Ministry of Housing & Urban Poverty Alleviation in urban areas.
- The SECC data excluded caste data and was published by the two ministries in 2016.

- The raw caste data was handed over to the Ministry of Social Justice and Empowerment.
- However, only the details of the economic conditions of the people in rural and urban households were released. The caste data has not been released till now.

What are the main apprehensions with regard to the Socio-Economic and Caste Census (SECC)?

- This census has the potential to solidify the caste identities of individuals. It won't be helpful in eliminating discrimination from society.
- SECC has not been able to cover the effects of the caste system on social structure from the local, to the regional, and to national scale.
- The data captured by the census is considered confidential under the census act of 1948. Whereas the personal data captured by SECC is open for use by Government departments. It makes the SECC data prone to use and for misuse by govt.
- The issue is the time duration between each census and the delay in the release of data after it is done. It makes the data obsolete and unusable to estimate the present status of issues.

What is the difference between SECC and Census?

Census	SECC
The Census provides a picture of the Indian population	SECC is a tool to identify beneficiaries of state support
The Census falls under the Census Act of 1948 and all data are considered confidential	All the personal information given in the SECC is open for use by Government departments to grant and/or restrict benefits to households.

Why is there a demand for caste census?

India did not conduct all the other surveys regularly. This led to a sense of deprivation among the public, and they demand some other means for their inclusive development. For example, the last poverty estimates are a decade old. There is a lag in unemployment data also. Household consumption expenditure surveys are also not conducted regularly.

What are the challenges in the caste census?

- India, which seeks to construct a casteless society, a caste census can deepen the caste divide.
- Reservation tussles: Caste census along with reservation might favour elites among castes. There is also some debate that the reservation policy in India invariably led to the growth of elites among castes and communities.
- There is a possibility that caste-based reservations will lead to heartburn among some sections and spawn demands for larger or separate quotas. The caste census might induce more such demands in future.
- The caste census will give rise to caste division. As India seek to eliminate and weaken the notion of caste, a caste census would only strengthen it.
- Collection of caste data is not easy: Naming and counting of caste is a difficult thing in India. For instance, the same caste is spelt in different ways in different states.

Way forward:

1. Instead of going behind the caste-based census, the government can subclassify the Backward Classes like in Tamil Nadu, Andhra Pradesh, West Bengal etc. This will provide the benefit to intended beneficiaries.
    - Since the government has already appointed Justice G Rohini Panel on Sub-categorisation of OBCs. The Panel has to fast pace the sub-classification process.
2. Use technologies to assess the caste date on SECC: The government can use technologies like Artificial Intelligence and machine learning to assess the SECC data and condense them into meaningful categories. After that, the government can reveal some important caste-based information. This will provide the necessary time to analyze the need for a caste census.

A caste census without data integrity would be much worse. The data of caste censuses have always been disputed, probably due to the contest of several vested interests in accepting the data. However, the government must go beyond caste and work for the

upliftment of illiterate, marginalized and poor sections of the population. The government should give more importance to economic division, education, health etc.

About Registrar General of India:

- Registrar General and Census Commissioner of India was founded in 1961 by Government of India Ministry of Home Affairs.
- It was formed for arranging, conducting and analyzing the results of the demographic surveys of India including Census of India and Linguistic Survey of India.

H21- Basic structure Doctrine

INTRODUCTION

The basic structure doctrine is a common law legal doctrine that the constitution of a sovereign state has certain characteristics that cannot be erased by its legislature. It was developed by the Supreme Court of India in a series of constitutional law cases in the 1960s and 1970s that culminated in Kesavananda Bharati v. State of Kerala, where the doctrine was formally adopted.

What is the Basic Structure Doctrine?

- The "Basic Structure" doctrine is a doctrine made from judicial innovation specific to Indian context. The doctrine prescribes that certain feature of the constitution are essential for the functioning of the state. Such features are beyond the limits of the amending powers of Parliament.
- The word "Basic Structure" is not mentioned in the Constitution of India. The concept developed gradually with the tussle between the Parliamentary power to amend the constitution and judiciary's power to review such amendments.

The concept was recognized for the first time in the Kesavananda Bharati case in 1973.

Evolution of the Basic Structure Doctrine

- 1951: The First Constitution Amendment Act, 1951: It was challenged in the Shankari Prasad vs. Union of India case. The Supreme Court held that the Parliament, under Article 368, has the power to amend any part of the constitution including fundamental rights.
- 1964: Sajjan Singh v. State of Rajasthan: The Constitution has "basic features" was first theorized in 1964, by Justice J.R. Mudholkar in the case of Sajjan Singh v. State of Rajasthan. He questioned whether the ambit of Article 368 included the power to alter a basic feature or rewrite a part of the Constitution.
- 1967: Golak Nath vs State of Punjab case: The Supreme Court overruled its earlier decision. The Supreme Court held that the Parliament has no power to amend Part III of the constitution as the fundamental rights are transcendental and immutable.
- 1971: Parliament passed the 24th Constitution Amendment Act. The act gave absolute power to the parliament to make any changes in the constitution including the fundamental rights.
- 1971: The 25th Amendment to the Indian Constitution curtailed the right to property, and permitted the acquisition of private property by the government for public use, on the payment of compensation which would be determined by the Parliament and not the courts
- 1973: in Kesavananda Bharti vs. State of Kerala case, the Supreme Court upheld the validity of the 24th Constitution Amendment Act by reviewing its decision in Golaknath case. The Supreme Court held that the Parliament has power to amend any provision of the constitution, but doing so, the basic structure of the constitution is to be maintained.
- 1981: Waman Rao case: The SC adhered to the doctrine and clarified that the doctrine would apply to constitutional amendments after April 24th.

Important Supreme Court Judgements and List of Basic Structure Elements:

Supreme Court Judgement	Elements of Basic Structure
Kesavanand a Bharati Case, 1973	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 Unity and integrity of the nation Sovereignty of the country. Freedoms secured to the citizens

	Equality of status and opportunity.
Indira Gandhi v. Rajnarain, Kihoto Hollohon case (Election Case), 1975	Rule of Law Free and Fair Elections India as a Democratic, Sovereign, Republic Secularism Judicial Review
Minerva Mills Case, 1980	Limited power of govt. to amend Constitution Judicial Review Harmony and Balance between Fundamental Rights and Directive Principles
Central Coal Fields Ltd. Case, 1980	Effective Access to Justice
L. Chandra Kumar Case, 1997	Powers of High Court under Articles 226 and 227
IR Coelho Case (IX Schedule Case), 2007	Rule of Law Separation of Powers Principles underlying Fundamental Rights Judicial Review Principles of Equality
National Legal Services Authority v. Union of India	Article 14 has been clearly stated to be a part of the basic structure of the Constitution

What is the significance of Basic Structure doctrine?

- The basic structure doctrine is a testimony to the theory of Constitutionalism to prevent the damage to essence of Constitution by brute majority of the ruling majority.
- The basic doctrine saved the Indian democracy as it acts as a limitation of constituent power or else unlimited power of parliament might have turned India into a totalitarian
- It helps us to retain the basic tenets of our constitution so meticulously framed by the founding fathers of our Constitution.
- It strengthens our democracy by delineating a true separation of power where Judiciary is independent of other two organs. It has also given immense untold unbridled power to the Supreme Court and made it the most powerful court in the world
- By restraining the amending powers of legislative organ of State, it provided basic Rights to Citizens which no organ of State can overrule.
- Being dynamic in nature, it is more progressive and open to changes in time unlike the rigid nature of earlier judgements.

What are the main criticisms of Basic Structure doctrine?

- The common criticism is that the doctrine has no basis in the Constitution's language. The doctrine does not have a textual basis. There is no provision stipulating that this Constitution has a basic structure and that this structure is beyond the competence of amending power
- Its detractors also believe the doctrine accords the judiciary a power to impose its philosophy over a democratically formed government
- There is no definite elucidation on what exactly constitutes basic structure, thereby, making the doctrine ambiguous
- In recent times, the doctrine has been invoked in cases that have been regarded as examples of judicial overreach. Ex: NJAC bill was declared null and void by the SC by relying on this doctrine

The basic structure doctrine though subject to an intense debate from the date of its inception continues to hold forte to guard constitutionalism in India.

H22- Rights

Rights are conditions and protections that cannot be breached or taken away by others, even by the government or the state. In a democratic system, every individual is assumed to have certain rights. It is the duty of the government and legal system to protect and uphold these rights. English philosopher John Locke was one of the first to suggest that all people were born with 'natural rights.

What are natural rights?

- Natural rights are those that are not dependent on the laws or customs of any particular culture or government, and so are universal, fundamental and inalienable.
- Natural law is the law of natural rights.

What is John Locke concept of natural rights?

- John Locke is one of the founders of "liberal" political philosophy, the philosophy of individual rights and limited govern-ment.
- Locke stated that men in the state of nature possessed some natural rights like right to life, liberty and property. These natural rights are derived from natural law and are limited by it.
- The freedom of man and liberty of acting according to his will is grounded on having reason, which is able to instruct him in that law he is to govern himself by, and make him know how far he is left to the freedom of his own will".
- Locke concluded all-natural rights in the right to property. Life and liberty are more important than property.

What are Human Rights?

- According to the Office of the United Nations High Commissioner for Human Rights (OHCHR), these are the rights that exist for humans simply because we are human beings. Further, The OHCHR also mentions that Human Rights are not granted by any state. Instead, these are inherent to all of us, regardless of nationality, sex, national or ethnic origin, color, religion, language, or any other status.
- Human Rights range from the most fundamental – the right to life – to rights that make life worth living. Such as the rights to food, education, work, health, and liberty, etc.

Why Human Rights Are Important?

- Human rights ensure people have basic needs met: Everyone needs access to medicine, food and water, clothes, and shelter. By including these in a person's basic human rights, everyone has a baseline level of dignity.
- Human rights protect vulnerable groups from abuse: The Declaration of Human Rights was created largely because of the Holocaust and the horrors of WII. During that time in history, the most vulnerable in society were targeted along with the Jewish population, including those with disabilities and LGBT.
- Human rights encourage freedom of speech and expression: It encompasses ideas and forms of expression that not everybody will like or agree with, but no one should ever feel like they are going to be in danger from their government because of what they think.
- Human rights give people the freedom to practice their religion: Religious violence and oppression occur over and over again all across history, from the Crusades to the Holocaust to modern terrorism in the name of religion.
- Human rights allow people to love who they choose: The importance of freedom to love cannot be understated.
- Human rights encourage equal work opportunities: The right to work and make a living allows people to flourish in their society. Without acknowledging that the work environment can be biased or downright oppressive, people find themselves enduring abuse or insufficient opportunities.

What are the important human rights conventions and international bodies?

There are many prominent Human Rights conventions and International bodies. A few significant of them are,

Universal Declaration of Human Rights (UDHR)

- This includes 30 civil and political rights and freedoms. These 30 rights cover a wide gamut of Human rights including the social, economic and cultural rights to the individual.
- India took active participation during the formation of UDHR.

- UDHR is not a treaty. So, there is no legal obligation for signatory countries to follow the provisions of UDHR.

Significance of the declaration:

- Its adoption recognized human rights to be the foundation for freedom, justice and peace.
- For the first time, the world had a globally agreed document that marked out all humans as being free and equal, regardless of sex, color, creed, religion or other characteristics.
- The UDHR continues to serve as a foundation for national and international laws and standards.

International Covenant on Civil and Political Rights (ICCPR)

- The ICCPR is a key international human rights treaty. The ICCPR also covers a wide range of civil and political rights.
- The countries ratifying the ICCPR have to take the necessary steps to protect and preserve basic human rights.
- The UN Human Rights Committee is tasked with monitoring the implementation of ICCPR
- The Covenant was adopted by the UNGA in 1966. It came into force in 1976.
- 173 countries including India have ratified the ICCPR.

Other Convention on Human rights

- Apart from the above two, there are a few other major Conventions. These include.
  a) Convention on the Prevention and Punishment of the Crime of Genocide (1948)
  b) Convention on the Elimination of All Forms of Discrimination against Women (1979) The
  c) The Convention on the Rights of the Child (1989)
  d) Convention on the Rights of Persons with Disabilities (2006)
- India is a party to all the above-mentioned conventions.

United Nation Human Rights Council (UNHRC)

- It is an inter-governmental body within the United Nations system. Further, It is made up of 47 United Nations Member States which are elected by the UN General Assembly.
- It conducts a Universal Periodic Review of all the UN members once in four years.
- The OHCHR is the secretariat of UNHRC.

What are the constitutional provisions dealing with Human Rights in India?

- **Human Rights in the Constitution:** India always respected Human Rights; this is reflected in the Constitution itself. The inclusion of Fundamental Rights and Directive Principles of State Policy are the enumeration of UDHR principles only.
- The Fundamental Rights are considered as basic human rights of all citizens, irrespective of their gender, caste, religion or creed. The following fundamental rights are related to human rights:
  a. **Right to Equality:** Prohibits inequality on the basis of caste, religion, place of birth, race, or gender.
  b. **Right to Freedom**: These rights are freedom of speech, freedom of expression, freedom of assembly without arms, freedom of movement throughout the territory of our country, freedom of association, freedom to practice any profession, freedom to reside in any part of the country.
  c. **Right against Exploitation:** It condemns human trafficking, child labor, forced labor making it an offense punishable by law, and also prohibit any act of compelling a person to work without wages where he was legally entitled not to work or to receive remuneration for it.
  d. **Right to Freedom of Religion:** It guarantees religious freedom and ensures secular states in India. The Constitutions says that the States should treat all religions equally and impartially and that no state has an official religion.
  e. **Cultural and Educational Rights:** Protects the rights of cultural, religious and linguistic minorities by enabling them to conserve their heritage and protecting them against discrimination. Educational rights ensure education for everyone irrespective of their caste, gender, religion, etc.
  f. **Right to Constitutional Remedies**: It ensures citizens to go to the supreme court of India to ask for enforcement or protection against violation of their fundamental rights.

- **Protection of Human Rights Act 1993:** This established the National Human Rights Commission in India. The commission is the watchdog of human rights in the country. It is an independent statutory body to look into the Human Rights issues and violation in India.

What is the Role of Judiciary to protect human rights in India?

Judiciary is playing a crucial role in the protection of the human rights of the people from time and again by expanding the scope of the rights and recognizing new rights with the need of time.

1. It is constitutional mandate of judiciary to protect human rights of the citizens. Supreme Court and High Courts are empowered to take action to enforce these rights. Machinery for redress is provided under Articles 32 and 226 of the constitution.

   - Article 32: It deals with the 'Right to Constitutional Remedies', or affirms the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred in Part III of the Constitution.
   - Article 226: It empowers a high court to issue writs including habeas corpus, mandamus, certiorari, prohibition and quo warranto for the enforcement of the fundamental rights of the citizens and for any other purpose.

2. An aggrieved person can directly approach the Supreme Court or High Court of the concerned state for the protection of his/her fundamental rights, redress of grievances and enjoyment of fundamental rights.
3. 3.In such cases, the Court is empowered to issue appropriate order, directions and writs in the nature of Habeas Corpus, Mandamus, Prohibition, Quo-Warranto and Certiorari.
4. Supreme Court in Maneka Gandhi v. Union of India interpreted the right to life and to widen its scope and deduced un-enumerated right such as "right to live with human dignity".
5. Supreme Court propounded the theory of "emanation" to make the existence of the fundamental right meaningful and active.
6. The Apex Court in People's Union for Civil Liberties and another v. State of Maharashtra and others, Francis Coralie Mullin v. The Administrator, Union Territory of Delhi held that right to life includes right to live with human dignity.
7. The rule of locus standi, i.e., right to move to the court, whereby only aggrieved person can approach the court for redress of his grievances has been relaxed by the judiciary. Now court through public interest litigation permits public spirited persons to file a writ petition for the enforcement of rights, if they are unable to invoke the jurisdiction of the Court.
8. In S.P. Gupta v. Union of India and others, Supreme Court held that any member of the public can approach the court for enforcing the Constitutional or legal rights of those, who cannot go to the court because of poverty or any other disabilities.

What is the Status of Human Rights in India and its violation?

- The US Human Rights Report 2020 and the Freedom in the world report 2020 criticized Human Rights violation in India. But the credibility of these violations can be doubted. But India can observe the Human Rights violation internally from issues such as,
- Custodial Torture still exists in India. The recent Sathankulam case in Tamil Nadu is proof of custodial torture.
- Right to Work and Labour Rights are still not complete. The government is still taking measures to improve them. The recent labour codes are also a step in that direction only
- Extrajudicial Killings like fake encounters, mob lynching, etc. have not stopped in India.
- Arbitrary Arrest and Detention are still common. Both the NHRC and SHRC both have failed to control them due to their lack of powers. This is seen as the criminalisation of government critics.
- Manual Scavenging is also prevalent in India. According to the 2011 Census, there are more than 26 Lakh insanitary latrines in the country. Even though the government enacted a law and NHRC given its recommendations, the practice still exists in India.
- Violence and discrimination against Women, Children like rape, murder, sexual abuse are also prevalent in India.

The situation of persistent human rights violations across the country presents manifold challenges. There is a need to improve and strengthen the human rights situation. It is important to empower NHRC to make it work more efficiently and independently.

H23- Fundamental Rights in India

Referred to as the "Magna Carta" of India, Fundamental Rights have been mentioned in the Part III of the constitution from Article 12 to 35. These are basic human rights, guaranteed and protected by the constitution. They are justiciable in nature. Thus, defended and guaranteed by the Supreme Court of India.

Why are fundamental rights called 'fundamental'?

These rights are fundamental because:

1. They are essential and natural to the development of human beings.
2. They are guaranteed and protected by the constitution, which is the fundamental law of the land.
3. These are justiciable, i.e., enforceable through the courts.
4. They are most essential for the all- round development (material, intellectual, moral and spiritual) of the individual.
5. Without the enjoyment of these rights the happiness and development of the individual is not possible.
6. They are also fundamental because the State cannot take away these rights and any law which infringes upon them will be declared null and void.
7. Every citizen in a democratic country needs these rights in order to grow as balanced and responsible citizens.
8. These Rights are meant for promoting the ideal of political democracy. They prevent the establishment of an authoritarian and despotic rule in the country.
9. They operate as limitations on the tyranny of the executive and arbitrary laws of the legislature.

Features of Fundamental Rights

Some of the salient features of Fundamental Rights include the following aspects:

- FRs are protected and guaranteed by the constitution. These rights bestowed upon each and every citizen of the Republic without any consideration of religion, caste, creed, colour or sex.
- FRs are Not sacrosanct or absolute in the sense that the parliament can curtail them or put reasonable restrictions for a fixed period of time. However, the court has the power to review the reasonability of the restrictions.
- FRs are justiciable: The constitution allows the person to move directly to the Supreme Court for the reinforcement of his fundamental rights as and when they are violated or restricted.
- Justiciable: In case of violation of these rights one can move to supreme court directly.
- Comprehensive: These rights have a comprehensive approach. They tend to safeguard our social, economic, cultural and religious interests.
- Suspension: All the Fundamental Rights are suspended during National Emergencies except the rights guaranteed under Articles 20 and 21.
- Restriction: Fundamental Rights can be restricted during military rule in any particular area.

What are fundamental rights guaranteed under the Constitution?

Fundamental Rights available to only citizens and not foreigners:

1. Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth **(Article 15).**
2. Equality of opportunity in matters of public employment **(Article 16).**
3. Six basic freedoms subject to reasonable restrictions **(Article 19).**
4. Protection of language, script and culture of minorities **(Article 29).**
5. Right of minorities to establish and administer educational institutions **(Article 30).**

Fundamental Rights available to both Citizens and Non-Citizens:

- Equality before law and equal protection of laws **(Article 14).**
- Protection in respect of conviction for offences **(Article 20).**
- Protection of life and personal liberty **(Article 21).**
- Right to elementary education **(Article 21A).**
- Protection against arrest and detention in certain cases **(Article 22).**
- Prohibition of traffic in human beings and forced labour **(Article 23).**

- Prohibition of employment of children in factories etc. **(Article 24).**
- Freedom of conscience and free profession, practice and propagation of religion **(Article 25).**
- Freedom to manage religious affairs **(Article 26).**
- Freedom from payment of taxes for promotion of any religion **(Article 27).**
- Freedom from attending religious instruction or worship in certain educational institutions **(Article 28).**

List of fundamental rights in Indian Constitution:

Article	Related to
Article 14-18	Right to Equality
Article 19-22	Right to Freedom
Article 23-24	Right against Exploitation
Article 29-30	Right to constitutional remedies

Originally, under Article 19 (to protect certain rights regarding freedom of speech) there were 7 Fundamental Rights enshrined in the constitution. However, the Right to Property was deleted as a fundamental right through the 44th Amendment Act, 1978. It was made a legal right (Article 300A).

What are the criticisms of incorporating Fundamental Rights?

The Fundamental Rights enshrined in Part III of the Constitution have met with wide and varied criticism.

1. One of the critics Jaspat Roy Kapoor said that the chapter dealing with fundamental rights should be renamed as 'Limitations on Fundamental Rights' or 'Fundamental Rights and Limitations Thereon'.
2. Critics also said that the list of fundamental rights is not comprehensive as it mainly consists of political rights.
3. It makes no provision for important social and economic rights like the right to social security, right to work, right to employment, right to rest and leisure and many more.
4. Fundamental rights are also critized for vagueness, indefinite and ambiguous. The language used to describe them is very complicated.
5. Some critics also assert that the provision for preventive detention (Article 22) takes away the spirit and substance of the chapter on fundamental rights. It confers arbitrary powers on the State and negates individual liberty.
6. The judicial process is too expensive and hinders the common man from getting his rights enforced through the courts. Hence, the critics say that the rights benefit mainly the rich section of the Indian Society.

Fundamental rights are extremely important in the lives of all citizens. These rights can protect us in times of complexity and hardship, and they can also help us evolve into better human beings. Thus, Part III of the Constitution which contains Fundamental Rights is rightly described as the 'Magna Carta of India'.

H24- Sabarimala Case

Introduction

Sabarimala judgement records for the battle between religious beliefs and practices and notions of equality for every citizen. There are different notions of morality; supreme Court through its judgment highlighted the highest notion of morality that is the Constitutional Morality and cleared the tussle between fundamental rights and traditions in an attempt to uplift women's right ion India.

Sabarimala Temple:

Sabarimala temple is situated in Pathanamthitta district, Kerala. It is a Hindu temple dedicated to Lord Ayyappa and their followers Ayyappan. This temple is managed and administered by statutory body created under the Travancore-Cochin Hindu Religious Travancore Devaswom Board Institution Act, 1950. Earlier, women devotees between ages of 10 to 50 years were not permitted to exercise their right to worship in this temple.

Chronology of the Case:

1991: In S.Mahendran v. the Secretary, Travancore case, Kerala High Court upheld the State's ban on menstruating women from entering the temple. This order went unchallenged for 15 years.

2006: Kannada Actress Jayamala claimed that she had entered the sanctum sanctorum and touched the idol of the deity in Sabrimala. Her claim led to future controversies.

2006: A PIL was filed by the India Young Lawyers Association before Kerala High Court, contending that the ban violated constitutional rights of women.

2008: This case is referred to 3-Judge bench.

2017: The Supreme Court referred the Sabrimala case to the Constitution Bench

Background of the Case:

- The Sabarimala temple restricts women between age of 10 and 50 years from taking the pilgrimage to Sabarimala. The restriction finds its source in the legend that the Sabarimala temple deity, Swami Ayyappa, is a 'Naishtika Brahmachari'.
- Rule 3(b) of the Kerala Hindu Places of Public Worship (Authorization of Entry) Rules, 1965, bars women from entering the temple premises.
- In 1991, Kerala High Court ruled in favor of the restriction imposed on women devotees. It had found that the restriction was in place since time immemorial and not discriminatory to the Constitution
- In 2006, Indian Young Lawyers Association, challenged the ban in Supreme Court, But the Kerala government told the Supreme Court that beliefs and customs of devotees cannot be changed through a judicial process and that "the opinion of the priests is final".

What are the Issues involved in the case?

1. **Gender Discrimination:** When everyone is equal in the eyes of God and the Constitution, why are only women banned from entering certain temples.
2. **Religion is a personal choice:** Our Constitution guarantees an individual the freedom to choose his/her religion. Therefore, praying in a temple/mosque/church or at home must be the choice of the individual.
3. **Custom Vs Liberty:** The Constitution has provisions to protect the customs and religious practices of the people. At the same time, it guarantees liberty and religious freedom to the individual.
4. **Temple as public place Vs religion as private choice:** Temple, managed by trusts, is public places. The representatives of the Sabarimala trust say that it has its own customs and traditions which have to be respected. Just like there are rules for other public places.

What is the Supreme Court Verdict?

Supreme Court Judgment (Indian Young Lawyers Association v. State of Kerala):

On 28th September, 2018, 5-Judge bench of Supreme Court delivered its verdict in this case. A 4:1 Majority held that the temple's practice of excluding women is unconstitutional, and violated the right to freedom of religion or female worshipers.

The bench struck down Rule 3(b) of the Kerala Hindu Place of Public Worship Rules, 1965, which allowed the exclusion of women based on custom, as unconstitutional.

- On the question of 'morality' as used in articles 25 and 26 of constitution, the court observes that morality means constitutional morality.
- Court observed that Constitutional Morality is to upheld the Article 14, 15, 25 so that Right to equality, non-discrimination and Religious freedom is practiced while allowing temple entry for women.
- It was also observed that the exclusion of women was a form of untouchability prohibited under Article 17 of the Constitution.
- The court also refused concept of a private temple. Court observed that if there is temple then it is a public place and everyone will be allowed to enter it.

Dissent Opinion on judgement:

- Justice Indu Malhotra dissented from the majority opinion and held that notions of rationality cannot be invoked in matters of religion by courts.
- The determination of what constituted an essential practice in a religion should not be decided by judges on the basis of their personal viewpoints.
- She argues that constitutional morality also implies that a religion can practice and porofess its values as enshrined in under Article 25. So it is a right given to Sabrimala Devasthanam has full right to ban woman entry based upon their own faith.
- The essentiality of a religious practice or custom had to be decided within the religion and it is a matter of personal faith.

Religious Denomination:

- A religious denomination is a subgroup within a religion that operates under a common name, tradition, and identity.
- The right of individuals and groups to practice their own religious belief has been recognized by Indian constitution under Articles 25 and 26 subjects to certain limitations

One of the key features of religious denomination is a sense of exclusive belongingness

Why the case is Significant?

- This judgment is considered as a radical judgment which would help to rationalize religious practices which are prevailing in Indian society
- It protects women's rights in public places and also ensures individual liberty.
- Critics also says that religious institutions are not included in the long list of public places mentioned in Article 15 (2) and this is overreach of judiciary on religious matters.
- The Sabarimala judgment is a watershed moment in the history of affirmative action as it has greased the wheels of social integration and breathed life into feminist jurisprudence.
- Prejudice against women based on notions of impurity and pollution associated with menstruation is a symbol of exclusion. The social exclusion of women based on menstrual status is a form of untouchability which is an anathema to constitutional values.

Women entry in Shani Shingnapur temple:

- The demand for temple entry to all classes has been long part of the larger struggle for social reforms in India.
- Maharashtra HC held that the Maharashtra temple entry act to be equally applicable to women who had been excluded from praying at the temple.
- After breaking 400-year custom, trust of shanni shingnapur temple has finally permitted women to enter the temple and pray in the sanctum sanctorum.

Way Forward

- A lot has changed since the rules prohibiting the entry of women into temple were made.
- The notion of "purity and pollution" must be disregarded in this age of Information Technology.
- Women must be given equal access and opportunities as men in all spheres.
- The notion of biological inequality, in this advanced age of science and technology, must not be extended into all other spheres.
- The Constitution must be seen a transcendental tool for social revolution rather than sharp divide between state and the individual.

The Supreme Court through this judgement established the supremacy of Constitution and ensuring that the rights of women are not violated due to certain long-prevailing customs and traditions.

H25 - Reservation

Introduction

The term "affirmative action "was first used in the United States which refers to set of policies and practices within a government or organization seeking to include particular groups based on their gender, caste race, sexually, creed or nationality in areas in which they are underrepresented, such as education and employment. These actions are intended to promote the opportunities of defined underrepresent groups within a society. The nature of affirmative action policies varies region to region and exists on a spectrum from a hard quota to merely targeting encouragement for increased participation.

What is the meaning of the term 'Affirmative Actions?

- Affirmative action, also known as "positive discrimination," is a government policy that is designed to help minorities and disadvantaged groups in finding employment, getting admissions at universities, and obtaining housing.
- The policy was originally created to offer disadvantaged groups a boost and increase diversity in communities, the workplace, and learning institutions.
- The policy was introduced in one of John F. Kennedy's presidential executive orders in 1961 and stated that applicants and employees must be treated fairly regardless of their race, color, or national origin.
- According to Aristotle, equality means that things that are alike should be treated alike and things that are unalike should be treated unalike.
- India is practicing affirmative actions to bring equality in society through its various policies and programs. For example, Reservation policy in promotions and jobs for the upliftment of scheduled caste and schedule tribes and EWS reservation.

What is Reservation?

- Reservation in Indian law is a form of affirmative action whereby a percentage of seats are reserved in the public sector units, union and state civil services, union and state government departments and in all public and private educational institutions for the socially and educationally backward communities.
- In the era of high competition and with an eye on robust economic growth, it is important to discuss the fallouts and need of rationalization of reservation policy.
- It is governed by constitutional laws, statutory laws, and local rules and regulations.

What is the need of reservation in present time?

- Equal Opportunities and respect: The underlying theory for the reservation by the state is the under-representation of the identifiable groups as a legacy of the Indian caste system.
- Oppression: The oppression of the weaker section of society by the stronger (upper castes) section has not ended. In fact, it has been aggravated. A new era of social justice and equality still remains a dream to be achieved.
- Social Justice: Reservation establishes a new social order that would secure to the underprivileged sectors of our society justice in social relations and equality of opportunity to rise in society.

What are the Constitutional provisions regarding reservation in India?

- The Preamble of the Indian Constitution provides for "social, economic and political justice". This aims to create a society without discrimination. Reservation to the weaker section of the society is an aspect of Social Justice. In India, reservation is provided in:
- Government Educational Institutions– as per Article 15 – (4), (5), and (6)
- Employment in Government Institutions – as per Article 16 – (4) and (6)
- Article 330 and 332 has provisions for specific representation through the reservation for SCs and STs. These reservations provided both in Parliament and in the State Legislative Assemblies respectively.
- Article 243D and Article 233T provides for the reservation of seats in every Panchayat and Municipalities respectively for SCs and STs.

Reservation in India is provided to Scheduled Castes (SCs), Scheduled Tribes (STs) and Other Backward Classes (OBCs) at the rate of 15%, 7.5% and 27%, respectively, in case of direct recruitment on all India basis by open competition.

What is the SC judgment contributed to evolution of Reservation in India?

The following judgments contributed to the evolution of jurisprudence of reservation in India:

- Indra Sawhney Case of 1992: The Supreme Court, while upholding the 27% quota for backward classes also upheld that the combined reservation beneficiaries should not exceed 50% of India's population. While Article 16(1) is a fundamental right, Article 16(4) is an enabling provision. The bench held that the creamy layer among Scheduled castes and tribes is to be excluded from reservation.
- Nagaraj (2006): Supreme Court laid down certain conditions which included the collection of "quantifiable data showing backwardness of the class and inadequacy of representation of that class in public employment". The bench held that the creamy layer among Scheduled castes and tribes is to be excluded from reservation.
- Jarnail Singh vs Lachhmi Narain Gupta (2018): The Supreme Court held that reservation in promotions does not require the state to collect quantifiable data on the backwardness of the Scheduled Castes and the Scheduled Tribes. The Court held that creamy layer exclusion extends to SC/STs and, hence the State cannot grant reservations in promotion to SC/ST individuals who belong to the creamy layer of their community.
- The Constitution (103rd Amendment) Act, 2019
    - The 10% reservation for Economically Weaker Sections (EWS), other Scheduled Castes, Scheduled Tribes and backward classes for government jobs and admission in educational institutions is currently under challenge before the Supreme Court which has referred the same to a constitution bench.
    - The verdict in this regard can turn out to be a critical milestone in the jurisprudence of reservation as traditional understanding of backwardness is broadened to specifically include economic backwardness without social backwardness as is traditionally seen.
    - Jaishri Laxmanrao Patil vs Chief Minister (2021): While affirming the Indra Sawhney decision, SC said that the 2018 Act granting reservation for Maratha community does not make out any exceptional circumstance to exceed the ceiling limit of 50% reservation.

Other affirmative actions taken

- **Mandal Commission:**
    - Mandal Commission (1980): The commission was formed to determine the criteria for defining India's "socially and educationally backward classes". The Mandal Commission concluded that India's population consisted of approximately 52% OBCs, therefore 27% government jobs should be reserved for them.
    - The recommendations of the Mandal Commission were accepted in 1990 and implemented. By this, the reservation in India raised to 49.5 per cent.
        a. 22.5% reservation for SCs and STs (7.5% for STs, 15% for SCs)
        b. 27% of seats are reserved for the OBCs
- Since Champakam Dorairajan case of 1951, the there has been a huge change in social engineering and amalgamation of social growth inclusion. Reverse discrimination is becoming a trend.

Reservation in Promotion

- The jurisprudence of reservation relies on the symbiotic coexistence of constitutionally guaranteed equality of opportunity in public employment under Article 16 (1) of the Constitution of India.
- The classifications were various clauses of the same article, especially Article 16(4) and Article 16 (4 A).
- It specifically aimed to provide reservation in promotion to Scheduled Castes and Scheduled Tribes, respectively.
- These articles vested a discretion on the government to consider providing reservations for the socially and educationally backward sections of the society.

Reservation to Economically Weaker Sections (EWS):

- The Constitution (103rd Amendment) Act 2019 passed by Parliament enables the State (i.e., both the Central and State Governments) to provide reservation to the Economically Weaker Sections (EWS) of the society.
- The Act provides for reservation in appointments to posts under the State and in admissions to educational institutions to "economically weaker sections of citizens [EWS]". This reservation can extend up to 10% of the total seat available.
- Salient features of the Act include
  - The Act provides for the reservation of jobs under the Central Government as well as government educational institutions. It is also applicable to admissions to private higher educational institutions,
  - This reservation is "in addition to the existing reservations and subject to a maximum of 10% of the total seats in each category".

What is reverse discrimination?

- The term "reverse discrimination" originated to describe the kinds of cases where members of a majority group are claiming they are now being discriminated against on the basis of their age, race, gender, or other protected characteristic.
- Reverse discrimination is a sort of unrelenting measure, which means discrimination against those who had discriminated.
- Reverse discrimination is the notion that instead of promoting anti-discrimination, affirmative action leads to discrimination against individuals and groups that come from non-disadvantaged backgrounds.
- Talented individuals may not be given equal opportunities simply because they are not part of a minority group. It may also result in hatred between majority and minority groups.

Reservation in Private Sector:

- Recently Haryana government notified its Haryana State Employment of Local Candidates Bill, 2020. This bill provides job reservation in the private sector for locals.
- Prior to Haryana, States such as Madhya Pradesh, Karnataka, Andhra Pradesh also tried to provide reservation in private jobs. Now the question is whether it is a constitutionally or legally correct move by the state government to provide job reservation in the private sector or not?

Legal Provisions related to reservations in employment Constitution:

The constitution under Article 16 and Article 371 mentions the Reservation in jobs.

1. Under **Article 16**, there were 3 sub-clauses dealing with the job reservation. They are,
   - **16(1):** It provides for equality of opportunity for all citizens in matters relating to 'employment or appointment' to any office under the State.
   - **16(2):** It provides that there cannot be any discrimination on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them.
   - **16(3):** It provides an exception by saying that Parliament may make a law "prescribing" a requirement of residence for jobs in a particular state. This power vests solely in the Parliament, not state legislatures.
2. **Article 371:** Some states have special protections under Article 371. Andhra Pradesh under Section 371(d) has powers to have "direct recruitment of local cadre" in specified areas.

Supreme Court Judgements - reservation in private jobs:

- **Dr. Pradeep Jain v Union of India (1984) case**: The Supreme Court discussed the issue of legislation for "sons of the soil". Further, The court held an opinion that such policies would be unconstitutional but did not expressly rule on it.
- **Sunanda Reddy v State of Andhra Pradesh (1995)** case: The Supreme Court repeated its earlier interpretation in Dr Pradeep Jain case. Further, the court strikes down the state government policy that gave 5% extra weightage to candidates who had studied with Telugu as the medium of instruction.
- The Rajasthan government gave preference to "people belonging to the concerned district or the rural areas of that district" in appointments. But, in 2002 the Supreme Court invalidated the appointment of government teachers in Rajasthan.
- **In 2019, the Allahabad High Court** struck down a recruitment notification issued by the Uttar Pradesh Subordinate Service Selection Commission. The commission prescribed preference for women who were original residents of the state in job appointments.

Concerns associated with reservation in private jobs

- **Delaying Economic Recovery:** The pandemic scenario has made it imperative for states to focus on fast and effective economic recovery. However, compulsion on companies to employ locals might compromise quality and delay the recovery phase.
- **Discourage Investment**: Compulsions to employ decreases the competitiveness of companies. Apart from that, such measures directly discourage investment potential in a state.
- **Impracticability:** The shortage of qualified workers in a state may impact its implementation. And also, the private sector cannot employ outsiders without the permission of concerned authorities. It might lead to the inspector raj prior to 1991 economic reforms.
- **A threat to unity:** This step would create friction among locals and non-locals in the implementing states. This will shake the fundamental of Indian democracy (Unity in Diversity) in long run.
- **Against constitutional provisions:** These laws are against the spirit of constitutional provisions:
- **Article 14** allows for equality before the law. But the reservations to locals are against that equality.
- Reservation to locals also violates Article 19(1)(g) is violated by Haryana's law as outsiders won't be able to effectively do any job of their choice in the state.
- **Article 16(3)** allows reservation based on the residence by a parliamentary law in matters of public employment and not in private employment.
- **Against the reservation ceiling**: Giving 75% reservation goes against the Supreme court's ceiling of 50% for maintaining meritocracy.

Way Forward

- The Supreme court must define the question on the reservation in private jobs. If permitted, then the constitutional limit of 50% reservation cannot be allowed to breach by State government laws.
- The law passed by the Andhra Pradesh assembly is already challenged in court. So, the supreme court has to define a clear stand on the reservation in private jobs.
- There should be voluntary encouragement as various companies are already having 50-60% employees from the local state only (under the salary of 50000 per month).
- The State government should focus on better education delivery, greater job creation and skill enhancement. It will make companies to employ more local youth automatically.

Why reservation policy needs a relook?

- Increased Casteism: Casteism has been granted a fresh lease of life. Our country is already divided into various groups. Reservation will further divide the population artificially which is not good for any country.
- Reduced meritocracy: Merit and calibre have been replaced by mediocrity. Reservation policy has generated a spirit of self-denigration, each caste and community competing to be more backward than others.
- Breach of 50% limit: The Supreme Court ruled that reservations cannot exceed 50% and put a cap on reservations. The central government of India reserves 27% of higher education, and individual states may legislate further reservations.
- Vote bank politics: Attempts to include more and more castes/classes in the list of OBCs, have changed the social and economic landscape beyond recognition.
- Increased conflicts: In some states for anti-reservation agitation have increased violence in the society. There is increase in discontent among people of advanced castes. The seventies, the eighties and the first six years of the nineties witnessed countrywide waves of violent protests.
- Impact on administrative efficiency: This not only politicised the civil services but also affected the efficiency of the administration. Most of the officers are now working on the basis of caste and creed.

What can be Negative fallouts of Reservation Policy?

- Reservation is similar to internal partition because in addition to being a form of ethnic discrimination, it also builds walls against inter-caste and inter-faith marriages.
- Reservations are the biggest enemy of meritocracy. By offering reservation through relaxed entry criteria, we are fuelling inflation of moderate credentials as opposed to the promotion of merit-based education system, which is the foundation of many progressive countries.
- Caste Based Reservation only perpetuates the notion of caste in society, rather than weakening it as a factor of social consideration, as envisaged by the constitution.
- The benefits of reservation policy have largely been appropriated by the dominant class within the backward castes, thereby the most marginalised within the backward castes have remained marginalised.
- Poor people from "forward castes" do not have any social or economic advantage over rich people from backward caste.

Way forward:

- Reservations should be accompanied by structural changes like land reforms and an inclusive educational support system.
- Reservation policy should be reviewed every five years so that the state can rectify distortions and people both backward and non-backward.
- All the commissions and the committees that have examined this issue like the Kelkar Commission have accepted the need for compensatory discrimination to a certain limit.
- The poor should get special weightage but a watchdog body should keep an eye on their progress. As soon as it is found that they no longer need the crutches of reservations, all jobs should be declared open to all.
- The government have to remove the well-off sections from the reservation policy. This can be achieved by analyzing the reservation policy based on a citizen's conditions rather than community-based reservations.
- The government also understands that the reservation policy is a temporary measure in the direction of social inclusion. Social inclusion can be achieved by better education policies, enhancing the skill development of backward communities, not by providing more reservations.

Reservation is a temporary policy measure introduced by the constitutional makers that cannot be misunderstood. Providing more and more reservation gradually is itself not a permanent solution. Further, Social Justice has to achieve without compromising efficiency in the long run. So, it is time for the government to move beyond reservation based on caste alone.

H26- Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act

Introduction

In India, former untouchable caste and several tribal groups continue to be subject to discrimination, economic and social exclusion and a stigmatized identity. Similar to hate crimes in other parts of the world, these groups have been victims of crimes and atrocities at the hands of upper caste.

NRRB (2020) Statistics related to atrocities against SC/STs:

- Crimes against Scheduled Castes (SCs) and Scheduled Tribes (STs) saw an increase of 9.4 per cent and 9.3 per cent respectively in 2020 compared to the previous year.
- MP, Rajasthan and Bihar recorded the highest rate of crime against SCs.
- Kerala, Rajasthan, and Telangana recorded the highest rate of crime against STs.
- Crime against SC/STs rose by 9.4% and 9.3%, respectively compare to 2019.

What are the Constitutional provisions related to prevent atrocities against SC/STs?

- **Article 17** of the constitution abolished the practice of untouchability. In line with the constitutional provisions under article 17 and Articles 14, 15, the untouchability (offenses) Act, 1955 was passed in parliament. In 1976, the act was renamed the Protection of civil rights act.
- **Article 46** – promote the educational and economic interests of SCs, STs, and other weaker sections of society and to protect them from social injustice and exploitation.
- **Article 338** – National Commission for Scheduled Castes
  a) investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working;
  b) inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs;
- **338-A** – National Commission for Scheduled Tribes
  - Its functions are same as that of NCSC, but with respect to ST than SC

Why was the SC/ST Act enacted?

- Despite various measures to improve the socio-economic conditions of the Scheduled Castes and the Scheduled Tribes, they remain vulnerable.
- They are denied a number of civil rights
- They are subjected to various offences, indignities, humiliations and harassment.
- They have, in several brutal incidents, been deprived of their life and property".

What is the National Commission for Scheduled Caste (NCSC)?

- It is a constitutional body established by Article 338 of the Constitution. It is mandated to investigate and monitor all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes.
- It consists of a chairperson, a vice-chairperson, and three other members.
- They are appointed by the President by warrant under his hand and seal. The President also determines their conditions of service and tenure of office.

Role of National Commission for Scheduled Castes?

- **Investigation:** It is the duty of the commission to investigate and monitor all matters relating to the constitutional and other legal safeguards for the SCs and to evaluate their working.
- **Inquiry into rights:** It is mandated to inquire into specific complaints with respect to the deprivation of rights and safeguards of the SCs.
- **Law implementation:** The NCSC monitors the implementation of the various legal provisions in force regarding such occurrences.
- **Collect Statistics:** It collects and comments on the statistics pertaining to cases under the Civil Rights Act, 1955 and the Prevention of Atrocities Act 1989.
- **Special courts:** A key monitoring activity performed by the Commission pertains to the setting up of special courts for the speedy trial of offences under the Civil Rights Act and the Atrocities Act.
- **Monitor disposal rate:** It also monitors the case disposal rates of these courts. Over the years, the Commission has conducted several on-the-spot inquiries into complaints of atrocities.

Evolution of SC/ST (Prevention of Atrocities) Act, 1989:

SC/ST Act, 1989

- **Scheduled Castes and Tribes (Prevention of Atrocities) Act 1989**, also known as the SC/ST Act, was enacted to protect the marginalized communities against discrimination and atrocities.
- The Act lists various offenses relating to various patterns or behaviors inflicting criminal offenses and breaking the self-respect and esteem of the scheduled castes and Scheduled tribes.
- Under section 18 of the act, provision for anticipatory bail is not available to the offenders.
- Any public servant who deliberately neglects his duties under this act, is liable to punishment with imprisonment for up to 6 months.

SC/ST Prevention of Atrocities (Amendment) Act, 2015

Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Amendment Act, 2015 was introduced to make the act more stringent with the following provisions:

- It recognized more instances of "atrocities" as crimes against SCs and STs.
- It provided for the establishment of exclusive special courts and special public prosecutors to try offenses under the PoA Act.
- The Act defined the term 'willful negligence' in the context of public servants at all levels, starting from the registration of the complaint to dereliction of duty under this Act.
- If the accused was acquainted with the victim or his family, the court will presume that the accused was aware of the caste or tribal identity of the victim unless proved otherwise.

SC/ST Amendment Act, 2018

About the act:

- In 2018, in response to this dilution of the act and public uproar against it, Parliament introduced Section 18A to overturn safeguards introduced by the Supreme Court.
- Preliminary inquiry shall not be required for registration of a First Information Report against any person.
- No approval is required before the arrest of the accused under this act.
- It rules out any provision (Section 438 of the CrPC that deals with anticipatory bail) for anticipatory bail for the accused.

What were the reasons for the Amendment?

- Alleged potential misuse would not deserve to be considered as valid, justifiable or permissible ground for reading down stringent provisions of the PoA (Prevention of Atrocities) Act, 1989.
- There was no decrease in the atrocities committed on members of SC/ST communities despite the laws meant to protect their civil rights.

What are the major issues related to the amendment act?

Two key issues with the Act are misuse of provision and weak implementation, critics argue that restoring the original provision would not solve either of the issues with PoA Act;

2018 SC judgment and its guidelines:

- Supreme Court in its Kashinath Mahajan judgment, introduced the following safeguards to the accused under SC/ST act.
- The bar on anticipatory bail under the Act need not prevent courts from granting advance bail if there is no merit in a complaint
- "Preliminary enquiry" to be conducted in all cases before registration of FIRs.
- The person can be arrested by an investigating officer, only if the "appointing authority" (in the case of a public servant) or the SP (in the case of others) approves such arrest.

Write down current status of SC/ST atrocity act after 2018 amendment?

Current status:

- A crime is committed against an SC every 15 minutes. Six SC women are raped every day on an average.
- Between 2007 and 2017, there was a 66 per cent growth in crimes against SCs. Data from the National Crime Record Bureau, which the 2018 judgment was based on, showed cases of rape of SC women had doubled in 10 years.

Way Ahead

- The government should do proper consultation with all stakeholders before bringing any amendment to the bill
- The government should focus on implementation strategy. There should be proper investigation and speedy trial for the victims belonging to SC/ST community. This will help to build confidence among the marginalized section of society
- The government should take measures to increase the participation of people from SC/ST community in decision-making and government functioning.
- The government should also take steps for the upliftment of SC/ST through their meaningful integration into society, by giving adequate capacity-building opportunities through education, employment etc.
- The most important thing for ending discrimination and improving fraternity is a persistent societal action to change the entrenched caste rigidity. SC/ST Prevention of Atrocities Act (PoA act) as a tool in this endeavor rather than an end in itself.

The amendment act was designed for achieving socio-economic development of the Scheduled Castes, and Scheduled Tribes communities from atrocities to a reasonable extent. However, these communities still face the same social stigma, poverty, and humiliation.

H27- Awards in India

The various awards are the token of respect and honor conferred on people with noteworthy achievements. The major categories of Awards in India are:

1. Civilian Awards
2. Gallantry Awards

Article 18 (1) of the Indian constitution abolishes all titles. It prohibits the State from conferring titles on anybody whether a citizen or a non-citizen. Military and academic distinctions are, however, exempted from the prohibition. A 'title' is something that hangs to one's name, as an appendage (either prefix or suffix e.g., Sir, Nawab, Maharaja, etc.)

Further, the titles of "Bharat Ratna", "Padma Vibhushan", "Padma Shri", etc. (introduced in 1954) are said to be not prohibited under Article 18 as they merely denote State recognition of good work by citizens in the various fields of activity. It may be noted that Article 18 does not secure any fundamental right but imposes a restriction on executive and legislative power. In British democracy, the system of honoring with title is still continued such as tittle of "Sir". Knighthood can be awarded for military service or to anyone deemed a significant contributor to national life.

What are Civilian Awards?

- Civilian Awards are bestowed to an individual who has done par excellence or attained achievements in their respective fields. These awards commenced in the year 1954. This award is given by President of every year on Republic Day.
- The Civilian Awards include the following awards:
  1. **Bharat Ratna:** Highest Civilian Award in India and is awarded for exceptional performance or services of the highest order.
  2. **Padma Vibhushan**: Second Highest Civilian Award in India and is awarded for distinguished and exceptional services.
  3. **Padma Bhushan:** Third Highest Civilian Award in India and is awarded for distinguished or different services of a high order.
  4. **Padma Shri**: Fourth Civilian

What are Padma Awards?

- The Padma Awards are one of the highest civilian honors of India announced annually on the eve of Republic Day.
- The Awards are given in three categories: Padma Vibhushan (for exceptional and distinguished service), Padma Bhushan (distinguished service of higher order) and Padma Shri (distinguished service).
- The award seeks to recognize achievements in all fields of activities or disciplines where an element of public service is involved.
- The Padma Awards are conferred on the recommendations made by the Padma Awards Committee, which is constituted by the Prime Minister every year. The nomination process is open to the public.
- Padma Awards, which were instituted in the year 1954 and given in three categories:
  1. Padma Vibhushan for exceptional and distinguished service;
  2. Padma Bhushan for distinguished service of a high order; and
  3. Padma Shri for distinguished service.
- All persons without distinction of race, occupation, position or sex are eligible for these awards. However, Government servants including those working with PSUs, except doctors and scientists, are not eligible for these Awards.
- All nominations received for Padma Awards are placed before the Padma Awards Committee, which is constituted by the Prime Minister every year

The Padma awards are given in the following fields:

- **Art** - Includes Music, Painting, Sculpture, Photography, Cinema, Theatre, etc.
- **Social Work** - Includes social and charitable services in the areas of affordable healthcare and education, other contributions to community projects like Environment, Sanitation, etc.
- **Public Affairs**- Includes work in the area of Law, Public Life, Politics, etc.
- **Science & Engineering** - Includes Space Engineering, Nuclear Science, Information Technology, Research & Development in Science & its allied subjects, etc.

- **Trade & Industry** - Includes banking, economic activities, management, trading and business in the areas of manufacturing, hospitality, technology, textiles, accounting, finance, tourism, etc.
- **Medicine** - Includes medical research and distinction/specialization in Allopathy, Ayurveda, Homeopathy, Siddha, Naturopathy, etc.
- **Literature & Education** - Includes promotion of literacy and education, education reforms, teaching, journalism, literature & poetry, authors, etc.
- **Civil Service** - Includes distinction/excellence in administration etc. by Government Servants
- **Sports** - Includes Sports, Athletics, Mountaineering, promotion of sports, etc.
- **Others** - Includes fields that are not covered in the above-mentioned fields. This may include Spirituality, Yoga, Wild Life protection/conservation, Culinary, Agriculture, Grassroot Innovations, Archaeology, Architecture, etc.

BHARAT RATNA

- Bharat Ratna is the highest civilian award of the country.
- It is awarded in recognition of exceptional service/performance of the highest order in any field of human endeavor.
- The recommendations for Bharat Ratna are made by the Prime Minister to the President of India.
- No formal recommendations for Bharat Ratna are necessary. The number of Bharat Ratna Awards is restricted to a maximum of three in a particular year.
- It is presented to the person for their extraordinary performance or work in their work or field irrespective of their caste, position, gender, race, and occupation.
- This award was restricted to the achievements in fields like science, trade and industry, sports, art, medicine, public services, education, civil services, and literature.

Gallantry Awards in India:

- Gallantry Awards have been instituted by the Government of India to honor the acts of bravery and sacrifices of the officers/personnel of the Armed Forces, other lawfully constituted forces and civilians.
- The gallantry awards are announced twice a year; first on the occasion of Republic Day and secondly, on the occasion of Independence Day.
- Post-independence, first three gallantry awards namely the Param Vir Chakra, the Maha Vir Chakra and the Vir Chakra were instituted by the Government of India on 26th January, 1950 which were deemed to have effect from the 15th August, 1947.
- Thereafter, other three gallantry awards i.e., the Ashoka Chakra Class-I, the Ashoka Chakra Class-II and the Ashoka Chakra Class-III were instituted by the Government of India on 4th January, 1952, which were deemed to have effect from the 15th August, 1947. These awards were renamed as the Ashoka Chakra, the Kirti Chakra and the Shaurya Chakra respectively in January, 1967.

Types of Gallantry awards

Wartime highest gallantry award:

- **Param Vir Chakra:**
  - It is India's highest military decoration awarded for displaying distinguished acts of valor during wartime whether on land, at sea or in the air.
- **Maha Vir Chakra:**
  - It is the second highest gallantry award for acts of conspicuous gallantry in the presence of the enemy whether on land, at sea or in the air.
- **Vir Chakra:**
  - It is the country's third-highest wartime gallantry award after Param Vir Chakra and Maha Vir Chakra.

List of awardees

Category	First Awardee	Recent
Param Vir Chakra	Major Somnath Sharma (1947)	Captain Yogendra Singh Yadav (2021)
Maha Vir Chakra	Lt. Colonel Dewan Ranjit Rai (1947)	B Santosh Babu (2021)
Vir Chakra	Captain TGN Pai (1950)	Gurtej Singh (2021)

Peacetime Highest Gallantry Awards

- **Ashoka Chakra:**
  - It is the highest military award during peacetime for valor, courageous action or sacrifice.
  - It is awarded for the most conspicuous bravery or some act of daring or pre-eminent act of valor or self-sacrifice otherwise than in the face of the enemy.
- **Kirti Chakra:**
  - It is the second highest peacetime gallantry award and is awarded for valor, courageous action or self-sacrifice away from the field of battle.
- **Shaurya Chakra:**
  - It is awarded to the personnel of the armed forces for instances of extraordinary gallantry.

List of Recent Gallantry awardees

Category	Given to (2021)
Param Vir Chakra	Babu Ram (Assistant Sub-Inspector)
Kirti Chakra	Sub. Sanjiv Kumar (Posthumous)
Shaurya Chakra	Maj.Anuj Sood(Posthumous)

H28- Article 21

"Embodies a constitutional value of supreme importance in a democratic society" Justice P.N.Bhagwati

Article 21 deals with one of the fundamental rights guaranteed by the Constitution of India. The Right to Protection of Life and personal liberty is the main object of Article 21 and it is a right guaranteed against State Action as distinguished from violation of such right by private individuals.

What is Article 21?

Article 21 of the Constitution read thus:

"No person shall be deprived of his life or personal liberty except according to procedure established by law"

- Article 21 is a fundamental right and is stated under Part-III of Indian Constitution.
- Supreme Court has described this right as the "heart of fundamental rights".
- Article 21 cannot be suspended during an emergency.

1. **Person:** the expression "Person" is not confined only to citizens but extends to every person regardless of nationality. This implies that the protection guaranteed under this Article extends even to persons who are undergoing imprisonment in jail.
2. **Deprived:** Article 21 comes into picture only when there is deprivation of life or personal liberty of a person. The term 'Deprived' came for consideration in a famous case of A.K.Gopalan v. State of Madras.
3. **Life:** Right to life under Article 21 under the constitution is more than mere survival or animal existence. The Right to life includes the right to live with human dignity.
4. **Personal Liberty:** This expression is of the widest amplitude and it includes various kinds of rights like Right to locomotion, right to travel abroad, right of a prisoner to speedy trial, right of an employee in a disciplinary proceeding, right to defence before an Advisory Board to take legal aid where the employer is represented by lawyer.
5. **Procedure Established by Law:** The expression 'Procedure Established by Law' means prescribed by law of the State. The law that is mentioned in Article 21 must be a valid law which means it should have been enacted by a competent legislature and the said law should not violate any other fundamental right declared by the Constitution.

What is meaning and scope of Article 21?

Right to life in Article 21 does not mean animal existence or the mere act of breathing. It guarantees the right to a dignified life. Some of the rights that are currently included in the ambit of Article 21 include:

• Right to live with human dignity • Right to the decent environment including pollution-free water and air and protection • Right against hazardous industries • Right to livelihood • Right to privacy • Right to shelter • Right to health • Right to free education upto 14 years of age • Right to free legal aid • Right against solitary confinement • Eight to speedy trial • Right against handcuffing • Right against inhuman treatment • Right against delayed execution • Right to travel abroad • Right against bonded labour	• Right to a fair trial • Right of prisoner to have necessities of life • Right of women to be treated with decency and dignity • Right against public hanging • Right to hearing • Right to information • Right to reputation • Right to appeal from a judgment of conviction • Right to social security and protection of the family • Right to social and economic justice and empowerment • Right against bar fetters • Right to appropriate life insurance policy

What are important cases related to Article 21?

1. **A.K.Gopalan v. State of Madras:** The Supreme Court has taken a narrow interpretation of Article 21 in this case.
   - Protection under Article 21 is available only against arbitrary executive action and not from arbitrary legislative action.
   - State can deprive a person right available under Article 21 based on a law
   - Article 21 gets attracted only in case of deprivation in the sense of 'total loss' and that the said article has no application in case restriction upon right to move freely.
2. **Maneka Gandhi v. Union of India:** In this case, the Supreme Court overruled its judgment if the A.K.Gopalan case by applying a wider interpretation of Article 21.
   - Right to life and personal liberty of a person can be deprived by law on the condition that the procedure prescribed by law is reasonable, fair and just.
   - A new dimension given to the expression "procedure established by law".
   - Right to life does not merely mean animal existence.
   - It is also added, that all those aspects of life which go to make a men's life meaningful, complete, and worth living will be included in this.
   - The 'procedure established by law' has acquired the same significance in India as the 'due process of law' clause in America.

What is Doctrine of Severability?

The doctrine of severability means that when some particular provision of a statute offends or is against a constitutional limitation, but that provision is severable from the rest of the statute, only that offending provision will be declared void by the Court and not the entire statute.

What is Due Process?

- Legal proceedings according to rules and principles that have been established in a system of jurisprudence for the enforcement and protection of private rights.
- Due process is an exercise of the power of the government as the law permits and sanctions, under recognized safeguards for the protection of individual rights.

Comparison between Procedure established by Law & Due process of Law

Procedure established by Law	Due process of Law
• In this the court would **only assess that whether the legislature has followed the right procedure to form a law band whether executive has implemented the law in correct manner** i.e., as per procedure established by law.	• Under due process, court would not only check the procedural validity but also check that whether a law is **just, fair** and **reasonable**.
• It would not go into the legislative wisdom or rationale behind the formation of a specific law even if the law enacted goes against the principles of natural justice or equality.	• In this case, court would also go behind the legislative wisdom of enacting a particular law. If a law is unjust & unfair then it can proclaim it be against the principles of natural justice thereby rejecting it.
• **Mentioned explicitly** under Article 21 of the Constitution which states that, no person shall be deprived of his life or his personal liberty except according to procedure established by law.	• It is **not mentioned explicitly** anywhere in the Indian Constitution.
• Procedure established by law has **less scope.**	• It has a **wider scope**.

• Borrowed from **Japanese Constitution.**	• Borrowed from the **US Constitution.**
• It **protects the individual** against the arbitrary action of only the executive.	• Due process of law protects the individual not only against the **arbitrary action of the executive but also of the legislative bodies.**
• It does not assess whether the laws made by Parliament is fair, just and not arbitrary.	• Judiciary also assesses the fundamental fairness, justice, and liberty of any legislation.

The framers of Indian Constitution have drafted this Article in such a way that neither it is made any provision compulsory nor makes any individual free from fundamental duties that must be followed by every citizen of the country.

H29- RIGHT TO FREEDOM

The right to freedom guarantees freedom for citizens to live a life of dignity among other things. These are given in Articles 19, 20, 21A and 22 of the Indian Constitution. We shall take up the articles one by one in this section.

Article	Brief Description
Article 19	Protection of 6 rights concerning the freedom of: 1. Speech and expression 2. Assembly 3. Association 4. Movement 5. Residence 6. Profession
Article 20	Protection with respect to conviction for offences
Article 21	Right to life and personal liberty
Article 21A	Right to elementary education
Article 22	Protection against arrest and detention in certain cases

Article 19 – guarantees the following six rights:

Article 19(1)(a) – Right to Freedom of Speech and Expression

- Available to citizens only against state and not private individuals; qualified in nature;
- Reasonable restriction 19(2) – Sovereignty and integrity of India; Security of the state, friendly relations with foreign state; public order; decency or morality, contempt of court, defamation; incitement to an offence.
- Subject to test of reasonability by courts.
- Freedom of Press implied under Article 19(1)(a) [Romesh Thappar case (1950)]

1.**Defamation [Section 499 IPC]** – Subramanya Swami vs UoI case.

- Supreme Court upheld validity of criminal defamation.
- Right to reputation under Article 21 to be balanced with right provided under Article 19(1)(a)
- Ensuring constitutional fraternity

2.**Sedition [Section 124A IPC]** – Supreme Court upheld in Kedarnath (1962) and Balwant singh (1995) case.

- Clear and immediate incitement of violence; mere discussion and advocacy not to be considered seditious.

3.**Censorship** (Indian Cinematographic Act, 1952)

4.**Hate Speech** – Section 153A (Affecting Class and communal Harmony)

Article 19(1)(b) – Right to assemble peacefully without arms

- Can be exercised only on public land
- Subject to reasonable restrictions on grounds of sovereignty and integrity of India, and public order including maintenance of traffic in an area. (Article 19(3)).
- Section 144 (CrPC) – magistrate can restrain assembly.
- Section 141 (IPC) – If imposed, makes assembly of 5 or more persons unlawful.

Section 144 of the Cr.PC

- Section 144 of the Code of Criminal Procedure (CrPC) is imposed when there are apprehensions of breach of public peace and order by some people.
- It bars the assembly of five or more people in an area where it has been imposed. The notification is issued by the District Magistrate of the area.
- Under the section, all civilians are barred from carrying of weapons including lathis, in public places except for police or paramilitary or security forces.
- It also empowers the authorities to block internet access. No order under this section can remain in force for more than two months.

- However, if the state government considers it necessary for preventing danger to human life or for preventing a riot, it can extend the impositions under the sections for not more than six months from the date of issuance of the initial order.
- It must be noted that Section 144 CrPC is not equivalent to a curfew. Curfew orders are issued in more severe situations where people are instructed to stay indoors for a specific time or period.

Article 19(1)(c) – Right to form associations

- All citizens have the right to form associations or unions or co-operative societies (Included through 97th constitutional amendment, 2011).
- Subject to reasonable restrictions on grounds of sovereignty and integrity of India, public order and morality.
- However, the right to obtain recognition of the association is not a fundamental right.
- In view of the Supreme Court, the right to strike is a statutory right (controlled by industrial laws) and not a fundamental right.

Article 19(1)(d) – Right to move freely throughout the territory of India

- Subject to reasonable restrictions on two grounds namely – interests of general public and the protection of interests of any scheduled tribe. Example: Areas with inner line permit.
- Right to travel within India – through Article 19; Right to travel abroad – though Article 21.

Article 19(1)(e) – Right to reside & settle in any part of territory of India

- Subject to reasonable restrictions on two grounds, namely – interests of general public and the protection of interests of any scheduled tribe.
- SC has held that certain areas can be banned for certain kind of persons like prostitutes and habitual offenders.

Article 19(1)(f) – Right to practice any profession or to carry on any occupation, trade or business

- State can prescribe technical qualification; Reasonable restriction (Article 19(b)) on grounds of public safety, Health, Morality and General welfare of the people.
- The right does not include the right to carry out a profession that is immoral. Example: human trafficking.

Article 20 – Protection in respect of conviction to offences

Protection against arbitrary and excessive punishment for offences is available to citizen; foreigner as well as legal entities. It contains three provisions in that direction:

1. No Ex-Post Facto Legislation – No person shall be (a) convicted of any offense except for violation of a law in force at the time of the commission of the act, nor (b) subjected to a penalty greater than that prescribed by the law in force at the time of the commission of the act. Protection under this provision is applicable only for criminal laws and not civil laws.
2. No double jeopardy – No person can be punished for the same offence twice. Protection under this provision is available only in court proceedings, tribunals and not before departmental authorities.
3. No self-incrimination – No person shall be compelled to witness against himself. Protection under this provision extends only to criminal proceedings and not civil proceedings.

What is right to silence?

- The right to silence is a legal principle which guarantees any individual the right to refuse to answer questions from law enforcement officers or court officials. It is a legal right recognized, explicitly or by convention, in many of the world's legal systems.
- The One Hundred Eightieth (180th) Report of the Law Commission of India dealt with article 20(3) of the Constitution of India and the Right to Silence. The report states that the right to silence is a principle in common law.
- The three facets that come along with the right to silence are –
  a. the burden is on the State or rather the prosecution to prove that the accused is guilty,
  b. that an accused is presumed to be innocent till he is proven to be guilty beyond reasonable doubt,
  c. the right of the accused against self-incrimination and to not be compelled to be a witness against himself.

- In India, the right to silence is included within the scope of article 20(3) of the Constitution. This article guarantees the fundamental right of the accused to protect himself against self-incrimination.

What is Bandh?

- Bandh is a protest that is used mainly by political activists in India. It is a form of civil disobedience.
- In India, right to protest is a fundamental right under Article 19 of the Constitution of India.

Right to strike:

- The right to strike exudes from Article 19 (1) (c) of the Indian Constitution, which gives the citizens the fundamental right to form associations or unions. Article 19(1) (a) secures every citizen the right to freedom of speech and expression.
- Article 19 of the Constitution doesn't explicitly give any fundamental right on a resident or citizens to organize a hartal, bandhs or chakka jam.
- In 1961, the apex court held in Kameshwar Prasad v State of Bihar case that even a liberal interpretation of Article 19(1)(c) would conclude that trade unions would guarantee the fundamental right to strike.
- However, later in the All-India Bank Employees Association case, the Supreme Court rejected the contention that right to 'form associations' guaranteed by Article 19(1)(c) carried with it a right to strike.
- In 2003, the Supreme Court in the TK Rangarajan vs Tamil Nadu government case made it clear that government employees cannot go on strike and that such an act is illegal.

Significance of freedom of expression enshrined under Article 19 (1) of the Constitution:

1. Societal good: Liberty to express opinions and ideas without hindrance, and especially without fear of punishment plays a significant role in the development of a particular society and ultimately for that state. It is one of the most important fundamental liberties guaranteed against state suppression or regulation.
2. Self-development: Free speech is an integral aspect of each individual's right to self-development and fulfilment. Restrictions inhibit our personality and its growth. The reflective mind, conscious of options and the possibilities for growth. Freedom of speech is also closely linked to other fundamental freedoms. Thus, for full-fledged development of personality, freedom of speech and expression is highly essential.
3. Democratic value: Freedom of speech is the bulwark of democratic Government. This freedom is essential for the proper functioning of the democratic process as it allows people to criticize the government in a democracy, freedom of speech and expression open up channels of free discussion of issues. Freedom of speech plays a crucial role in the formation of public opinion on social, political and economic matters.
4. Ensure pluralism: Freedom of Speech reflects and reinforces pluralism, ensuring that diversity is validated and promotes the self-esteem of those who follow a particular lifestyle.

It is important to understand that freedom is a fundamental value that is worth pursuing for its own sake, freedom is necessary and useful for peace and prosperity, and also for unrestricted individual growth and development. It is what India as a nation was founded upon.

NOTE: Details regarding Article 21, Article 22 are covered in other handouts.

H30- Right to Information (RTI) Act, Role of Media

Introduction

Information is regarded as the oxygen of democracy. It invigorates where it percolates. If people do not know what is happening in their society, if the actions of those who rule them are hidden, then they cannot take a meaningful part in the affairs of the society. Freedom of expression, free dissemination of ideas and access to information are vital to the functioning of a democratic government. Information is crucial for a vibrant democracy and good governance as it reflects and captures Government activities and processes.

History of RTI Act

- First right to information law was enacted by Sweden in 1766.
- The idea of RTI Act in India was floated by the former Prime Minister of India, Shri. V.P. Singh in 1990.
- The first grassroot campaign for the introduction of RTI was started by Mazdoor Kisan Shakti Sangathan (MKSS) in 1994.
- National Campaign for People's RTI – Formed in 1996; formulated initial draft of RTI law for the Government.
- Tamil Nadu became the first Indian State to pass RTI law in 1997.
- The Freedom of Information (FOI) Act, 2002, passed by Parliament, could not be implemented.
- Bill for the present RTI Act, 2005 was passed on the recommendations of National Advisory Council (NAC) in May 2005, and RTI Act, 2005 became effective from October 12, 2005.

How RTI enabled a culture of accountability and more informed citizens in India?

1. Increased responsiveness: Greater access of the citizens to information led to increased responsiveness of government to community needs. Earlier the government was less or not responsive to citizens' needs and grievances.
2. Awareness of rights: RTI has led to awareness of rights and responsibilities as citizens among people. This led to increased accountability of officials through RTI and litigation.
3. Discharge of duties: Information through RTI has led to legitimate discharge of their duties by officers.
4. Led to Culture of obligation: Earlier information was protected by the Colonial Secrets Act 1923, which makes the disclosure of official information by public servants an offence.
5. Empowered poor communities: RTI empowered poor communities to raise their voices on the basis of information and demand for their rights from government.
6. Proper grievance mechanism: RTI provided for Central and the State Information Commissions to hear grievances related to RTI. These commissions have played an important role in the effective implementation of the Right to Information Act, 2005, ensuring its proper implementation.
7. Informed Citizenry: Democracy requires an informed citizenry and transparency of information for its functioning. RTI enabled healthy democracy and also contained corruption and held Governments and accountable to the people.

Q) What role does the media play in information society?

- Article 19 of the Universal Declaration of Human Rights adopted by the United Nations states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."
- The media have an essential role in the development of the Information Society and are recognized as an important contributor to freedom of expression and plurality of information".
- Mass media is the most important vehicle for information, knowledge and communication in a democratic polity:

a) They are pervasive and play a significant role in shaping societies; they provide the public sphere of information and debate that enables social and cultural discourse, participation and accountability.
b) They are the most accessible, cost-effective and widespread source of information and platform for expression.

- The media can play a crucial role in building an inclusive Information Society based on knowledge power and its distribution.
- An RTI regime can enable credible, evidence-based and factual reporting on key issues of public interest. It can enable the media to expose mal-administration, corruption and inefficiency and to propagate stories and instances relating to accountability, transparency, effective administration and good governance.
- By using the RTI Act, the media can play an important role in highlighting issues related to public service delivery and the efficacy and accountability of public officials.
- Under the RTI Act, journalists & reporters, like citizens, can:
  a. Demand from the Government for information pertaining to any of its departments
  b. Demand photocopies of Government contracts, payment, estimates, measurements of engineering work etc.
  c. Demand from the Government certified samples of material used in the construction of roads, drains, buildings etc.
  d. Demand to inspect any public development work that may be still under construction or completed
  e. Demand to inspect Government documents - construction drawings, records books, registers, quality control reports etc.
  f. Demand status of requests or complaints, details of time delays, action taken on Information Commission's decisions etc.
- Providing Information to the Citizens and Building Awareness on the Act
- Giving Voice to the Citizens: As part of civil society, the media has an obligation to articulate the needs and aspirations of the people. Using the Act, the media can highlight key issues faced by the citizens, particularly those faced by the poor and voiceless
- Acting as a Watchdog on behalf of the Citizens: The best service that the media can provide to the public, whether in a mature or emerging democracy, is that of a community watchdog.

What are the Issues and loopholes in RTI:

1. **Not all institutions under RTI**: Another issue is that some institutions are not covered under the Act. E.g., judiciary is not under the act.
2. **Lack of infrastructure:** The Implementation of RTI requires the PIOs to provide information to the applicant through photocopies, soft copies etc. 45% of public information officers did not receive any training.
3. **Low awareness level:** Awareness about RTI is still very low. Awareness level is low, especially among the disadvantaged communities such as women rural population, OBC/SC/ST population. Only 36 per cent in rural and 38 per cent urban areas have heard of the RTI Act. Women in sufficient numbers are not taking advantage of the provisions of the RTI Act.
4. **Constraints faced in filing applications:** Under Section 26 of the RTI Act, the appropriate Government is expected to publish and distribute user guides (within 18 months of enactment of the Act) for information seekers.
5. Poor record-keeping practices within the bureaucracy. This is a violation of section 4 of the RTI act
6. Long Pendency in most Information Commissions signals casual approach towards RTI
7. Dilution of supplementary laws such as the one for whistle-blower protection act
8. There are concerns over frivolous use of the Act where disclosure of information doesn't serve any purpose
9. Concern over threats that some activists faced in the course of their work

10. Judiciary and political parties don't come under RTI which led to distrust among the citizens.

What is the difference between RTI Act 2005 and RTI Amendment 2019?

RTI ACT, 2005	RTI Amendment, 2019
Sections 13 of the Right to Information (RTI) Act, 2005 sets the term of the central Chief Information Commissioner and Information Commissioners at 5 years (or until the age of 65, whichever is earlier).	The RTI amendment bill 2019, amends it. Now the term will be prescribed by the Central Government.
Section 13 states that salaries, allowances and other terms of service of the Chief Information Commissioner shall be the same as that of the Chief Election Commissioner and those of an Information Commissioner shall be the same as that of an Election Commissioner.	The amendment proposes that the salaries, allowances and other terms of service of the Chief Information Commissioner and the Information Commissioners should be as may be prescribed by the Central Government.
Section 16 of the original Act deals with state-level Chief Information Commissioners and Information Commissioners. It sets the term for state-level CICs and ICs at five years (or 65 years of age, whichever is earlier).	The amendment proposes that these appointments should be for such terms as may be prescribed by the Central Government.
The original Act prescribes salaries, allowances and other terms of service of the state Chief Information Commissioner as the same as that of an Election Commissioner and the salaries and other terms of service of the State Information Commissioners as the same as that of the Chief Secretary to the State Government.	The amendment proposes that salaries, allowances and other terms of service shall be such as may be prescribed by the Central Government.

RTI (Amendment) Act 2019:

- The government has introduced the Right to Information (Amendment) Bill, 2019. The bill seeks to amend the Right to Information (RTI) Act, 2005.

Key features of the 2019 act:

- Term of Information Commissioners: Under the Act, Chief Information Commissioner (CIC) and Information Commissioners (ICs) are appointed at the national and state level to implement the provisions of the Act.
- Determination of salary: The Act states that the salary of the CIC and ICs (at the central level) will be equivalent to the salary paid to the Chief Election Commissioner and Election Commissioners, respectively.
- The Bill seeks to amend these provisions to state that the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs will be determined by the central government.
- Deductions in salary: The Act states that at the time of the appointment of the CIC and ICs (at the central and state level), if they are receiving pension or any other retirement benefits for previous government service, their salaries will be reduced by an amount equal to the pension.

What are the criticisms on RTI (Amendment) Act 2019?

- Blow to Federalism: The role of State Governments has been diminished.
- Against Democratic value: Opposition now has no role in the appointment.
- A threat to transparency and accountability of CIC and ICs: Earlier the CIC and ICs were appointed with the consent of Opposition and function relatively independently due to fixed tenure and salary.
- Against the Spirit of Supreme Court Judgement & Parliamentary Committee:
  - In 2005, the parliamentary standing committee reviewing the RTI Bill had said the

terms of appointment of information commissioners was the "essence of the Bill".
- In the case of Anjali Bhardwaj & Ors. V/s UOI held that the RTI Act is enacted not only to sub-serve but also to ensure freedom of speech

Way Ahead

- Government should bring the amendment after proper consultation with civil society and other stakeholders
- The government should also incorporate the concerns raised by various information commissioners before table it in parliament
- To strengthen the RTI government should operationalize the Lok Pal, the Whistle-blowers Act and the Grievance Redress law.
- The government should take necessary steps to develop a reliable online system to apply for information and make it easier to pay for bills.
- The government should take necessary steps to strengthen the requirement under section 4 of the Act to publish information Suo moto. This will help to reduce the number of cases.
- The Supreme Court has held the right to information as being integral to the right to free expression under Article 19(1)(a); weakening the transparency law would negate that guarantee.

Information is crucial for a vibrant democracy and good governance as it reflects and captures Government activities and processes. Access to information not only facilitates active participation of the people in the democratic governance process, but also promotes openness, transparency and accountability in administration. 'Right to Information' (RTI), the right of every citizen to access information held by or under the control of public authorities, can thus be an effective tool for ushering in good governance.

H31- Right to Internet access and digital literacy

In 2019, Faheema Shirin v. State of Kerala, the Kerala High Court declared the right to Internet access as a fundamental right forming a part of the right to privacy and the right to education under Article 21 of the Constitution. In the present digital world where almost, every service is being digitized, it is important to recognize the right to Internet access as an independent right.

What is the need to recognize the Right to Internet Access and digital literacy as a right in itself?

1. Social injustice: Digital inequalities lead to gross social injustice and hinder the development of individuals. It prevents Indian citizens and marginalized to enjoy various services and rights provided to them
2. Poor Access to services: In recent times, several government and private sector services have become digital. Some of them are only available online. This leads to a new kind of inequality, digital inequality, where social and economic backwardness is exacerbated due to information poverty, lack of infrastructure, and lack of digital literacy.
3. Digital economy: We are moving to a global digital economy where knowledge of digital processes will transform the way in which people work, collaborate, consume information, and entertain themselves. This has been acknowledged in the Sustainable Development Goals as well as by the Indian government and has led to the Digital India mission. Thus, it is important for an economy to provide equal access to the Internet as a right.
4. Preventing exclusion: Services are now offered online with less cost and better efficiency. It also allows citizens to bypass lower-level government bureaucracy. In the absence of Internet access and digital literacy enabling that access, there will be further exclusion of large parts of the population, exacerbating the already existing digital divide.
5. Good governance: Moving governance and service delivery online without the requisite progress in Internet access and digital literacy do not make economic sense. For instance, Common Service Centres, which operate in rural and remote locations, are physical facilities which help in delivering digital government services and informing communities about government initiatives.
6. Employment opportunities: Lack of internet access prevents many people from equal employment opportunities vis-à-vis available to one who have Internet access and digital knowledge. Further digital illiteracy led to lack of required skills, as digital skills are a must nowadays to get any job.
7. Women empowerment: Digital literacy and internet access help in furthering women rights and help them to be aware of their rights. It helps in educating women. Also, it provides employment opportunities to them, as many women work from home through internet.

What is the significance of the right to internet access and digital literacy being recognized as a right in itself?

1. Digital literacy allows people to access information and services, collaborate, and navigate socio-cultural networks.
2. Acknowledgement of the right to access the Internet in accessing other fundamental rights, is imperative that the right to Internet access and digital literacy be recognized as a right in itself.
3. Recognizing the right to internet access and digital literacy will also make it easier to demand accountability from the state, as well as encourage the legislature and the executive to take a more proactive role in furthering this right.
4. A right to Internet access would also further provisions given under Articles 38(2) and 39 of the Constitution reducing inequalities and furthering the right of every individual.

Unequal access to the Internet creates and reproduces socio-economic exclusions. It is important to recognize the right to Internet access and digital literacy to alleviate this situation, and allow citizens increased access to information, services, and the creation of better livelihood opportunities.

H32- Right to Privacy

Introduction

Privacy is a fundamental human right enshrined in many international treaties. It is important for the protection of human dignity and is one of the important pillars of a democratic country. It supports the rights of self and others. It also extends to physical integrity, individual autonomy, free speech, and freedom to move, or think.

What is the Right to Privacy?

- The right to privacy is an element of various legal traditions that intends to restrain governmental and private actions that threaten the privacy of individuals.
- Privacy is a constitutionally protected right emerging primarily from the guarantee of life and liberty in Article 21 of the Constitution.
- However, Article 21 of the Constitution of India states that "No person shall be deprived of his life or personal liberty except according to procedure established by law".
- Article 21 interprets that the term 'life' includes all those aspects of life which go to make a man's life meaningful, complete and worth living.

What are the various features of the Right to Privacy?

- It includes the preservation of personal intimacies, sanctity of family life, marriage, procreation, the home and sexual orientation.
- Privacy connotes a right to be left alone. It safeguards individual autonomy and recognizes one's ability to control vital aspects of his/her life.
- Privacy is not an absolute right, but any invasion must be based on legality, need and proportionality.
- Informational privacy is a facet of this right. Dangers to this can originate from both state and non-state actors.

What is Justice Puttaswamy judgement?

- Retired Justice Puttaswamy challenged the constitutionality of Aadhar before the Supreme Court by filing a writ petition. The petitioner contended that with regard to all the previous apex court judgements, the Right to Privacy is a fundamental right and the Aadhar procedure violated this right. Puttaswamy case resulted into declaration of right to privacy as a fundamental right under Article 21 of the Indian Constitution. Thus, one can move to the Supreme Court or high court against tyranny of state.
- The court expanded the purview of Article 21 and said that the Right to Life and Liberty, as stated in Article 21, also included the right to privacy. Since Article 21 falls under Part III of the Indian Constitution, which deals with fundamental rights, the right to privacy thus automatically became a fundamental right after the judgement.

Significance of Puttaswamy judgement:

- This will strengthen freedom of thoughts, expressions, beliefs etc.
- Provides for protection against the state's interference in the private matters including marriage, family & sex.
- It will help in prevent the situation of surveillance by the state.
- It will give boost to the rights of the transgender & LGBT as confirmed by scrapping of section 377 of IPC.
- The dignity & integrity of a people's body, mind & thoughts are protected through Right to privacy.
- Now one can make the state accountable & seek justice in case of any infringement in the private zone & in case of unnecessary surveillance without her consent.
- This opens doors for further debates, and will encourage awareness about the rights enjoyed by the citizens.
- This verdict on the right to privacy will also challenge the validity of privacy policies of many companies and will make them transparent and accountable.

Is the right to privacy an absolute right or not?

- The court ruled that Privacy is not an absolute right.
- The government can introduce a law which "intrudes" into privacy for public and legitimate state reasons.

- But an individual can challenge this law in any of the constitutional courts of the land for violation of his/her fundamental right to privacy.
- There are many grounds on which government can impose restrictions.

What is the Restriction on the Right to Privacy?

These restrictions have not been defined or elucidated anywhere and have been identified through the interpretation of various provisions and judgments of the Supreme Court of India:

- The right to privacy can be restricted by procedure established by law and this procedure would have to be just, fair and reasonable.
- Reasonable restrictions can be imposed on the right to privacy in the interest 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; (Article 19(2) of the Constitution of India, 1950).
- The right to privacy can be restricted if there is an important countervailing interest which is superior to it.
- The right to privacy can be restricted if there is a compelling state interest to be served.
- The protection available under the right to privacy may not be available to a person who voluntarily introduces him- or herself into controversy.

What are the various committees and cases dealing with right to privacy in India?

Cases:

- **P. Sharma vs Satish Chandra case (1954),** which involved a challenge to the constitutionality of search and seizure of documents from a person against whom a FIR was lodged.
- **The Kharak Singh vs State of Uttar Pradesh case (1963),** in which the petitioner Kharak singh challenged the constant surveillance on him by U.P police on grounds of violation of article 19 and 21.
- **Gobind vs State of Madhya Pradesh case (1975),** where Supreme Court recognized Right to Privacy as implicit in the Right to Life and Personal Liberty guaranteed by Article 21 of the Constitution. However, the court made it clear that this was not an absolute right and reasonable restrictions can be imposed on the basis of public interest.
- **ADM Jabalpur vs Shukla case (1976),** where a constitutional bench shamelessly declared that under emergency provisions no one could seek the assistance of court in India to try and save his liberty, life or limb threatened to be taken by the state.
- **Maneka Gandhi vs Union of India case (1978):** It stands as a bulwark of the Right of Personal Liberty granted by Article 21 of the Constitution, started when the passport of the petitioner in this case, was impounded by the authorities under the provisions of the Passport Act.
- Justice (Retd) B.N. Srikrishna Committee was formed after, Justice **K.S. Puttaswamy (Retd) v. Union of India judgemet** to suggest a draft data protection law.

What are the Government Steps to Protect Privacy?

- Data Protection Bill 2019:
  1. To provide for protection of privacy of individuals relating to their Personal Data and to establish a Data Protection Authority of India for the said purposes and the matters concerning the personal data of an individual.
  2. Framed on the recommendations of B N Srikrishna Committee (2018).
- Information Technology Act, 2000:
  1. Provides for safeguard against certain breaches in relation to data from computer systems. It contains provisions to prevent the unauthorized use of computers, computer systems and data stored therein.

Personal Data Protection Bill 2019:

- The Bill seeks to regulate the use of data and to foster a privacy protection framework in the country. It establishes Data Protection Authority to provide protection of personal data of individuals.

Key features of the Bill are given below:

- Personal data definition: The Bill defines 'personal data' as any information which renders an individual identifiable. Also, it defines data 'processing' as collection, manipulation, sharing or storage of data.
- Territorial applicability: The Bill includes the processing of personal data by both government and private entities incorporated in India, and also the entities incorporated overseas if they systematically deal with data principals within the territory of India.
- Grounds for data processing: The Bill allows data processing by fiduciaries if consent is provided by the individual.
- Sensitive personal data: Sensitive personal data defined in the Bill includes passwords, financial data, biometric and genetic data, caste, religious or political beliefs.
- Data Protection Authority: The Bill provides for the establishment of a Data Protection Authority (DPA). The DPA is empowered to
  a) Draft specific regulations for all data fiduciaries across different sectors,
  b) Supervise and monitor data fiduciaries.
- Cross-border storage of data: The Bill states that every fiduciary shall keep a 'serving copy' of all personal data in a server or data centre located in India.
- Transfer of data outside the country: Personal data (except sensitive personal data which is 'critical') may be transferred outside India under certain circumstances.

Way forward

- It is important to strike a right balance between digital economy and privacy protection. The law should encompass all the aspects- data collection, processing and sharing practices.
- The privacy of an individual is important for which data should be secured.
- The government must incorporate suggestions from various stake holders over the draft bill.
- Privacy should not be used to undermine government transparency. Data protection law should be framed such that it does not make government opaque and unaccountable
- Robust data privacy laws are needed to permit citizens to enjoy proper privacy. The law should deal with all the aspects- data collection, processing and sharing practices. The best practices from both USA and EU's GDPR should be adapted.
- Privacy shouldn't be wont to undermine government transparency. Data protection law should be framed such that it does not make the government opaque and unaccountable.
- There is a need for a separate law to address oversight in intelligence gathering, rather than dealing it within the data protection law itself.
- A separate tribunal or authority can be established to give prior authorization for data surveillance and interception.

In this digital age, data is a valuable resource that should not be left unregulated. In this context, the bill is a step in the right direction. Once the bill is fine-tuned, it will be an effective law in enforcing the rights of the people over personal data and will provide a more effective data protection regime. The privacy of an individual is important for which data should be secured. A firm legal framework for data protection is the foundation on which data driven innovation and entrepreneurship can flourish in India. Thus, a data protection law must be put in place.

H33- Euthanasia

Euthanasia is a practice of intentionally ending life in order to relive pain and suffering. It is categorized as voluntary, non-voluntary and involuntary. It can be further classified into active or passive.

What is Euthanasia?

- The word "euthanasia" comes from the Greek word "eu" (good) and "thanatos" (death).
- Euthanasia, also called "mercy killing", act or practice of painlessly putting to death persons suffering from painful and incurable disease or incapacitating physical disorder or allowing them to die by withholding treatment or withdrawing artificial life-support measures.

What are the types of Euthanasia?

- **Active Euthanasia:** It is also known as 'Positive Euthanasia' or 'Aggressive Euthanasia'. It refers to causing intentional death of a human being by direct intervention. It is a direct action performed to end useless life and a meaningless existence.
    - For example, by giving lethal doses of a drug or by giving a lethal injection. Active euthanasia is usually a quicker means of causing death and all forms of active euthanasia are illegal.
- **Passive Euthanasia:** It is also known as 'Negative Euthanasia' or 'Non-Aggressive Euthanasia'. It is intentionally causing death by not providing essential, necessary and ordinary care or food and water.
    - It implies discontinuing, withdrawing or removing artificial life support systems.
    - Passive euthanasia is usually slower and more uncomfortable than active. Most forms of voluntary, passive and some instances of non-voluntary, passive euthanasia are legal.

What are the legal provisions in India about Euthanasia?

- **Article 21** includes the "right to die or not" this issue primarily raised in the case State of **Maharashtra v. Maruti Shripati Dubal.**
    - It was held in this case by the Bombay High Court that 'right to life' also includes 'right to die' and **Section 309** was struck down.
    - The court clearly said in this case that the right to die is not unnatural; it is just uncommon and abnormal. Also, the court mentioned many instances in which a person may want to end his life.
- This was upheld by the Supreme Court in the **case P. Rathinam v. Union of India.**
- In **Gian Kaur v. State of Punjab**, it was held by the five-judge bench of the Supreme Court that the "right to life" guaranteed by Article 21 of the Constitution does not include the "right to die".
    - The court clearly mentioned in this case that **Article 21** only guarantees right to life and personal liberty and in no case can the right to die be included in it. In India, like almost in other countries, euthanasia has no legal aspect.
- Every act of aiding and abetting the commission of suicide are punished under the **section 306 of the I.P.C.**
- Distinction between euthanasia and suicide given by, Justice **Lodha in Naresh Maratra Sakhee vs Union of India,** observed that, "suicide by its nature is an act of self-killing or self-destruction, an act of terminating one's own act and without the aid or assistance of any other human agency.
- "**Mercy killing is nothing but homicide**, whatever the circumstances in which it is affected. Unless it is specifically accepted it cannot be an offense. Indian Penal Code further punishes not only abetment of homicide, but also abetment of suicide".
- In **Aruna Shanbaug case**, the Supreme Court passes a landmark judgment legalising passive euthanasia asks the Centre to frame a law to monitor it. The court's guidelines include getting clearance from a medical board and state government, followed by declaration from a high court.
- **In 2012,** the Law Commission of India prepares a draft Bill on passive euthanasia and living wills.
- In 2016, the Union Health Ministry posts a draft of the terminally ill Patients (Protection of Patients and Medical Practitioners) Bill on the website.

What is Sallekhana/ Santhara?

- Santhara, being a practice of welcoming death, is nothing but another name for the practice of passive euthanasia.
- Sallekhana is a supplementary vow to the ethical code of conduct of Jainism. It is the religious practice of voluntarily fasting to death by gradually reducing the intake of food and liquids. It is viewed in Jainism as the thinning of human passions and the body, and another means of destroying rebirth-influencing karma by withdrawing all physical and mental activities. It is not considered as a suicide by Jain scholars because it is not an act of passion, nor does it employ poisons or weapons.
- There is debate about the practice from a right to life and a freedom of religion viewpoint. In 2015, the Rajasthan High Court banned the practice, considering it suicide. In 2016, the Supreme Court of India stayed the decision of the Rajasthan High Court and lifted the ban on Sallekhana.

What are the issues related to Euthanasia?

1. Medical Ethics: Medical ethics call for nursing, caregiving and healing and not ending the life of the patient. In the present time, medical science is advancing at a great pace making even the most incurable diseases curable today. Thus, instead of encouraging a patient to end his life, the medical practitioners have to encourage the patients to lead their painful life with strength.
2. Moral Wrong: Taking a life is morally and ethically wrong. The value of life can never be undermined.
3. Vulnerable will become more prone to it: Groups that represent disabled people are against the legalisation of euthanasia on the ground that such groups of vulnerable people would feel obliged to opt for euthanasia as they may see themselves as a burden to society.
4. Suicide v/s Euthanasia: When suicide is not allowed then euthanasia should also not be allowed. A person commits suicide when he goes into a state of depression and has no hope from the life. Similar is the situation when a person asks for euthanasia. But such a tendency can be lessened by proper care of such patients and showing hope in them.
5. X-Factor: Miracles do happen in our society especially when it is a matter of life and death, there are examples of patients coming out of coma after years and we should not forget human life is all about hope.

What is the significance of Euthanasia?

1. End of Pain: Euthanasia provides a way to relieve the intolerably extreme pain and suffering of an individual. It relieves the terminally ill people from a lingering death.
2. Respecting Person's Choice: The essence of human life is to live a dignified life and to force the person to live in an undignified way is against the person's choice. Thus, it expresses the choice of a person which is a fundamental principle.
3. Dignified Death: Article 21 of the Indian Constitution clearly provides for living with dignity. A person has a right to live a life with at least minimum dignity and if that standard is falling below that minimum level then a person should be given a right to end his life.
4. Addressing Mental Agony: The motive behind this is to help rather than harm. It not only relieves the unbearable pain of a patient but also relieves the relatives of a patient from the mental agony.

Way Forward:

1. Achieving peace with God and pain control: are nearly identical in importance for patients and bereaved family members.
2. The futile treatment: that doesn't have any reasonable chance of doing good-other than keeping the patient from dying could be stopped to lessen the agony of the family.
3. Easier to commit murder: At the same time, allowing voluntary euthanasia makes it easier to commit murder, since the perpetrators can disguise it as active voluntary euthanasia. That must be avoided.
4. We should look at the brighter side of it than thinking of it being abused.

There is no doubt that matters of life and death are sensitive ones. Many states recognize that we have the right to live. However, whether the right to die is included in it or not remains doubtful.

H34- Undertrials in India

"Justice delayed is justice denied."- English adage

The present situation of undertrials demonstrates the problematic status of the citizen who are held for perceived violation of laws and overall, of functioning of the judicial system in India.

Who are Undertrials?

An undertrial is a person who is in judicial custody or remand during investigation and denotes an unconvicted prisoner.

Under-trials are people who have been detained for alleged crimes but remain in custody as they await trial – a process that can sometimes take years.

The 78th Report of Law Commission also includes a person who is in judicial custody on remand during investigation in the definition of an 'under-trial'.

What is the status of Undertrials in India?

- More than 65% of the prison population in India are under trials. Of these undertrials, more than 2,000 have been in jail for over five years
- The share of the prison population awaiting trial or sentencing in India is extremely high by international standards; for example, it is 11% in the UK, 20% in the US and 29% in France.
- According to NCRB, out of the total number of undertrials in India, 55% are Dalits, Muslims or Adivasis. This is disproportional as these communities make up only 39% of Indian population
- Further, 42% of the undertrials have not completed their secondary education

What are the reasons for the increasing number of Undertrials?

1. **Population-Judge ratio:** Population-judge ratio is extremely low in India, which is only 12 judges per million of population (in USA its 1100 per million and in China 190 per million). this leads to huge pendency of cases with undertrials being incarcerated in jails without even a fair chance of trial.
2. **Delayed investigation**: Investigation and trial process is often delayed by police and prosecution functionaries. A major reason for this delay is low 'Police- Population' ratio. Moreover, alleged corruption in police forces often leads to delays and unnecessary arrests.
3. **Inadequate Prosecution system:** The Delhi High Court, in a March 2014 order observed, "One of the predominant causes for delay in disposal of criminal case is due to shortage of public prosecutors".
4. **Poverty and illiteracy:** A large number of Undertrials are poor, illiterate, belonging to the marginalized communities. Given this, most undertrials require public defenders and legal aid to secure bail. However, there is a dire crunch of legal representatives for the under trials.
5. **Problems with the Bail system**: The Law Commission in its 268th report has highlighted the fact that the rich and the affluent get bail with ease. However, poverty becomes the reason for incarceration of many prisoners, as they are unable to afford bail bonds or provide sureties.

What is the impact of the increasing number of undertrials in India?

The Constitution of India, the Universal Declaration of Human Rights and the Standard, Minimum Rules for Treatment of Prisoners clearly specify the standards of treatment with prisoners on trial. However, undertrials are subjected to many disadvantages inside and outside prison such as:

1. **Economy**: A demographic profile of Undertrials indicates that most of them are in the younger age group. Thus, the most productive years are wasted in a prison which is not only a sentimental loss of youth for the individuals, but also a loss for their families and Indian economy.
2. **Family:** Often the undertrial happens to be the only earning member. Thus, their family is left in a state of destitution during their imprisonment. Apart from the regular expenses, the family finds it difficult to afford legal expenses to ascertain a fair trial for the individual.
3. **Psychological:** Those who spent years in jails carry the psychological burden of imprisonment often leading to depression and mental illness.
4. **Social:** Undertrials even after release face problem in integrating within the society and face social stigma- the stigma of being called a criminal for the rest of their lives.
5. **Human and constitutional rights**: Granting justice at a higher cost indirectly leads to the

denial of justice. This leads to a clear violation of the Supreme Court judgement which held, legal aid to a poor is a constitutional mandate not only by virtue of Article 39A but also Articles 14, 19, 21 which cannot be denied by the government.

6. **Prison resources:** The huge number of Undertrials not only leads to overcrowding in prisons but strain the already insufficient prison infrastructure and human resources.

What is police custody?

When an accused is arrested by police for committing an offence and kept in the lock-up of a police station, it is known as police custody.

It usually means being under the physical custody of an investigating agency that is probing the matter concerned.

What is judicial custody?

When an accused is kept in prison or jail and is under the custody of a magistrate, it is known as judicial custody.

Difference between police and judicial custody

A person is put under policy custody usually up to 24 hours of arrest excluding the time for travelling. Beyond that, it is solely in the hands of the magistrate whether a person would be kept in police custody or judicial custody.

An accused can be sent to police custody only within the first fifteen days of the presentation before the magistrate. After the arrest while in judicial custody, an accused can be sent to prison, either within the first fifteen days or even thereafter.

	Police Custody	Judicial custody
Time limit	• It can be ex-tended for a maximum period of 15 days	• A maximum period of 90 days for offences punishable with more than 10 years of imprisonment. • A maximum period of 60 days for all other offences.
Bail provisions	• A person can apply for bail being in judicial custody under CrPC chapter 33 which pertains to bail and bonds.	• A person is entitled to be released forthwith on bail at the police station itself as a matter of right on furnishing a bail bond of a reasonable amount.
Interrogation	• the investigating authority can interrogate a person	• officials need the permission of the court for questioning.
Counsel	• The accused has the right to legal counsel and the right to be informed.	• The accused is under the responsibility of the magistrate and his/her conduct is governed by the Prison Manual.

What is Supreme Court`s directives in this regard?

Eight-point guidelines were issued by SC in a landmark judgement on inhuman conditions of prisons in 2013.

The guidelines on the issue of undertrials are as follows:

1. The Under-Trial Review Committee in every district should meet every quarter.
2. The Under-Trial Review Committee should specifically look into aspects pertaining to effective implementation of Section 436 of the CrPC (prisoners to be released on bail except for non-bailable offences) and Section 436A of the CrPC so that undertrial prisoners are released at the earliest.
3. The State Legal Service Authority of every state should ensure that an adequate number of competent lawyers are provided to assist undertrial prisoners and convicts, particularly the poor and indigent
4. The District Legal Services Committee should also look into the issue of the release of undertrial prisoners for compoundable offences.

Law Commission recommendations:

The Law Commission in its 268th Report has made the following recommendations:

1. When a person is arrested without a warrant, the arresting officer should inform the person about the available legal remedies including applying for bail.
2. Bail applications should be decided by subordinate courts within a week.
3. If the investigating officer finds that the under-trial is not in a position to pay surety then that person should be allowed bail without payment of surety.
4. A portion of the funds transferred to the Panchayat for developmental work should be set aside to meet the bail amount for under trials belonging to the particular panchayat / block.
5. Release of Undertrials:
   - The bail provisions under Section 436A of the CrPC should be amended to ensure early release of under-trials.
   - Those who had completed one-third of the maximum sentence for offences up to seven years should be released.
   - Those who were awaiting trial for offences punishable with imprisonment of more than seven years should be let out on bail if they had completed half their sentence.

What are the initiatives by the Government?

1. Establishing fast-track courts to speed up the resolution of cases involving undertrial prisoners.
2. Mission Mode Programme for Delivery of Justice & Legal Reforms–Undertrial Programme: It aimed to resolve 2/3rd of all undertrial cases and ease congestion in jails by 2010. It worked with state governments to identify the undertrial prisoners who were entitled to be released under the law and link them with Legal Service Authority to ensure their release
3. Introducing the concept of plea bargaining through Section 265 of CrPC:
   - It states that the plea bargaining shall be available to the accused who is charged of any offence other than offences punishable with death or imprisonment or for life or of an imprisonment for a term exceeding to seven years.
   - Plea bargaining has been encouraged by the National Legal Services Authority (NALSA) within CrPC parameters
4. Insertion of Section 436A of CrPc– It states that if an accused is detained for more than half the maximum period of imprisonment associated with the crime, he/she has the right to be released on the presentation of a personal bond.
5. Free legal services are provided to all undertrial prisoners by NALSA's legal service clinics

What solutions can be suggested to improve the conditions of undertrials?

1. Undertrial prisoners should be lodged in separate institutions away from convicted prisoners. There should be proper and scientific classification even among undertrial prisoners to ensure that contamination of first time and petty offenders into full-fledged and hardcore criminals does not happen.
2. Provisions of Section 167 of the CrPC with regard to the time limit for police investigation in case of accused undertrial prisoners, should be strictly followed by both the police and courts.
3. Automatic extension of remands has to stop which are also given merely for the sake of the convenience of the authorities. Mere convenience of the authorities cannot supersede the Constitutional guarantees under Article 21.
4. All undertrial prisoners should be effectively produced before the presiding magistrates on the dates of hearing.
5. The possibility of producing prisoners at various stages of investigation and trial, in shifts could be explored.
6. Video conferencing between jails and courts should be encouraged and tried in all states beginning with the big Central jails and then expanding to District and Sub jails.
7. Police functions should be separated into investigation and law and order duties and sufficient strength be provided to complete investigations on time and avoid delays.
8. The criminal courts should exercise their available powers under Sections 309, 311 and 258 of the CrPC to effectuate the right to speedy trial.

9. Order of Dr. A.S. Anand – former Chief Justice of India on holding Special Courts/ Jails for prisoners involved in petty offences and willing to confess, should be actively taken up by the High Courts and implemented in all districts.
10. Alternatives to imprisonment should be tried out and incorporated in the IPC, such as, concept of Open Jails, Borstal jails, special jails etc.

The legal, political and administrative system of the country and society should collectively work to ensure that undertrials languishing in Indian jails are accorded their rightful and speedy trials, human rights and a life of dignity, rather than leaving them to mercy of our overburdened judicial processes.

H35- Preventive Detention

Detention in its simplest sense means to curb the liberty of an individual, i.e., without the knowledge of that individual.

There are 2 types of Detention:

- **Preventive Detention**
- **Punitive Detention**

Punitive detention is used to punish a person for an offense committed after a court trial and conviction.

Q) What is Preventive detention?

It means the detention of a person without trial and conviction by a court. Its purpose is not to punish a person for past offenses but to prevent him from committing an offence in the near future.

What are the constitutional provisions related to preventive detention?

- **Article 22 of the Indian Constitution** provides protection against arrest and detention in certain cases.
- **Article 22 (1)** of the Indian Constitution says an arrested person cannot be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- **Article 22 (4)** states that no law providing for preventive detention shall authorize the detention of a person for a longer period than three months unless:
  a) An Advisory Board reports sufficient cause for extended detention.
  b) Such a person is detained in accordance with the provisions of any law made by Parliament.
  c) The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months.
- Under **Entry 9 of List I ('Union List'),** Parliament has the exclusive power to enact a law for preventive detention for the reasons connected with defence, foreign affairs, or security of India.
- **Entry 3 of List III ('Concurrent List'),** both Parliament and State Legislature have powers to enact such laws for the reasons related to maintenance of public order or maintenance of supplies or services essential to the community.
- Under **Section 151 of The Criminal Procedure Code, 1973 (CrPC)** preventive detention is action taken on grounds of suspicion that some wrong actions may be done by the person concerned.

What safeguards are provided related to preventive detention under the constitution?

- A person may be taken to preventive custody only for 3 months at the first instance. If the period of detention is extended beyond 3 months, the case must be referred to an Advisory Board consisting of persons with qualifications for appointment as judges of High Courts.
- The detainee is entitled to know the grounds of his detention. The state, however, may refuse to divulge the grounds of detention if it is in the public interest to do so.
- The detaining authorities must give the detainee earliest opportunities for making representation against the detention.

What is the difference between preventive detention and an arrest?

- An 'arrest' is done when a person is charged with a crime.
- In the case of preventive detention, a person is detained as he/she is simply restricted from doing something that might deteriorate the law-and-order situation.
- Article 22 of the Indian Constitution provides protection against arrest and detention in certain cases.

What are various judgments of courts on preventive detection?

- The constitutionality of the Preventive Detention Act, 1950 was challenged in the case of A.K. Gopalan V. State of Madras where a leader named A.K. Gopalan was detained in Madras jail from 1947.
- In the case of Prem Narayan v. Union of India, the Allahabad High Court stated that preventive detention is an infringement upon the personal freedom of an individual and it can't be infringed in an easy-going way
- In the case of ShibbanLal v. State of Uttar Pradesh, the Supreme Court of India stated that a courtroom isn't even competent to enquire into

reality or in any case of the facts which are referenced as the grounds of detainment.

- In Haradhan Saha case, the Supreme Court held that if a person is liable to be tried for a criminal offence, but the ordinary criminal laws are not be able to deal with the situation, then, and only then, can the preventive detention law be taken recourse to.
- In the case of Banka Sneha v. State of Telangana, the Supreme Court held that Preventive Detention Order can only be passed against a Detenu if his activities adversely affect or are likely to adversely affect the maintenance of public order.

What is the difference between preventive detention and punitive detention?

Preventive Detention	Punitive Detention
Under Section 151 of The Criminal Procedure Code, 1973 (CrPC), preventive detention means detention of a person without trial and conviction by a court.	It is to punish a person for an offence committed by him after trial and conviction in a court.
Purpose: Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future.	Its purpose is to punish a person for an offence.
It is only a precautionary measure and based on suspicion.	It punishes for the crime committed.
Availability of rights – The following rights not available to a person arrested or detained under preventive detention law: • Right to be informed of the grounds of arrest • Right to consult and be defended by a legal practitioner • Right to be produced before a magistrate within 24 hours, excluding the journey time • Right to be released after 24 hours unless the magistrate authorizes further detention.	All these rights are available to a person arrested or detained under a punitive detention law.
A detainee under preventive detention has no right of personal liberty guaranteed by Article 19 or Article 21.	A detainee under punitive detention can have the right of personal liberty guaranteed by Article 19 or Article 21.

Q) What are the issues related to preventive detection?

- Arbitrariness: The police determinations of whether a person poses a threat are not tested at a trial by leading evidence or examined by legally trained persons.
- Rights violation: Quiet often, there is no trial (upto 3 months), no periodic review, and no legal assistance for the detained person.
- Abuse: It does not provide any procedural protections such as to reduce detainees' vulnerability to torture and discriminatory treatment, and to prevent officials' misusing preventive detention for subversive activities.
- Tool for suppression: In the absence of proper safeguards, preventive detention has been misused, particularly against the Dalits and the minorities.
- No democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India.
- The governments sometimes use such laws in an extra-judicial power. Also, there remains a fear of arbitrary detentions.

What are the rights of accused in India?

- The Right to Appeal: The rights of arrested persons include the right to file an appeal against his conviction in a higher court.

- The Right to Humane Treatment in Prison: Accused persons have the right to have all their human rights when in prison. Also, be subjected to humane treatment by the prison authorities.
- Right to know about the accusations and charges: Under the Criminal Procedure Code (CrPC), 1973, the rights of an arrested person under CrPC include knowing the details of the offence and the charges filed against him/her.
- Right against wrongful arrest: The rights of accused in India are provided only in cases where a warrant is issued.
- Right to be accused of privacy and protection against unlawful searches: The police officials cannot violate the privacy of the accused on a mere presumption of an offence.
- Right against self-incrimination: A person cannot be compelled to be a witness against himself as per Article 20(3) of the Indian Constitution (pdf).
- Right against double jeopardy: A person cannot be prosecuted and punished for the same offence more than once as per Article 20(2) of the Constitution.
- The Right against the ex-post facto law: The rights of accused in India also gives a person the authority where he/she cannot be tried for an offence that was the earlier crime and now is not.
- Bail as the rights of accused in India: The right of an accused person allows them to file a bail application to be released from jail custody. There are three kinds of bail under Indian law- anticipatory bail, interim bail and bail by a bond.
- Right to legal aid: In this, the rights of an accused person allow him/her to hire a lawyer to defend them and in case he is not able to afford a lawyer, the State has to provide free legal aid to him for his representation in court.
- Right to a free and expeditious trial: The rights of accused in India has the right to fair trial in India and an expeditious trial, which is free of any bias or prejudice.
- The Right to be present during a trial: Section 273 of the Code provides that all evidence and statements must be recorded in the presence of the accused or his criminal lawyer.
- Right to get Copies of Documents: The accused has the right to receive copies of all the documents filed by the prosecutor in relation to the case.
- The Right to be present at the trial: The accused person has the right to be present during his trial and have testimony presented in front of him.
- Right to cross-examination: The accused has the right to be cross-examined by the prosecutor to prove his innocence
- Right to Appeal: The rights of arrested persons include the right to file an appeal against his conviction in a higher court.
- Right to Humane Treatment in Prison: The accused has a right to have all his human rights when in prison and be subjected to humane treatment by the prison authorities.

Armed Forces Special Powers Act (AFSPA)

- AFSPA was first promulgated in 1942, by Linlithgow, in response to the Quit India movement in 1942. Its aim was "to confer special powers upon certain officers of the armed forces.
- After Independence, the Act was retained by the ordinance enacted in 1958, to control increasing violence in the North-eastern States, which the State governments found difficult to control.
- AFSPA gives armed forces the power to maintain public order in "disturbed areas".

What is a "disturbed area" under AFSPA?

- According to Section 3 of the AFSPA, an area can be declared disturbed due to differences or disputes between members of different religious, racial, language, or regional groups or castes or communities.
- The Central Government or the Governor of the State or administrator of the Union Territory can declare the whole or part of the State or Union Territory as a disturbed area.

What are the powers given under AFSPA?

The armed forces have the following powers in the disturbed area,

- Authority to prohibit a gathering of five or more persons in an area,

- Can use force or even open fire after giving due warning if armed forces feel a person is in contravention of the law.
- Can arrest a person without a warrant, enter or search premises without a warrant, and ban the possession of firearms.

What is the need for AFSPA?

- Provide legal powers to Army: The Armed forces have no constitutional authority or legal powers to use force or firearms against anyone except in 1. War, 2. When guarding the international border, 3. They were in "aid to civil authority".
- Better counterinsurgency in border areas: Northeast India is an area of immense geostrategic importance, which shares boundaries with five countries, including Myanmar and China. It is important that the insurgency situation is brought under control.
- Reduce the cost of court hearings for Armed forces: The only legal right a soldier has, apart from AFSPA, is the right of "private defense" (of life or property), which must be proved post-facto in a court of law, and this takes many years of court hearings.

What are the criticisms against AFSPA?

- India is the only country in the world where there is no war, and yet an emergency martial law was in force. The Act provides the security personnel with absolute powers without accountability. This leads to various issues.
- In 2013, the Supreme Court appointed Hegde Commission. The commission found that all seven deaths in the six cases it investigated were extrajudicial executions.
- The commission also said that the AFSPA was widely abused by security forces in Manipur. This commission report applies to other areas where the AFSPA is in force.
- Human rights violations: In over 20 years, the Centre has denied prosecution sanctions under AFSPA in all cases recommended by the J&K government against army men.

Unlawful Activities (Prevention) Act (UAPA)

- Originally enacted in 1967, the UAPA was amended to be modelled as an anti-terror law in 2004 and 2008. The significant provisions of amendments are,
- The period of detention is increased, enlarging the period of custody prior to which default bail cannot be granted
- Regular bail is subject to the satisfaction of the judge that no prima facie case exists. This makes bail a near impossibility.
- Lengthy periods of pre-trial incarceration for the accused who are presumed guilty of heinous terror crimes.

Issues with UAPA:

- UAPA is being misused to put people like independent journalists, students and activists who are fighting for justice
- The condition of UAPA prisoners: The persons arrested with UAPA were not entitled to the provisions of jail manual citing safety and security concerns. Further, there is a continuous violation of human rights inside prison.
- High pendency rate: The National Crime Records Bureau (NCRB) published the status of UAPA between 2016 and 2019.
- A total of 4,231 FIRs were filed under various sections of the UAPA, of which 112 cases have resulted in convictions. While the number of acquittals is low, at 187.
- The rate of pendency at the level of trial is at an average of 95.5 per cent. This signifies the reasons for long years of undertrial imprisonment.

Way Ahead

- Preventive detention should be strictly used with the delicate balance between social security and citizen freedom.
- As the Supreme Court has observed that to prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and needs to follow meticulous compliance with the procedural safeguards. There is an urgent need to ensure this.

India is a large country and many separatist tendencies against the national security and integrity existed and existing and a strict law is required to counter the subversive activities. Preventive detention is a necessary evil only to prevent public disorder.

H36- Child Labour

Introduction

India needs to address the causative factors for Child labor through effective Policymaking and programmatic interventions. It should aim at the elimination of child labor in all its forms by 2025. The Covid pandemic has amplified the contributing factors for Child labor in India. For instance, School lockdown, increasing unemployment, etc., However, not all the factors that contribute to child labour were created by the pandemic. Most of them were pre-existing and have been exposed or amplified by it.

Who is a child?

"Child" as defined by the Child and Adolescent Labour (prohibition and regulation) Act 1986 is a person who has not completed the age of 14 years.

What is child labour?

- The International Labour Organization (ILO) defines child labour as work that deprives children of their childhood, their potential and their dignity, and that is harmful to their physical and mental development.
- However, children or adolescents who participate in work that does not affect their health and personal development or interfere with their schooling, is not child labour. Example: helping their parents at home, assisting family or earning pocket money outside school hours and on holidays.

Child Labour in India- Statistics:

- According to the 2011 Census, there were more than 10.2 million "economically active" children in the age group of 5to 14-5.6 million boys and 4.5 million girls.
- Child labour has decreased in rural areas however; it has increased drastically in the urban areas
- An analysis (2016) by CRY (Child Rights and You) of census data shows that the overall decrease in child labour is only 2.2%per year from 2001 to 2011.
- There are five states which are the India's biggest child labour employers- Uttar Pradesh, Bihar Rajasthan, Madhya Pradesh and Maharashtra.

What is the nature of Child Labour in India?

1. 1.Change in Location of work: There has been an increasing involvement of children in home-based work and in the informal sector. The change in the type of child labour is mainly attributed to enforcement of legislation and awareness amongst buyers about child exploitation.
2. Nature of work in Rural-Urban Areas: In urban areas, a large number of children are engaged in manual domestic work, rag picking, restaurants, motor repair shops etc.
3. Gender: The division of labour is gender-specific with girls being engaged in more domestic and home-based work, and boys working as wage labourers.
4. Bonded child labour: Bonded labour means the employment of a person against a loan or debt or social obligation by the family of the child or family as a whole. Bonded child labourers are often found in the agriculture sector.
5. Migrant children: Migrant children are often forced to drop out of schools and are inevitably put to work at work-sites.

What are the causes of Child Labour?

- Poverty and Indebtedness: Poverty is the greatest cause of child labour. For impoverished households, income from a child's work is usually crucial for his or her own survival or for that of the household.
- Unemployment: High prevalence of adult unemployment and under-employment often force children to work to support family.
- Illiteracy and Ignorance of child's parents: Illiteracy and Lack of awareness of the harmful effects of child labour make them violate the law and put their children under the risk of inhuman exploitation.
- Lack of skills training: The prevailing educational infrastructure is highly unsuitable to children of economically deprived families.
- Demand for child labour: Increasing demand for child labour especially in urban areas, is an important reason for the prevalence and increase in child labour. Children are employed because they are cheap and flexible.
- Cultural factors: An expectation that children should contribute to the socioeconomic survival of the family and community, as well as the existence of large families contribute to prevalence of child labour.
- Social factors: There is a strong correlation between India's differentiated social structure and child labour. The majority of child labourers in India belong to the so-called lower castes (SCs), the tribal and Muslim religious minority.

What were the impacts of the COVID-19 pandemic?

- The Pandemic has amplified the contributing factors for Child labor in India. For instance, School lockdown, increasing unemployment, etc.
- The International Labour Organization and UNICEF warn 9 million additional children at risk as a result of COVID-19 pandemic
- The mental health issues and needs in school-age children have doubled in the pandemic period.
- Children, in particular girls, in addition to the risk of child labour, might be burdened by increased domestic chores and caring responsibilities.
- Vulnerable individuals and families who have lost their jobs in the informal economy, in urgent need of funds for household survival but with few savings and limited access to social protection or other forms of State support, are likely to be at greater risk of falling prey to lenders providing credit on terms constituting debt bondage.
- Households may resort to child labour in order to cope with job loss and health shocks associated with COVID-19, in particular if they are not in the education system.

What is the Impact of Prevalence of Child Labour?

- Child labour impedes children from gaining the skills and education they need to have opportunities for decent work as an adult.
- It deprives a child of his/her childhood. It not only denies his/her right to education but also right to leisure
- Child labourers face major health and physical risks. They work long hours and are required to perform tasks for which they are physically and developmentally unprepared.
- Child labour is both a cause and consequence of poverty. Household poverty forces children into the labour market to earn money.
- The presence of a large number of child labourers has long term effect on the economy; it is a serious obstacle to the socio-economic welfare of a country.

What are the International Safeguards related to Child labour?

- The two Core Conventions directly related to child labour are that of ILO Convention 138 (Minimum age convention) and 182 (**Worst forms of Child Labour Convention). India has ratified both the Core Conventions of International Labour Organization (ILO) Conventions.**
- **Declaration of Rights of Child, 1959**: Universal declaration of human rights 1948 – stipulates (under article 25) that childhood is entitled to special care and assistance. The above principles along with other principles of universal declaration concerning child were incorporated in the Declaration of the Rights of the Child, 1959.
- **United Nations Convention on the Rights of the Child, 1989:** It sets out different rights of children- civil, political, economic, cultural, social and health. Article 32 states that the government should protect children from work that is

dangerous or might harm their health or their education.

What are the Policy Framework surrounding Child Labour in India?

1. **Child Labour (Prohibition & Regulation) Act, 1986:** Based on the recommendations of the Gurupadswammy Committee (1979), the Act was passed in 1986. It has following objectives:
   a. to prohibit the engagement of children in certain employments
   b. and to regulate the conditions of work of children in certain other employments
2. **Child Labour (Prohibition and Regulation) Amendment Act, 2016:**
   a. The Amendment Act completely prohibits the employment of children below 14 years.
   b. It also prohibits the employment of adolescents in the age group of 14 to 18 years in hazardous occupations and processes and regulates their working conditions where they are not prohibited.
   c. The amendment also provides stricter punishment for employers for violation of the Act and making the offence of employing any child or adolescent in contravention of the Act by an employer as cognizable.
3. **National Policy on Child Labour (1987**): It contains the action plan for tackling the problem of Child Labour. The policy is more on rehabilitation of children working in hazardous occupations and processes, rather than on prevention. The policy consists of three main attributes:
   a) Legal Action plan –Emphasis will be laid on strict and effective enforcement of legal provisions relating to child under various Labour laws.
   b) Focusing of general development programmes- Utilization of various on-going development programmes of other Ministries/Departments for the benefit of Child Labour wherever possible.
   c) Project based plan of Action – Launching of projects for the welfare of working children in areas of high concentration of child labour.
4. **National Child Labour Project Scheme:** For rehabilitation of child labour, the Government initiated the National Child Labour Project (NCLP) Scheme. The NCLP Scheme seeks:
   a. To eliminate all forms of child labour through identification and withdrawal children from child labour and preparing them for mainstream education along with vocational training
   b. To contribute to the withdrawal of all adolescent workers from Hazardous Occupations / Processes and their skilling and integration in appropriate occupations.
   c. Creation of a Child Labour Monitoring, Tracking and Reporting System.
5. **Juvenile Justice (Care and Protection of Children) Act 2000 and Amendment of the Act in 2006**. It includes the working child in the category of children in need of care and protection, without any limitation of age or type of occupation.
6. **The Right to Free and Compulsory Education Act (2009):** The Act made it mandatory for the state to ensure that all children aged six to 14 years are in school and receive free education.

What are the factors that need to be addressed to eliminate Child labor in India?

- Increase in 'out of school' children: UNESCO estimates that around 38.1 million children are "out of school".
- Economic crisis: The economic contraction and lockdowns lead to income reductions for enterprises and workers, many of them in the informal economy.
- Socioeconomic Challenges: caused by the return of migrant workers has compounded the problem.
- Issues in the Indian Economy: India experienced slower economic growth and rising unemployment even before the pandemic.
- Digital divide: Lack of access to the internet, Digital devices have forced challenges in distant learning and online learning for children.
- Other reasons: Increased economic insecurity, lack of social protection and reduced household income, children from poor households Children are being pushed into child labour.

Way Ahead:

- There should be concerted **effort towards social protection programmes** and cash transfers to **improve the economic situation of families and to reduce the "need" to send children** to work.
- There is **an urgent need to revamp educational infrastructure-** to ensure access to educational institutions, improvement in quality and relevance of education
- There is a **need to bring uniformity in existing Indian laws** dealing with child labour. The laws must expand the definition of a child by prohibiting the employment of and ensuring free and compulsory education (RTE, Act, 2009) for children under 18 years.
- There is a need to launch a **national campaign** to invoke public interest and large-scale awareness on exploitation of children and the menace of child labour.
- **Parental literacy** can play an important role in ensuring the rights of children are upheld.

It is high time to allow all children to realize their rights and dreams. All the stakeholders such as government, society, NGOs, Civil societies, local communities should come together to contribute to stop child labour.

H37- Essential Religious Practices

Introduction

The Essential Religious Practices test (ERP) Test has been deliberated upon strongly in Indian Jurisprudence through recent landmark judgments including the Karnataka Hijab Case, the Sabrimala Temple Case, and the Triple Talaq Case. The ERP test finds its origin in a speech given by Dr B.R Ambedkar in the Constituent Assembly regarding how Article 25 of the Constitution was to be interpreted. However, the interpretation and usage of this test has evolved considerably throughout the years and has brought along with it a plethora of problems which pose a threat to Indian secularism and unity.

What is the 'essentiality' test in religious practice?

- The doctrine of "essentiality" was invented by a seven-judge Bench of the Supreme Court in the 'Shirur Mutt' case in 1954. The court held that the term "religion" will cover all rituals and practices "integral" to a religion, and took upon itself the responsibility of determining the essential and non-essential practices of a religion.
- The Indian constitution under Article 25-28 guarantees the fundamental right to freedom of religion with some reasonable restrictions. The Indian model of secularism also provides for state's intervention in religion to ensure freedom of religion.

How did the doctrine of essential religious practice evolve?

- The Doctrine has evolved significantly as a result of various judicial precedents. The Doctrine was originally conceived in The Commissioner, Hindu Religious Endowments, **Madras v. Shri Lakshmidar Thirtha Swamiyar of Shri Shirur Mutt**, also known as The Shirur Mutt Case, in which the Court made a distinction between **'religious' and 'secular'** practices.

How is religious freedom protected under the Constitution?

- It is a right that guarantees negative liberty — which means that the State shall ensure that there is no interference or obstacle to exercising this freedom.
- However, like all fundamental rights, the right to religious freedom is not absolute in nature. The State can restrict it on grounds of public order, morality, health and other fundamental rights.

What are the SC observations on doctrine of essentiality?

- The doctrine of "essentiality" was invented by a seven-judge Bench of the Supreme Court in the 'Shirur Mutt' case in 1954.
- The Supreme Court's decision to refer the Sabarimala temple case to a large 7-judges bench reopens not only the debate on allowing women of menstruating age into the Ayyappa temple but the larger issue of whether any religion can bar women from entering places of worship.
- In 2004, the Supreme Court held that the Ananda Marga sect had no fundamental right to perform the Tandava dance in public streets since it did not constitute an essential religious practice of the sect.
- More recently, in 2017, the Supreme Court has also ruled that triple talaq was not an essential practice of Islam and could not be offered constitutional protection under Article 25.

What are the issues associated with the use of essentiality doctrine?

- It raises a major question, what constitutes an essential practice shall be decided by the judges or members of the community.
- There is no fixed parameter for deciding the essential practices, in some cases they have relied on religious texts to determine essentiality, in others on the empirical behavior of followers, and in yet others, based on whether the practice existed at the time the religion originated.
- Constitutional law experts have argued that the essentiality/integrality doctrine leads the court into an area that is beyond its competence, and gives judges the power to decide purely religious questions.

Way ahead

- Petitions have been filed in the Supreme Court against the High Court Judgment. The Supreme

Court has already referred the review of the Sabarimala Judgment (2018) to a larger bench and is considering the correctness of the doctrine of essentiality and whether Courts should assume the role of clergy.

- On the administrative front, the Government needs to enhance cooperation with parents, various organizations and communities to prioritize the education of students above everything else.
- Ms. Farida Khanam, an eminent Islamic scholar and Chairperson of the Centre for Peace and Spirituality, quotes several instances from the life of Prophet of Islam and argues that hijab had never been prescribed in the Holy Quran. She exhorts that Muslims must accept the Karnataka HC judgment wholeheartedly and take part in all educational facilities.

The basic idea of the constitution was to create a progressive and just society, which makes higher judiciary duty bound to strike down social evils present in religious practices. But while exercising this doctrine the court should keep in mind that religion is also a crucial aspect of human development and social harmony. Hence excessive interference should be avoided.

H38- Religious Conversions in India

Introduction

India does not have any state religion nor it patronizes any specific religion. Religion is basically a matter of choice, faith or sets of belief. Indian Constitution provides the freedom to profess, practice and propagate any religion to all persons. Religious conversion can be defined as the adoption of any other religion or of a set of beliefs by the exclusion of another i.e., renouncing one religion and adopting another.

What is Religious Conversion?

- The practice where an individual change his religion from one to another religion under his belief, conscience and wisdom.

What is the constitutional status of Religious Conversion in India?

- The Constitution of India, under Article 25 guarantees the right to freedom of religion as Fundamental Right on every citizen.
- Article 25 guarantees the freedom of conscience, the freedom to profess, practice, and propagate religion to all citizens.
- However, Article 25 does not give fundamental right status to the Right to conversion from one religion to another.
- Supreme Court of India in Rev Stanislaus vs Madhya Pradesh, 1977 while considering the issue whether the fundamental right to practice and propagate religion includes the right to convert, held that the right to propagate does not include the right to convert.

Mahatma Gandhi`s View on Religious Conversion

- Gandhi considered all religions as different paths leading to the truth, his advice to Hindus, Muslims and Christians was to keep away from trying to convert other religionists to their faith and instead prove themselves as true followers of their own religion.
- One argument used by Gandhi to oppose conversions was that all religions are equally true and none is superior to another. Hence, he believed that one should not switch to other religions. Rather, he said, one should follow one's own religion with complete sincerity.
- He wrote in Young India, "If you are a Hindu, you should not pray that a Christian should turn a Hindu and if you are a Muslim, you should not pray that Hindus or Christians should become Muslims.
- He advocated for considering all religions equal and believing in Sarva Dharma Sambhav, keeping in mind his wider objective of forging Hindu-Muslim unity.

Ambedkar's view on conversion was different from Gandhiji's view in the following manner:

- He believed that conversion to another religion was the only way Dalits could be emancipated from their ostracization and the inferiority complex generated by it.
- He said that once the Dalits started believing that they are equal to others, the ingrained inferiority complex would wither away.
- He emphasizes that Dalits could be freed from their alienation by becoming part of a religion free from the concept of caste.

What are various ways towards conversions?

- Voluntary Conversions i.e., conversions by free choice or because of change of beliefs.
- Forceful Conversions i.e., conversions by coercion, undue influence or inducement.
- Marital Conversions i.e., conversions due to marriage.
- Conversion for convenience.

What is Forced Conversion?

Forced conversion is the adoption of a different religion or the adoption of irreligion under duress. Someone who has been forced to convert to a different religion or irreligion may continue, covertly, to adhere to the beliefs and practices which were originally held, while outwardly behaving as a convert. Crypto-Jews, crypto-Christians, crypto-Muslims and crypto-Pagans are historical examples of the latter.

Why religious conversion is a much-debated issue in the Indian society?

1. The effect of religious conversion is not only personal transformation but also social transformation. It creates major social problems such as communal riots, disturbing law and order situations. (Like Gujarat riots, Babri Masjid demolition, anti-Sikh riots).
2. Religious conversions create conflicts in society and pose a threat to a country's unity and integrity.
3. Religion conversion creates a fractured family, social punishment, and disunity that can affect individuals.
4. The anti-conversion laws in various Indian States were seen as a means to promote Hindutva or the Hindu nationalism.

Other impacts:

- Psychological effects are developed because the person is trying to readjust himself to the social environment and personal condition within him/her.
- Conversion could have legal effects on the marriage and lead to automatic dissolution of the marriage.
- In Hindu law a person who converts to another religion from Hinduism could not inherit from the Hindu relation.

What is the Legal Procedure for Religion Conversion in India?

- **Changing one's religion to another does not govern by any law.** The Supreme Court has held in the plethora of cases that conversions do not need any particular legal requirements, formalities, religious rituals or ceremonies.
- In **Perumal Nadar (dead) by Legal Representative v. Ponnuswami Nadar (minor),** it was held that no formal ceremony of purification or expiration is necessary to effectuate conversion.
- **Any person can convert his or her religion with good faith.** A mere declaration whether oral or in writing does not amount to conversion. Credible evidence of the intention to convert followed by definite overt acts to give effect to that intention is necessary.
- Once conversion of religion has taken place then it has to be notified in Government Gazette so that converted religion can be mentioned in all the legal documents too. In Kailash **Sonkar vs. Smt. Maya Devi,** the Supreme Court adopted the same approach for reconversion.
- **Conversion to Islam:** It is not necessary that a Muslim should be born a Muslim. A person can easily convert to Islam by accepting the unity of God and the prophetic character of Muhammad. He has to declare publicly that he has renounced his original religion in order to profess Islam. A person can convert his religion to Islam by performing various ceremonies as prescribed in Islam itself.
- **Conversion to Hinduism**: Hindu Scriptures do not provide any procedure to convert to Hindu from any other religion as Hinduism is regarded as the way of life. The moment where one has made pure intentions to convert to Hinduism, he will be regarded as a Hindu. To become a follower, one can approach Arya Samaj which is a religious organization for any help.
- **Conversion to Christianity:** There is no uniform ritual or ceremony which should be performed during the time of conversion to Christianity. Different sects of Christianity believe in different-2 rituals or ceremonies. Any non-Christian person can renounce his original religion in order to adopt the religion of Christianity by taking a vow of repentance from past sins and by having faith in Jesus as their savior and vow to follow his teachings as found in the New Testament.

What is the rationale behind the enactment of anti-conversion laws?

- There are the dangers of coercion: Force does not just refer to physical force used to persuade someone to convert from one faith to another, but it also refers to mental force such as the "threat of heavenly anger
- There is the issue of allurement or inducement: Odisha's anti-conversion statute defines allurement or inducement as "any gift or reward, whether in cash or in kind," as well as "any provision of any benefit, whether pecuniary or

otherwise." The court upheld this term in Rev. Stanislaus versus. State of Madhya Pradesh (1977).

- Religious conversion is not a basic right: The Supreme Court ruled in Rev. Stanislaus vs State of Madhya Pradesh (1977) that religious conversion is not a fundamental right that can be governed by the government.
- All anti-conversion laws implemented by various States have the same goal: to limit communities' and individuals' capacity to convert from one religion to another in the name of protecting vulnerable groups such as women, children, backward castes and untouchables.

What are the issues with anti-conversion laws?

- Several legal specialists have slammed such legislation, claiming that the concept of "love jihad" lacks any constitutional or legal foundation.
- They cited Article 21 of the constitution, which states that everyone has the freedom to marry the person of their choice.
- Furthermore, under Article 25, freedom of conscience guarantees the practice and conversion of one's choice of faith, including not following any religion.

The Uttar Pradesh Prohibition of Unlawful Religious Conversion Ordinance, 2020

- Law prohibits conversion from one religion to another by "misrepresentation, force, fraud, undue influence, coercion, allurement or marriage".
- Marriage will be declared "Shunya" (null and void) if the "sole intention" was to "change a girl's religion"
- The persons forced the girl to change religious conversion may face jail term of up to 10 years if the girl is minor, a woman from the Scheduled Caste or Scheduled Tribe, if the person involved religious conversion on mass scale. For the rest of the cases, the jail term ranges from 1 to 5 years.
- The law also provides for the way to conversion. The person willing to convert to another religion would have to give it in writing to the District Magistrate at least two months in advance.
- The burden to proof would be on the person who caused the conversion or the person who facilitated it. If any violation is found under this provision, then she/he will face a jail term from 6 months to 3 years
- If any person reconverts to his immediate previous religion, then it shall not be deemed to be a violation of the ordinance.

Judicial pronouncement regarding interfaith marriages and forcible conversions:

- The Rev Stanislaus vs Madhya Pradesh case: Supreme Court said Article 25 does provide freedom of religion in matters related to practice, profess and propagate, but the word propagate does not give the right to convert and upheld the laws prohibiting Conversion through force, fraud, or allurement.
- Based on the above case it is clear that forcible conversion or conversion through fraud and allurement is against thse Right to Freedom of Religion.
- Sarla Mudgal case: The court had held that the religious conversion into Islam by a person from non-Islamic faith is not valid if the conversion is done for the purpose of polygamy.
- Lily Thomas case: In this case Court observed that marrying another woman after converting to Islam is punishable under the bigamy laws.
- Hadiya Case: Supreme Court said that the right to marry a person of one's choice is integral to Article 21 (right to life and liberty) of the Constitution.

Way ahead

- There is a need for uniformity: Article 18 of the Universal Declaration on Human Rights mentions everyone has the right to freedom of religion including changing their faith. Since it is a state subject, the Centre can frame a model law like Model law on contract farming etc.
- States while enacting anti-conversion laws should not put any vague or ambiguous provisions for the person who wanted to convert of his own will.
- The anti-conversion laws also need to include a provision to mention the valid steps for conversion by minority community institutions.

- People also need to be educated about the provisions and ways of Forceful conversions, Inducement or allurement, etc.
- Strengthening existing legislations to prevent marriages based on forceful conversions.
- Forming an adequate committee to find solutions to the challenge of unlawful marriages and forceful conversions.

H39- Religious Minorities in India

Introduction

A religious or linguistic minority is any group of people which constitutes less than half of the population in the entire territory of a State whose members share common characteristics of culture, religion or language, or a combination of any of these.

What is 'the meaning of the term 'minority'?

- The term "Minority" is not defined in the Indian Constitution. However, the Constitution recognizes religious and linguistic minorities through various articles.
- Article 29 has the word "minorities", generally seen as a minority or a group within a majority community.
- Article30 speaks specifically of religious and linguistic minorities and the remaining two Articles- 350A and 350B relate to linguistic minorities only.
- Section 2(f) of the National Commission for Minority Educational Institutions or NCMEI Act 2004, defines minority as- a community notified as such by the Central Government.
- Article 350-B: The 7th Constitutional (Amendment) Act 1956 inserted this article which provides for a Special Officer for Linguistic Minorities appointed by the President of India.
- As per the Census 2011, the percentage of minorities in the country is about 19.3% of the total population of the country.
- The population of Muslims are 14.2%; Christians 2.3%; Sikhs 1.7%, Buddhists 0.7%, Jain 0.4% and Parsis 0.006%.

Who are Religious and linguistic minority groups in India?

- Religious minority is a group or class of people whose religion is different from the majority of people in the state. A few examples are Muslims, Christians, Parsi etc.
- A linguistic minority is a group of people whose mother tongue is different from that of the majority in the state or part of a state.
- Currently, the linguistic minorities are identified on a state-wise basis thus determined by the state government whereas religious minorities are determined by the Central Government.
- Currently, only those communities notified under section 2(c) of the NCM Act, 1992, by the central government are regarded as a religious minority.
- In 1993, the first Statutory National Commission was set up and five religious communities viz. The Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) were notified as minority communities.
- In 2014, Jains were also notified as a minority community.

Constitutional Provisions for Religious Minorities in India

The Constitution of Indi lists down a few important mandates with regard to Minorities in India. Discussed below are the same in brief:

- **Article 15 (1) & (2)** – Prohibition of discrimination against citizens on grounds of religion, race, caste, sex or place of birth
- **Article 16(1) & (2)** – Citizens' right to equality of opportunity in matters relating to employment or appointment to any office under the State
- **Article 25(1)** – People's freedom of conscience and right to freely profess, practice and propagate religion – subject to public order, morality and other Fundamental Rights
- **Article 28** – People's freedom as to attendance at religious instruction or religious worship in educational institutions wholly maintained
- **Article 30(1)** – Right of all religious and linguistic minorities to establish and administer educational institutions of their choice
- **Article30(2)** – Freedom of minority-managed educational institutions from discrimination in the matter of receiving aid from the Stat

National Commission for Minorities (NCM)

- After the enactment of the NCM Act, 1992, the first National Commission for Minorities with a statutory status was formed in 1993.
- It was established to protect the interests of minorities as provided in the Constitution of India

and laws enacted by the Parliament and the State Legislatures.

What is Bezbaruah Committee?

- It was formed by Ministry of Home Affairs to recommend measures for safety and better integration of natives of North East states in rest of India.
- Recommendations made by the Committee, inter-alia, include legislative measures, special police initiatives for safety and security of North Eastern people living in Delhi, NCR and other parts of the country, educating people about the North East and addressing their grievances of accommodations etc.
- Their proposal to amend the provisions of Indian Penal Code relating to "promoting or attempting to promote acts prejudicial to human dignity" and "words, gestures or acts intended to insult a member of a particular racial group".

What are the Problems and concerns with Minorities?

- **Problem of identity**- Because of the differences in socio-cultural practices, history and backgrounds, minorities have to grapple with the issue of identity everywhere which gives rise to the problem of adjustment with the majority community.
- **Problem of Security**: Different identities and their small number relative to the rest of society develops feelings of insecurity about their life, assets and well-being.
- **Problem of equity:** - The minority community in a society may remain deprived of the benefit of opportunities for development as a result of discrimination.
- **Backwardness**: - Minority communities are unable to join the mainstream of society. Sachar Committee which was constituted in 2005 has placed Muslims below the schedule castes, and schedule tribes.
- **Lack of Clear definition:** - There was no clear definition for minority which creates a huge flaw. By which inclusion and exclusion error occurs in implementation of Government schemes.

Way ahead

- Particular attention should be given to the violence, threats and harassment experienced by religious minority women.
- police and prosecutors must be adequately trained in treating minority women victims in an appropriate, respectful and confidential manner, and always enabling victims to be assisted by women officers.
- Government and civil society employees should be exclusively trained in gender-sensitive data collection, ensuring that religious minority women victims can come forward and report instances confidentially.
- Eliminating Discriminatory Treatment: it is vital for the society to give equal preference to girls and women of minority and make provision of essential things to them in order to promote effective growth and development.
- Women of the minority community constitute a large population of the country and keeping them oppressed won't help us in any way, giving equal treatment and respect to them will lead to a better future.

The constitutional goal is to develop citizenship in which everyone enjoys full fundamental freedoms of religion, faith and worship and no one is apprehensive of encroachment of his rights by others in minority or majority. In order to understand and define a minority group, mere numerical or demographic indicators will not be adequate. It will have to go beyond the quantifiable variables.

H40- Article 32- Right to Constitutional Remedies

A mere enumeration of rights, even if it is meticulously worded, is not enough. What is needed is a provision for its enforcement, an avenue for redressal. Article 32 of the Constitution of India enshrines this provision whereby individual may seek redressal for the violation of fundamental rights.

What is Article 32?

- It is one of the fundamental rights listed in the Constitution that each citizen is entitled.
- Article 32 deals with the 'Right to Constitutional Remedies', or affirms the right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred in Part III of the Constitution.
- It states that the Supreme Court "shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.
- The right guaranteed by this Article "shall not be suspended except as otherwise provided for by this Constitution".

What are Writs?

- Writs are written orders provided by the Supreme Court of India so as to provide constitutional remedies in case of violation of any of the fundamental rights and accordingly the Constitution has empowered the Supreme Court and the High Court to issue orders or writs under article 32 and 226 respectively.
- These were borrowed from the English Laws where they were known by the name of 'Prerogative Writs'.

What are the different Kinds of Writs in the Indian Constitution?

- There are five types of writ petition which SC and HC can issue under article 32 and 226 of the Constitution respectively for smooth enforcement of fundamental rights.

Writ	Meaning
Habeas Corpus	• "To Habeas corpus is the Latin term which means 'you must have the body". • It is the order issued by the court to present the detenu before the court and to check whether the arrest was lawful or not. • It can be issued against both public bodies as well as private individuals. **Notable case:** • In Kanu Sanyal vs. District Magistrate, the Supreme Court opined that while dealing with a petition for habeas corpus, the court may examine the legality of detention without detaining the person to be produced before.
Mandamus	• It is the order or command issued by any statute or any authority sanctioned by law to any person, corporation or any other authority in order to perform any public duty. • This writ can be issued against any public body, corporation, an inferior court, a tribunal or the government, but is not available against a private individual or body. **Notable case:** • In S.P.Gupta vs. Union of India, here the judges of the court were of the view that the wit cannot be issued against the President of India for fixing the number of High Court Judges and vacancies.

Prohibition	• It is a writ issued by the higher authority to its subordinate authority in order to stop something which the law prohibits. • This writ can only be issued against a judicial and quasi-judicial body. **Notable case:** • In East India Commercial Co. Ltd. Vs. Collector of Customs, a writ of Certiorari was passed directing an inferior tribunal prohibiting it from continuing with the proceeding and held that the proceeding is beyond the jurisdiction of the tribunal.
Quo warranto	• Writ of Quo warranto means by what authority. This writ is issued which requires a person to show by what authority he has exercised his powers or rights. **Notable case:** • In Jamalpur Arya Samaj vs. Dr. D. Ram, here it was held that the writ of quo warranto cannot lie against an officer of a private nature, also it is very much important that the office should be of substantive character.
Certiorari	• The term certiorari is a Latin word which means to be informed. • This writ is issued by the higher court to review the actions of the lower court. • This writ can be issued against both judicial and quasi-judicial authorities as well as administrative authorities. • However, it isn't available against the legislative bodies and private individual/bodies. **Notable Case:** • In Surya Dev Rai vs. Ram Chander Rai & Ors., the Supreme Court explained the ambit and scope of this writ and stated that Certiorari is always available against inferior courts and not against equal or higher courts.

Q) Discuss the Comparative Analysis of Article 32 and 226?

The Supreme Court's writ jurisdiction differs from that of a high court in three ways:

Supreme Court	High Court	Remarks
The Supreme Court can only issue writs for the enforcement of fundamental rights.	A high court can issue writs for any purpose, including the enforcement of fundamental rights.	The Supreme Court's writ jurisdiction is narrower than that of the High Court in this regard.
The Supreme Court may issue writs against a person or government throughout India's territory.	A high court may issue writs only against a person residing within its territorial jurisdiction or against a government or authority located outside its territorial jurisdiction if the cause of action arises within its territorial jurisdiction.	The Supreme Court's territorial jurisdiction for issuing writs is broader than that of a high court.

A remedy under Article 32 is a Fundamental Right in and of itself, and thus the Supreme Court may not refuse to exercise its writ jurisdiction.	A remedy under Article 226, on the other hand, is discretionary, and thus a high court may refuse to exercise its writ jurisdiction.	The Supreme Court is constituted as a defender and guarantor of fundamental rights.

Why right to constitutional remedies are important?

- Article 32 was incorporated in the Indian Constitution to ensure that the Citizens and individuals are not subject to unreasonable violation of fundamental rights.
- Any individual, whose fundamental right has been violated by the state, has the right to approach the Supreme Court of India for enforcement of the said right.
- Dr B.R Ambedkar called article 32 as "the very soul of the Constitution and the very heart of it".
- This right form the basis of the entire legal system in India and also lays down the detailed process to approach the Supreme Court.
- Having right to remedies is crucial to uphold the ideals of democracy, freedom, equalty and liberty, rule of law.

Artice 32 which is rightly said by Dr Amendkar as "soul of the Constitution guarantees the Rule of Law and appropriate check and equalizations between the three organs of our vote-based framework. The rationality of writs is very much synchronized in our Constitutional arrangements to guarantee that privileges of nationals are not smothered by a self-assertive authoritative or Judicial activity.

H41- DPSP

Introduction

"No ministry responsible to the people can afford light-heartedly to ignore the provisions in Part IV of the constitution" Sir Alladi Krishnaswamy Ayyar.

Directive Principles of State Policy are in the form of instructions/guidelines to the governments at the center as well as states. Though these principles are non-justiciable, they are fundamental in the governance of the country.

What is Directive Principles of State Policy (DPSP)?

- The Directive Principles of State Policy (DPSP) has been taken from the Irish constitution and enumerated in Part IV of the Indian Constitution under Article 36 to 51).
- It guarantees social and economic democracy and tries to establish a welfare state. These are the ideals that the State should keep in mind while formulating policies and enacting laws.
- Dr. BR Ambedkar described the Directive Principles as the "novel features" of the Indian Constitution. Directive principles, combined with the Fundamental rights have been described as the 'conscience of the constitution'.

What are the sources of DPSP in Indian Constitution?

- The DPSP of the Indian Constitution was inspired by the Irish Constitution which took these details from Spain.
- Some Instruments of Instructions, which also became the immediate source of DPSP, have been taken from the Government of India Act, 1935.
- Another source was the Sapru Report, 1945 which gave us both Fundamental Rights (justiciable) and DPSP(s) (non-justiciable).

Landmark cases related to DPSP:

1. **The State of Madras Vs Champakam Dorairajan(1951):** The SC held that Article 37 expressly says that the directive princples are not enforceable by the Court.
2. **Golak Nath Vs.The State of Punjab(1967):** The SC held that fundamental rights cannot be abridged/diluted to implement the directive principles.
3. **Keshavananda Bharti Vs the State of Kerala (1973):** Constitutional amendments do not abridge the basic structure of the Constitution.
4. **Minerva Mills Vs Union of India (1980):** The SC held that the Constitution exists on the balance of part III and Part IV.

Categorization of Directive Principles:

DPSPs have been broadly classified into 3 categories:

1. **Socialistic principles:**
   - These principles follow the ideology of "Socialism" and lay down the framework of India. Its ultimate aim is to provide social and economic justice to all its citizens so that the state can fulfil the criteria required for a welfare state.
   - The articles in DPSP which follows the socialist principles are – Article 38, Article 39, Article 39 A, Article 41, Article 42, Article 43, Article 43 A and Article 47.
2. **Gandhian Principles:**
   - These principles reflect the programme of reconstruction ideology propagated by Gandhi throughout the national movement. In order to fulfil his dreams, some of his concepts have been included in the form of DPSP.
   - They direct the State through these articles – Article 40, Article 43, Article 43 B, Article 46, Article 47 and Article 48.
3. **Liberal-intellectual Principles:**
   - These principles follow the 'Liberalism' ideology.
   - The articles which follow this approach in DPSP are – Article 44, Article 45, Article 48, Article 48 A, Article 49, Article 50 and Article 51.

Categorization	DPSP
Socialist Principles	Article 38, Article 39, Article 39(a), Article 39(b), Article 39(c), Article 31c, Article 39(d), Article 39(e), Article 39(f), Article 39A, Article 41, Article 42, Article 43, Article 43A, Article 47
Gandhian Principle	Article 40, Article 43B, Article 46 Article 47, Article 48
Liberal-Intellectual principle	Article 44, Article 45, Article 48A, Article 49, Article 50, Article 51

Conflict between fundamental rights and DPSP:

- **Article 31** C contained two provisions:
  a) If a law is made to give effect to DPSPs in Article 39(b) and Article 39(c) and in the process, the law violates Article 14, Article 19 or Article 31, then the law should not be declared as unconstitutional and void merely on this ground.
  b) Any such law which contains the declaration that it is to give effect to DPSPs in **Article 39(b) and Article(c) shall not be questioned in a court of law.**
- In **Champakam Dorairajan v the State of Madras (1951):** In this case, the Supreme Court ruled that in case of any conflict between the Fundamental Rights and the Directive Principles, the former would prevail.
- **Kesavananda Bharti Case (1973):** Through the 42nd amendment act, Parliament extended the scope of the first provision of Article 31C. It accorded the position of legal primacy and supremacy to the Directive Principles over the Fundamental Rights conferred by Articles 14, 19 and 31.
- **Minerva Mills Case (1980):** Supreme Court held the extension of Article 31C made by the 42nd amendment act unconstitutional and invalid. Supreme Court also held that 'the Indian Constitution is founded on the bedrock of the balance between the Fundamental Rights and the Directive Principles.'

What are the importance of DPSP?

1. **Socio-economic rights**: Fundamental rights provide for political rights. DPSP supplement them by providing for social and economic rights.
2. **Sustainable development**: DPSP are the principles of a welfare state in India. DPSP are important as it seeks to create a balance between economic progress and competition on one hand and environmental sustainability and social and economic equity on the other.
3. **Inequalities**: With liberalization and globalisation inequalities have increased as reflected in the Oxfam report, which says that India's richest 1% holds over 40% of national wealth.
4. **Accountability:** DPSPs are important as it allows the citizens to hold the government accountable in their policy formulations and implementation e.g. equality at work, minimum wages etc.
5. **Fair market**: Globalization is based upon competition and monopolistic tendencies in the market. DPSP is important to provide a laissez faire business environment to industries.
6. **Human rights:** Liberalisation and capitalism has scant regards to the human work environment, wages, gender sensitivity and labour concerns.
7. **Human capital:** Modern industries seek the best talent and most productive labour from the market having required skills and education.
8. **Environment:** Further it obliges the government to protect and improve the environment and safeguard forest and wildlife in the era of indiscriminate exploitation and deforestation-based globalization.

9. **Women rights:** Liberalisation and globalisation has led to women empowerment. DPSP put an onus on the state to work towards women education, equal opportunity, equal wages, uniform civil code etc. that would further enhance women rights.

Instruments of instruction:

- The Directive Principles resemble the 'Instrument of Instructions' enumerated in the Government of India Act of 1935.
- The framers of the Constitution borrowed this idea from the Irish Constitution, which had in turn been inspired by the Spanish Constitution.
- In the words of Dr B R Ambedkar, the Directive Principles are like the instrument of instructions, which were issued to the Governor-General and to the Governors of the colonies of India by the British Government under the Government of India Act of 1935.
- The main reason behind this policy is to create a welfare State. Principles like freedom of expression, belief, faith and worship, equality in opportunity and status and promote a sense of unity and integrity of the nation has been included in this policy.

What are the Limitations of Part IV of the Indian Constitution?

1. No Legal Force: The DPSP are non-justiciable in nature i.e. they are not legally enforceable by the courts for their violation.
2. Constitutional Conflict: DPSP leads to constitutional conflict between Centre and states, Centre and President, Chief Minister and governor.
3. Conflict with Fundamental rights: They can be amended to implement the fundamental rights.
4. Constitutional validity: A law cannot be struck down by courts for violating DPSP.

Q) What is the difference between DPSP and Fundamental Right?

Fundamental Rights	DPSP
They are enumerated in Part III of the Indian Constitution.	They are enumerated in Part IV of the Indian Constitution.
Covered under Articles 12 to 35	Covered under Articles 36 to 51.
Borrowed from US Constitution (Bill of Rights)	Borrowed from the Irish Constitution.
They are justiciable in nature i.e.; they are legally enforceable in the court of law in case of their violation.	They are non-justiciable in nature i.e.; they are not legally enforceable in the court of law.
They promote the ideal of political democracy.	They promote the ideal of social and economic democracy.
They promote the welfare of the individual.	They promote the welfare of the community.
Almost all Fundamental Rights, excluding few like Right to Education etc, do not require any legislation for their implementation. They are automatically enforced.	DPSP's require legislation for their implementation. They are not automatically enforced.
These are negative as they restrict the power of the state.	These are positive as they require the State to take certain steps.
Judiciary can declare a law as unconstitutional and invalid if it violates the Fundamental Rights.	The courts cannot declare a law violative of any of the Directive Principles as unconstitutional and invalid. However, they can uphold the validity of a law on the ground that it was enacted to give effect to a directive

Should DPSPs be made justiciable?

- A prominent contention for making the Directives enforceable is that their justifiability will keep the absolutist inclinations of the decision governments under control.
- The governments have been working in the manner to give them effect dynamically and to create welfare state. This dynamic nature doesn't bound the govt. to just act like the memorandum or written proposal, but also give chance to modify or interpret them better for the citizens or general public.
- Another argument against the enforceability we find from the idea of secularism that they are not very secular. One hand it says to implement the Uniform Civil Code, another hand it restricts the slaughter of cows via Article 48 in the name of endeavor.
- Article 47 direct to prohibit the alcohol and other intoxicating drugs which on first view looks morally good, though it never has been enforced on a nation-wide level. However, the path which tries to impose morals on the people without looking the consequences and other aspects can be disastrous for a democratic country like India.

What is Doctrine of Harmonious Construction?

- The word "harmonious construction" refers to the process of achieving harmony or oneness among the numerous components of a statute.
- According to this doctrine, a provision of the statute should not be interpreted or construed in isolation but as a whole, so as to remove any inconsistency or repugnancy.
- The courts must avoid a clash on contradicting provisions and they must construe the opposing provisions so as to harmonize them.
- When the court is unable to reconcile the differences between opposing provisions, the courts must interpret them in such a manner that both the opposing provisions are given effect as much as possible.
- The doctrine's development may be traced all the way back to the first amendment to the Indian Constitution, with the landmark verdict of Shankari Prasad v. Union of India.

The objective of harmonious construction:

- The objective of harmonious construction is to avoid any confrontation between two enacting provisions of a statute and to construe the provisions in such a way so that the harmonize.
- The basis of this rule is that the Legislature never envisages to provide two conflicting provisions in a statute, for the reason that it amounts to self-contradiction.

DPSP are fundamental to the governance of the country. DPSP still holds relevance in this globalised world for a better informed, productive, equity based and sustainable developmental model. There is an increasing realisation that these directives act as bedrocks for good governance and socio-economic justice in the society.

H42- Uniform Civil Code

Concept: A Uniform Civil Code means that all sections of the society irrespective of their religion shall be treated equally according to a national civil code, which shall be applicable to all uniformly.

They cover areas like- Marriage, divorce, maintenance, inheritance, adoption and succession of the property. It is based on the premise that there is no connection between religion and law in modern civilization.

Constitutional Provisions:

The constitution has a provision for Uniform Civil Code in Article 44 as a Directive Principle of State Policy which states that the State shall endeavor to secure for the citizens a uniform civil code throughout the territory of India.

There are a number of cases where the Supreme Court has referred to Article 44 and the concept of uniform civil code, mainly to highlight the lackluster attitude of the executive and the legislature in the implementation of the directive.

Argument in Favor:

1. It Promotes Real Secularism: Secularism means there is no role of religion in matters of state. But India is still partially governed by religious laws. A uniform civil code means that all citizens of India have to follow the same laws whether they are Hindus or Muslims or Christians or Sikhs. UCC is not inspired by religion but by human rationale.
2. All Indians should be Treated Same: Article 14 guarantees that all citizens of India shall be treated equally without any discrimination. But the prevalence of different personal laws is antithetical to Article 14. All the laws related to marriage, inheritance, family, land etc. should be equal for all Indians. This is the only way to ensure that all Indians are treated the same.
3. It will provide More Rights to the Women: All religions are patriarchal and subjugate and mistreat women. Modern nation-states give fair and equal rights to women. But the presence of religion-based personal laws prevent women from enjoying all the rights. A uniform civil code will also help in improving the condition of women in India.
4. To Support National Integration: Presence of religion-based personal laws can promote too much of religious consciousness and will promote identity-based politics. As such UCC can help promote national identity and further the cause of national integration.

Examples: Countries where there is Uniform Civil Code – USA, France, Australia.

Argument Against

1. UCC is against Cultural Diversity: India is a multicultural society. Religious and customary rights are guaranteed by the Constitutions itself keeping into account the diverse nature of our country. Bringing all minorities under the same law will be an attempt to homogenize the diverse sections of population and will be against the spirit of the Constitution.
2. Not an Opportune Time: The spirit of Article 44 is that there should be consensus regarding implementation of UCC. But there are allegations of majoritarianism and minority alienation. Bringing UCC at such a moment may further alienate minorities and prevent national integration, an objective UCC aims to achieve. As B R Ambedkar rightly said "no government can use its provisions in a way that would force the Muslims to revolt".
3. Reforms by Judiciary: Supreme Court has already struck down many of the discriminatory practices in personal laws. For instance, Triple Talak was declared unconstitutional, Muslim couples can now adopt under the Juvenile Justice Act (Shabnam Hasmi case), etc., have positive developments in reforming personal reforms. This momentum needs to continue rather than adopting a one-size-fits-all approach.
4. Common Personal Laws available: There are already common personal laws enacted by the Parliament that apply to all citizens irrespective of religion. These are: Special Marriage Act 1954, Juvenile Justice Act (for adoption), Guardians and Wards Act of 1890 govern the custody of children on separation, etc. Thus there is no need to bring UCC.
5. Law Commission concluded that a Uniform Civil Code is neither feasible nor desirable as:

a) In the Northeast, there are more than 200 tribes with their own varied customary laws. The Constitution itself protects local customs in Nagaland. Similar protections are enjoyed by Meghalaya and Mizoram.

b) Even reformed Hindu law, in spite of codification, protects customary practices.

c) Even the framers of the Constitution did not put Uniform Civil Code in the Union List, instead "personal laws" are mentioned in the Concurrent List, indicating that they did not want to give parliament an exclusive power over it.

However, recently in Uttarakhand, the Home Department has been nominated as the nodal department by the Uttarakhand government for the implementation of the Uniform Civil Code in the state.

At present Goa is the only state where Uniform Civil Code is in force.

Goa Civil Code

Goa is the only Indian state to have a UCC in the form of common family law. The Portuguese Civil Code that remains in force even today was introduced in the 19th century in Goa and wasn't replaced after its liberation.

Features-

Uniform Civil Code in Goa

The Uniform Civil Code in Goa is a progressive law that allows equal division of income and property between husband and wife and also between children (regardless of gender).

Every birth, marriage and death have to be compulsorily registered. For divorce, there are several provisions.

Muslims who have their marriages registered in Goa cannot practice polygamy or divorce through triple talaq.

During the course of a marriage, all the property and wealth owned or acquired by each spouse is commonly held by the couple.

Each spouse in case of divorce is entitled to half of the property and in case of death, the ownership of the property is halved for the surviving member.

The parents cannot disinherit their children entirely. At least half of their property has to be passed on to the children. This inherited property must be shared equally among the children.

However, the code has certain drawbacks and is not strictly a uniform code. For example, Hindu men have the right to bigamy under specific circumstances mentioned in Codes of Usages and Customs of Gentile Hindus of Goa (if the wife fails to deliver a child by the age of 25, or if she fails to deliver a male child by the age of 30). For other communities, the law prohibits polygamy.

Conclusion:

According to Law Commission report, the way forward may not be a Uniform Civil Code but the codification of all personal laws so that prejudices and stereo-types in every one of them would come to light and could be tested on the anvil of Fundamental Rights guaranteed by the Constitution.

H43- Separation of Power

Introduction

Separation of powers refers to the division of a government into branches, each with separate, independent powers and responsibilities, so that the powers of one branch are not in conflict with those of the other branches. This ensures certain autonomy to each branch while preventing concentration of power in any single branch.

Separation of powers is a doctrine of constitutional law under which the three branches of government (executive, legislative, and judicial) are given certain separate powers to check and balance the other branches. This is also known as the system of checks and balances.

In the 18th century, the doctrine of separation of powers was theorized meticulously by a French jurist, Baron de Montesquieu. In his book The Spirit of Laws (1748), he propounded that:

- The Executive should not exercise the legislative or judicial powers because this may threaten the freedom and liberty of individuals.
- The Legislative should never exercise the executive or judicial powers as this may lead to arbitrariness and hence, end the liberty.
- The Judiciary should not exercise the executive or legislative powers because then a judge would behave like a dictator.

Objectives of Separation of Powers:

1. Firstly, it aims to eliminate arbitrariness, totalitarianism and tyranny and promote an accountable and democratic form of government.
2. Secondly, it prevents the misuse of powers within the different organs of the government. The Indian Constitution provides certain limits and boundaries for each domain of the government and they are supposed to perform their function within such limits.
3. Thirdly, separation of powers maintains a balance among the three organs of government by dividing the powers among them so that powers do not concentrate in any one branch leading to arbitrariness.
4. Fourthly, this principle allows all the branches to specialize themselves in their respective field with an intention to enhance and improve the efficiency of the government.

Although the Constitution of India does not provide strictly for the separation of powers, these articles provide a general guideline:

- Article 50: This states that the State or the Government concerned will take appropriate steps to ensure that the judicial branch is separated from the functioning and working of the executive branch.
- Article 121 & 211: They separate the legislature and the judiciary. These articles state that the conduct of justice or the way a judge discharges his duties of any Court cannot be discussed in the legislature (state or union).
- Article 122 & 212: These articles strip the judiciary of any power to review and question the validity of proceedings that take place in a legislature or the Parliament.
- Article 361: This article separates the judiciary and the executive. It states that the President or any governor of any state is not answerable to any court in the country for actions taken in performance of the duties of their office.

System of checks and balances:

- **Judicial check:**
  - The judiciary has the power to strike down any law passed by the legislature if it is unconstitutional or arbitrary as per Article 13 (if it violates Fundamental Rights).
  - It can also declare unconstitutional executive actions as void under its power of judicial review.
- **Legislative check:**
  - The legislature also reviews the functioning of the executive since the Executive is collectively responsible to the Legislature.
  - The legislature can also alter the basis of the judgment while adhering to the constitutional limit.

- The Judiciary is bound by the procedure established by law in adjudication on question of law.

- **Executive check:**
  - Although the judiciary is independent, the judges are appointed by the executive.
  - The Supreme Court can make laws regarding court proceedings only with approval of the President.

Checks and balances ensure that no one organ becomes all-too powerful. The Constitution guarantees that the discretionary power bestowed on any one organ is within the democratic principle.

Functional Overlap

Overlapping Powers of Legislature

With Judiciary	With Executive
• Impeachment and the removal of the judges. • Power to amend laws declared ultra vires by the Court and revalidating it. • In case of breach of its privilege it can punish the person concerned.	• The heads of each governmental ministry are members of the legislature. • Through a no-confidence vote, it can dissolve the Government. • Power to assess the works of the executive. • Impeachment of the President. • The council of ministers on whose advice the President and the Governor acts are elected members of the legislature.

Overlapping Powers of the Executive

With Judiciary	With Legislature
• Making appointments to the office of Chief Justice and other judges. • Powers to grant pardons, reprieve, respite or remission of punishments or sentence of any person convicted of any offence. • The tribunals and other quasi-judicial bodies which are a part of the executive also discharge judicial functions.	• Power to promulgate ordinance which has the same force of the Act made by the Parliament or the State legislature. • Authority to make rules for regulating their respective procedure and conduct of business subject to the provisions of this Constitution. • The Executive has powers to make laws under delegated legislation.

Overlapping Powers of the Judiciary

With Executive	With Legislature
• Under Article 142, the Supreme Court functions as an Executive in order to bring about complete justice. • Collegium system, judiciary possessing executive power of selecting judges to be appointed.	• Judicial review, i.e. the power to review executive action to determine if it violates the Constitution. • Amenability of Constitution under basic structure.

Supreme Court viewed in **Golakh Nath vs. State of Punjab:**

"The three organs of the government have to exercise their functions keeping in mind certain encroachments assigned by the constitution. The constitution demarcates the jurisdiction of the three organs minutely and expects them to be exercised within their respective powers without overstepping their limits. All the organs must function within the spheres allotted to them by the constitution."

Some important issues that highlight breach of the principle of separation Power the judiciary:

Farm Laws: In January 2021, India's Supreme Court stayed the implementation of three farm laws in response to protests by certain farmer groups.

Issues with this order:

- Violation of separation of powers as it is not a court's job to mediate a political dispute.
- The court did not state any legal or constitutional basis for the stay order.
- Instead of commenting on the constitutionality of laws, it encroached into political and administrative management. This undermines the parliamentary process.

Liquor ban order:

On a PIL about road safety, the Supreme Court banned the Sale of Liquor, within 500m of any national or state highway.

Issues with this order:

- The case was seen as an Overreach because the matter was administrative, requiring executive knowledge.
- There was no evidence presented before the court that demonstrated a relation of ban on liquor on highways with the number of deaths.
- This judgment also caused loss of revenue to state governments and loss of employment.

Issue of Oxygen allocation during Covid 19:

The Supreme Court decided to constitute a 12-member "National Task Force" to streamline and ensure the "effective and transparent" distribution of liquid medical oxygen to states and Union Territories.

Issues with this order:

- This order amounted to judicial overreach as policy making and implementation is not the domain of Judiciary.
- Judiciary neither had resources nor expertise to resolve this issue for instance understanding the specific logistic challenges involved in oxygen supply in Indian towns and villages, which involves coordination with the manufacturing sector and varied transport networks.
- Such an overreach can reduce credibility of the judiciary as an institution and may lead to non-implementation of its order for example, The Center had signaled its reluctance to abide by the apex court's interventions.

The principle of separation of power needs to be adhered by all the organs of government in true letter & spirit. It is an obligation on the part of courts to remain under their jurisdiction and uphold the principle of separation of powers. The Supreme court has itself reminded other courts, in 2007, to practice Judicial restraint. It stated "Judges must know their limits and must try not to run the government. They must have modesty and humility, and not behave like emperors." Further, it said, "In the name of judicial activism, judges cannot cross their limits and try to take over states which belong to another organ of the state".

H44- Animal Right

"The greatness of a nation and its moral progress can be judged by the way its animals are treated". – Mahatma Gandhi.

Introduction

Animal rights are moral principles which believe that non-human animals deserve the ability to live as they wish, without being subjected to the desires of human beings. At the core of animal rights is autonomy. As human rights safeguard the basic tenets of what makes human lives worth living, Animal rights aim to do something similar, only for non-human animals. Animal rights come into direct opposition with animal exploitation, which includes animals used by humans for a variety of reasons, be it for food, as experimental objects, or even pets. Animal rights can also be violated when it comes to human destruction of animal habitats. This negatively impacts the ability of animals to lead full lives of their Choosing.

Few examples of animal rights that could be enacted in future:

- Animals may not be used for food.
- Animals may not be hunted.
- The habitats of animals must be protected to allow them to live according to their choosing.
- Animals may not be bred.

Difference between animal rights and animal welfare:

Animal rights philosophy is based on the idea that animals should not be used by people for any reason, and that animal rights should protect their interests the way human rights protect people.Like human rights animal rights are also claims of non-human animals against state as well as human cruelty. Animal welfare, on the other hand, is a set of practices designed to govern the quality of life experienced by an animal and encompasses how well the animal is coping with his or her current situation and surroundings.

Why do we need animal rights?

- **Environmental conservation:** If rights of animals are recognized, animal exploitative industries would disappear, this will reduce environmental problems they cause, including water pollution, air pollution, greenhouse gas emissions, and deforestation.
- **To be compassionate towards other living creatures:**
  - Halting the widespread use of animals would also eliminate the systematic cruelty that animal industries perpetuate. The physical and psychological pain endured by animals in places like factory farms is at unacceptable level. For example, practices like castrations, dehorning, and cutting off various body parts, usually without the use of anesthetic in factory farms.
  - Concentrated animal feeding operations (CAFOs) house vast numbers of animals in cramped conditions, often forcing animals to perpetually stand in their own waste. Many species—including chickens, cows, and pigs—never see the outdoors except on their way to the slaughterhouse. Recognizing animal rights would necessitate stopping this mistreatment for good.

Protection of Animals in India

Animals are protected under Sections 428 and 429 of the IPC. These provisions make killing, poisoning, maiming or rendering useless any animal, a punishable offense. The central law for protection of animals in India is the Prevention of Cruelty against Animals Act. This was enacted in the year 1960 with the objective of preventing the infliction of unnecessary pain or suffering on animals.

The Prevention of Cruelty to Animal (PCA) Act, 1960

- The Section 11 of the Act prevents torturing and subjecting the animal to unnecessary pain or suffering on animals.
- Under Section 4, the Animal Welfare Board of India is established, with its powers, functions, constitution, and term of the office of members of the Board.
- The Act provides for the guidelines regarding the experimentation on animals for scientific purposes and empowers a committee to make rules with regards to such experiments.

- The Act restricts the exhibition and training of performing animals. Both the terms 'exhibit' and 'train' are separately defined under Section 21 of the Act.
- Discusses different forms of cruelty, exceptions, and killing of a suffering animal in case any cruelty has been committed against it, so as to relieve it from further suffering.
- The Act provides for the limitation period of 3 months beyond which no prosecution shall lie for any offenses under this Act.

Issues with the Act:

1. Paltry fine of 10-50 rupees for a first-time offender and 25 to 100 for serious offense.
2. At present, a majority of the offenses under the Act are non-cognizable, which means the police cannot investigate the offense or arrest the accused without the permission of a Magistrate. This facilitates police inaction, and ensures that most culprits of animal abuse go scot free.
3. There are a plethora of exceptions which significantly dilute the protections available to animals. Though Section 11 criminalizes several forms of animal cruelty, sub-section (3) carves out exceptions for animal husbandry procedures such as dehorning, castration, nose-roping, and branding.
4. The PCA Act also suffers from ambiguity in definition. In Section 11 what constitutes "unnecessary" is entirely a matter of subjective assessment.

Steps needed to provide teeth to PCA act:

1. Increase penalties: For example, In 2014 (Animal Welfare Board of India v. A Nagaraja and Others) the Supreme Court had also recommended an overhaul of the penalties and punishments in the PCA Act, 1960 to effectively control the incidences of cruelty against animals.
2. Make the offense under act Cognizable and non bailable.
3. Bring clarity by clearly defining key terms in the act so as to reduce any ambiguity.
4. Increase duration of limitation for prosecution from 3 months to at least 1 year.

Steps taken by the government in this regard:

Draft Prevention of Cruelty to Animals Amendment Bill 2021:

1. Bill proposes imprisonment of up to five years and steep penalties that may go up to Rs 75,000.
2. Bill proposes to hike the penalty for first-time offenders from the paltry "minimum of Rs 10 to maximum of Rs 50" to "not less than Rs 750 extended up to Rs 3,750 per animal".
3. Its proposed new section, has the following provisions—

- 11 (A): Gruesome cruelty or life-threatening cruelty against animals, for which the penalty is Rs 50,000 per animal or the cost of the animal as determined by a jurisdictional veterinarian. This carries imprisonment of one year which may extend to three years or both.
- 11 (B): Killing of an animal for which the penalty is Rs 75,000 per animal or three times the cost of the animal as determined by the jurisdictional veterinarian, whichever is more, with imprisonment of three years which may extend to five years or both.
- 11 (C): Exceptions (exemption to section 11 (B) killing of an animal): i) accident ii) in defense of self or property (iii) by an act of god or war (iv) any other unforeseen circumstance outside the control of any person in general.
- Under Section 12—which deals with the practice of doom dev (the process of blowing air into a cow's vagina to induce production of more milk) or the injection of any substance to improve lactation—the draft proposes Rs 75,000 as the penalty with imprisonment of three years which may be extended to five. The current penalty is Rs 1,000, two years in prison or both.
- It also seeks to increase the limitation of prosecution under the PCA Act from three months to two years, as well as a new chapter for the formation of state animal welfare boards.

Conclusion:

The Constitution requires all citizens to "have compassion for living creatures". We must seek to protect the most vulnerable among us. If this promise of the Constitution is to hold any value, our animal welfare laws need an overhaul.

H45- Fundamental Duties

"The true source of rights is duty. If we all discharge our duties, rights will not be far to seek. If leaving duties unperformed we run after rights, they will escape us like a will-o'-the-wisp. The more we pursue them, the farther they fly"- MAHATMA GANDHI

Introduction

The Fundamental Duties are defined as the moral obligations of all citizens to help in nation building in various ways possible like upholding sovereignty, integrity and unity, by protecting the environment etc.

Background

Original constitution did not include a Chapter on fundamental duties, however, as the need and necessity of fundamental duties was felt during the emergency period Swaran Singh Committee was set up in 1976, who made the recommendation for including a separate chapter in the Indian Constitution under the heading Fundamental Duties. The objective was to make the citizens aware of their duties while enjoying their fundamental rights. This suggestion was accepted by the government and the fundamental duties were incorporated under Article 51 (A) in Part IV-A of the Constitution by The Constitution (42ndAmendment) Act, 1976.

Article 51(A) describes 11 fundamental duties — 10 incorporated by the

42nd Amendment; and the 11th was added by the 86th Constitutional Amendment in 2002.

Features of Fundamental duties:

- Both moral and civic duties have been laid down under the fundamental duties.
- Fundamental rights can be applied to foreigners also but the fundamental duties are only restricted to the Indians citizens.
- The fundamental duties are not enforceable in nature. No legal sanction can be enforced by the government in case of their violation.
- These duties are also related to Hindu traditions or mythology like paying respect to the country or promoting the spirit of brotherhood.

Significance of Fundamental Duties:

- They serve as a reminder to the citizens that while enjoying their rights, they should also be conscious of duties they owe to their country, their society and to their fellow citizens.
- They serve as a warning against the anti-national and antisocial activities like burning the national flag, destroying public property and so on.
- They serve as a source of inspiration for the citizens and promote a sense of discipline and commitment among them.
- They create a feeling that the citizens are no mere spectators but active participants in the realization of national goals.
- They are ideal in nature and lead the citizens in the right direction.
- They help the courts in examining and determining the constitutional validity of a law.
    - For instance, in 1992, the Supreme Court ruled that in determining the constitutionality of any law, if a court finds that the law in question seeks to give effect to a fundamental duty, it may consider such law to be 'reasonable' in relation to Article 14 (equality before law) or Article 19 (six freedoms) and thus save such law from unconstitutionality.
    - MC Mehta Case where under Art 51A the central govt was obliged to introduce compulsory lessons on protection of environment in all educational institutions.
- The importance of fundamental duties is that they define the moral obligations of all citizens to help in the promotion of the spirit of patriotism and to uphold the unity of India.
- Fundamental duties make citizens conscious of his social and citizenship responsibilities and so shape the society in which all become solicitous and considerate of the inalienable rights of our fellow citizens.

Criticism of Fundamental Duties:

- They are made non-justiciable in nature thus non effective as non implementation does not carry any punishment.
- Important duties such as tax-paying, family

planning etc are not covered.

- Vague and ambiguous provisions which are difficult to be understood by a common man, for example noble ideas of freedom struggle.
- Superfluous provisions since they would generally be followed even if they were not included.
- Inclusion as an appendage to the Part IV of the constitution reduces the value and intent behind FD. They should have been included after Part III to keep them at par with fundamental rights.

Should fundamental duties be made legally enforceable?

Arguments in favor -

- Indian society since ancient times emphasized on the individual's 'Kartavya".
- The Gita and the Ramayana enjoin people to perform their duties without caring for their rights.
- In the erstwhile Soviet Union Constitution, the rights and duties were placed on the same footing.
- Not having legal enforceability goes against the principle of common good as it is not the individual so much but the society which is affected by the non-observation of the fundamental duties.
- If not for all, there is a pressing need to enforce and implement at least some of the fundamental duties.
    - For instance, to uphold and protect sovereignty, unity and integrity of India, to defend the country and render national service when called upon to do so and to disseminate a sense of nationalism and to promote the spirit of patriotism to uphold the unity of India.
    - This is important as India faces a two and half front war.
- In Ranganath Mishra judgment 2003 Supreme court held that fundamental duties should not only be enforced by legal sanctions but also by social sanctions.
- In AIIMS Students Union v. AIIMS 2001, it was held by the Supreme Court that fundamental duties are equally important like fundamental rights.

Arguments against-

- It will raise a burden on the courts.
- Lack of manpower like Police personnels, Judges etc will increase pendency and eventually harm the interests of society.
- Though fundamental duties are obligations on the part of citizens it is the duty of the state to sensitize the people and to create a general awareness among them with respect to these duties. However, the state has failed in this context.
- The Justice Verma committee has already identified the existence of legal provisions for the implementation of some of the Fundamental Duties.

Way forward:

There is a need for an effective policy for the "proper sensitisation" of fundamental duties by state and instead of blanket legal enforceability we can improve implementation of already existing legal provisions and make legal enforceability only for other key duties.

Justice Verma Committee

The Verma Committee was constituted to operationalise the suggestions to teach fundamental duties to the citizens of the country as even three decades after the fundamental duties were incorporated, there was no adequate awareness among citizens. The Committee identified the existence of legal provisions for the implementation of some of the Fundamental Duties.

Link between fundamental duties and fundamental rights:

- "Our rights are directly dependent on the duties performed by others," for example, student rights cannot be guaranteed unless teachers carry out their duties.
- Though fundamental duties are not enforceable like fundamental rights they cannot be overlooked.
- They are prefixed by the same word

fundamental which was prefixed by the founding fathers of the Constitution to 'right' in Part III.

CONCLUSION

Though the Fundamental Duties need a review by the Parliament to make their implementation more effective, we must admit that it's not that the Constitution has failed us; we have failed the Constitution by not abiding by the Fundamental Dutie.

H46- Comparative analysis of A352, 356 and 360

Introduction

Emergency can be defined as a situation where the Government of a country either alters or suspends the normal functioning of a nation by holding in a state of abeyance the Constitution and other organs of the Government. Emergency provisions impact significantly in two ways: (1) the balance of powers between the Government and its branches is disturbed, and (2) the protection of human rights and the law of governance is threatened.

The emergency provisions are contained in part XVIII of the constitution, from articles 352 to 360. National Emergency is mentioned in article 352, the president's rule is mentioned in article 356 of the Indian constitution and Financial emergency is mentioned in article 360.

Comparative Analysis of Article 352, Article 356 and Article 360

Grounds of comparison	National Emergency (Article 352)	President's Rule (Article 356)	Financial Emergency (Article 360)
Grounds of proclamation	External Aggression or Armed Rebellion	Failure of Constitutional Machinery	Threat to Financial stability or Credit of India
Majority	Special Majority	Simple majority	Simple majority
Duration of Emergency	Continues for 6 months Can be extended to an Indefinite period with Parliament approval every 6 months	Continues for 6 months Can be extended to a maximum period of 3 years with Parliament approval every 6 months	Continues indefinitely until revoked. No maximum limit was prescribed. No repeated approval is required.
Approval	Proclamation imposing National Emergency must be approved by both houses of the Parliament within 1 month from the date of its issue.	Proclamation imposing President's rule must be approved by both houses of the Parliament within 2 months from the date of its issue.	A proclamation declaring financial emergency must be approved by both the Houses of Parliament within two months from the date of its issue.
Time Duration for Approval	Must be approved by both the houses within one month	Must be approved by both the houses within two months	Must be approved by both the houses within two months
Extension	Can be extended to an indefinite period with Parliamentary approval every 6 months	Can be extended to a maximum period of 3 years with Parliamentary approval every 6 months	Financial Emergency can operate as long as the situation demands and may be revoked by a subsequent proclamation.

Effect	Center gets concurrent powers of administration and legislation in the state. Under this relation of center with all the state undergoes modification It affects fundamental rights of the citizen.	State executive is dismissed and the state legislature is either suspended or dissolved. Parliament makes laws for the state. Executive & Legislative powers of the state are assumed by the Centre. Under this relationship the center with only the state under emergency undergoes modification. It doesn't have any effect on fundamental rights.	The Union Government may give direction to any of the States regarding financial matters. The President may ask the States to reduce the salaries and allowances of all or any class of persons in government service. It doesn't have any effect on fundamental rights.
Scope of Judicial Review	The 38th Amendment Act of 1975 made the declaration of National Emergency immune to judicial review. But, this provision was subsequently deleted by the 44th Amendment Act of 1978.	The 38th Amendment act of 1975 made the satisfaction of the President in invoking Article 356 final and conclusive which would not be challenged in any court on any ground. But, this provision was subsequently deleted by the 44th Amendment Act of 1978 implying that the satisfaction of the President is not beyond judicial review	The 38th amendment act of 1975 made that the proclamation of financial emergency cannot be questioned in a court of law. The 44th amendment act of 1978 allowed Judicial review.
Revocation	By Resolution of the House or President Order. Lok Sabha and in her absence Rajya sabha can pass the resolution for its revocation.	There is no such provision it can be revoked by the President only on his own.	It can be revoked by the President at any time only on his own, i.e. parliamentary approval is not required neither can parliament initiate resolution for revocation.

Conclusion:

Emergency provisions are a vital part of the Constitution of India. As they give huge responsibility and power to the executive they should be used sparingly. As indicated by Mahabir Tyagi in constituent assembly these should only act as a safety valve and not more than that.

H47- Suspension of Fundamental Rights during emergency

Introduction

Part XVIII of the Indian Constitution talks about the emergency **(Article 352-Article 360)**. The Constitution envisages three types of emergencies: **National Emergency, President's Rule (failure of constitutional machinery in a state) and Financial Emergency.**

Emergency provisions and Rationality behind including them in the Indian Constitution:

- The emergency provisions are contained in Part XVIII of the Constitution of India, from Article 352 to 360. These provisions enable the Central government to deal with any abnormal situation effectively.
- Emergency provisions are borrowed from the Government of India Act 1935.
- The President can declare an emergency in a country when there is a war, external aggression or armed rebellion, failure of constitutional machinery in a state or financial emergency.
- The rationality behind the incorporation is to safeguard the sovereignty, unity, integrity and security of the country, the democratic political system and the Constitution.

Suspension of fundamental rights during National emergency:

- Fundamental rights can be suspended during national emergency only Under Article 358 and Under article 359.
- Suspension of fundamental rights under article 358:
  - According to Article 358, when a proclamation of national emergency is imposed the six fundamental rights under Article 19 are automatically suspended. No separate order for their suspension is required.
  - The 44th Amendment Act of 1978 restricted the scope of Art. 358 by providing the six fundamental rights under Art. 19 will be suspended only if the National emergency is proclaimed on the ground of war or external aggression and not on the ground of armed rebellion.
- Suspension of other fundamental rights under article 359:
  - Under Art. 359 The President through separate proclamation can suspend the right to move any court for the enforcement of fundamental rights during national emergency (whether on internal or external grounds) except Fundamental rights under Art. 20 and Art. 21.
  - Thus, under article 359 the fundamental rights as such are not suspended but only their enforcement.
  - The suspension of enforcement relates to only those fundamental rights that are mentioned in the presidential order.
  - Article 359 operates in case of both External as well as Internal emergency.
  - The 44th Amendment has made two significant changes in Article 359:
    - It provides that under Art.359 the President does not have the power to suspend the enforcement of fundamental rights guaranteed in Articles 20 and 21 of the Constitution.
    - Secondly, only those laws which are related with the emergency are protected from being challenged and not other laws and the executive action taken only under such a law is protected.

Judicial Interpretation:

- **Suspension of Art. 19-**
  - **Makhan Singh Vs. State of Punjab:** Art.358 makes it clear that things done or omitted to be done during emergency could not be challenged even after the emergency was over.in other words the suspension of Art.19 was complete

during the period in question and legislative and executive action which contravened Article 19 could not be questioned even after the emergency was over.

- **Suspension of Art.20,21**
  - **A.D.M. Jabalpur Vs. Shivkant shukla:**
    Apex court held that during a National Emergency, the right to life of a person cannot be enforced by a High Court under Article 226 of the Constitution of India. Thus paving the way for the state to violate A21 during national emergency without impunity.
- **Suspension of Art.14 and 16**
  - **Arjun Singh vs. the State of Rajasthan**
    The question arose whether art.16 is also suspended although it is not mentioned in order, the Rajasthan high court held that art.16 remained operative even though art.14 was suspended. The court emphasized that under art.359 the enforcement of only such fundamental rights was suspended as were specifically and expressly mentioned in the presidential order.

Conclusion

Thanks to our experience of the emergency, the 44th constitutional amendment act has tried to reduce ill effects of emergency by making proclamation of emergency a difficult process and bringing clarity on various issues. We must guard against any attempts to overturn these measures and save the democracy which can only be the solution for India's diversity and required unity.

H48- Presidents Rule (Article 356)

Introduction

In the Republic of India, the phrase "President's rule" refers to the imposition of Article 356 of the Constitution of India on a State whose constitutional machinery has failed.

What is the President Rule?

- Emergency provisions are listed in Part XVIII of the Constitution. President's Rule is dealt with under Article 356 of the Indian Constitution.
- Article 356 of the Constitution is based on Section 93 of the Government of India Act,1935.
- Article 356 of the Indian Constitution gives the President the power to impose the President's Rule on any state in case the constitutional machinery of that state fails.
- Parliamentary approval is necessary for the imposition of the President's Rule on any state. The proclamation of President's Rule should be approved in both Houses of Parliament within two months of its issue. The approval is through a simple majority.
- The President's Rule can be imposed initially for a period of six months. Later, it can be extended for a period of three years with parliamentary approval, every six months.
- The 44 th Amendment to the Constitution (1978) brought in some constraints on the imposition of the President's Rule beyond a period of one year. It says that President's Rule cannot be extended beyond one year unless:
    - There is a national emergency in India.
    - The Election Commission of India certifies that it is necessary to continue the President's Rule in the state because of difficulties in conducting assembly elections to the state.

What is the nature and scope of Article 356?

- There are two essential components of Article 356.
    - The President can impose President rule in a state based on a report sent by the governor of the concerned state or it can be also imposed in other **circumstances that deem fit to the President** on the aid and advice of the council of ministers to protect the state.
    - President's rule can be applied in a state when there is a failure of Constitutional machinery. Failure of Constitutional machinery refers to a situation when the state government can't carry out its functions following provisions of the Constitution.

Article 355 & breakdown of Constitutional Machinery:

What is Article 355?

- Article 355 refers to the provision in the Constitution that states that "It shall be the duty of the Union to protect every State against external aggression and internal disturbance and to ensure that the government of every State is carried on in accordance with the provisions of this Constitution".
- The Article 355 is part of emergency provisions contained in Part XVIII of the Constitution of India, from Article 352 to 360.
- Cases for its invocation:
    - This article thus comes handy when there are communal violence incidents. Over the period, this article has gained a different texture. "Public order" and "police" are state subjects and states have exclusive power to legislate on these matters.
    - These subjects were entrusted to states because states would be in a better position to handle any law and order problem.
    - Management of Police by states was also seen as administratively convenient and efficient.
    - However, there might be some circumstances where states are unable to maintain public order and protect people.
    - In such a situation, the center can invoke article 355 and take measures such as taking law and order of state under its own hand, deployment of military etc.\

What are the controversies related to Article 356?

- **Misuse by political parties**: In a federal country like India, where unions and states are governed by different political parties, the misuse of Article 356 by the political party at the Center is not a surprising event and instances of the same have

been observed various times in India.
    - Even though B.R. Ambedkar had assured that it would remain a dead letter, Article 356 has been used/misused more than 125 times. Thus, in this context HV Kamath held that Dr Ambedkar is dead and the articles are very much alive.
- **Vague and substantive nature:** The major reason for the misuse of Article 356 is its vague and subjective nature. The use of words such as 'otherwise' and 'failure of Constitutional machinery' are so broad that they can include a wide range of acts within its scope.
- **Lack of clarity:** Article 356 fails to define what the failure of Constitutional machinery is and what sort of failure can be used as a reasonable ground for encroaching into the arena of state government.
- **Liberal interpretation**: One needs to understand that the fundamental purpose of incorporating Article 356 was to safeguards the states when there is a breakdown of law and order for good governance. But, the liberal interpretation of Article 356 leaves a wide scope for its misuse that eventually led to hampering the fundamental purpose of granting such power to the President via 356.
- **Wide discretion to the governors** coupled with activist Governors makes A356 a powerful weapon in the hands of the center.
- **Impacts federal structure**: The misuse of Article 356 can't be ignored as it has direct implications on the federal structure of the country thereby violating the basic structure of the Constitution.

S.R Bommai Judgment:

- The verdict concluded that the power of the President to dismiss a State government is not absolute.
- The President should exercise the power only after his proclamation is approved by both the Houses of Parliament.
- Till then the President can only suspend the Legislative Assembly.
- Floor test should be the "norm" and not the exception.
- The S.R Bommai precedent has helped Governors to decide on the appointment of a Chief Minister or continuance of a regime based on its numerical strength in the House.

Floor test:

- It is nothing but a test of the majority of the government.
- The person appointed as Chief Minister without a clear majority,should seek a vote of confidence in the assembly within 30 days.
- In case of doubt over the incumbent majority, the governor can call for convening of house.

Significance of the S.R. Bommai vs Union of India case:

- The case put an end to the arbitrary dismissal of State governments by a hostile Central government.
- The verdict ruled that the floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor, who is often referred to as the agent of the Central government.
- Judgements inclusion of proper and improper use of A356 has minimized its use to a large extent.
- Judgment ruled that an improperly dismissed government could be restored to office.
- Thus, it established faith in federalism and judiciary.
- Bommai doctrine is applied to protect states from discretion and political games of the Central government.

When will the use of A356 be proper?

- In case of hung assembly.
- When no political party is able to form a government either on its own or in coalition.
- Where the constitutional direction of the central government is disregarded by the state government.
- Internal subvention where for example the state is deliberately acting against the constitution.
- Physical breakdown where the government willfully refuses to discharge its constitutional obligations.

When will the use of A356 be improper?

- Where the ministry resigns or is dismissed on losing majority support and the governor recommends A356 without probing the possibility of forming an alternative ministry.
- Without floor test if the governor recommends A 356 to the president.
- The ruling party enjoying majority support in assembly has suffered massive defeat in the general election to lok sabha.
- Internal disturbance not amounting to internal subversion or physical breakdown.
- Maladministration or allegations of corruption.
- Where the state government is not given prior warning to rectify itself except in case of extreme urgency.

Various recommendations of commission and committees:

The Administrative Reforms Commission report, 1968:

- It recommended that the report of the Governor regarding President's Rule has to be objective and also the Governor should exercise his own Judgment in this regard.
- It recommended that where President's Rule is imposed the Governor of the State should responsibly act under the direction of the Union Government.
- The Commission recommended that Where Presidential Rule is imposed the Governor may be entrusted by the Center with the task of actively carrying on the administration for which he then becomes directly responsible under the overall direction of the Union Government.

Sarkaria Commission report:

- This Commission recommended that Article 356 must be used very cautiously only in the rarest of rare scenarios and only as a last remedy after exhausting all possible alternatives to resolve and avert any circumstance where the constitutional machinery has collapsed in a state.
- The President's proclamation of President's Rule should include reasons as to why he thinks the state cannot run normally.
- Whenever possible, the center should give the state government a warning before imposing Article 356.
- The Article should not be used for settling political scores.
- Dissolve the state legislature only after getting parliamentary approval.

Punchhi Commission:

- The Punchhi Commission recommended that the center should try to bring only a specific troubled area under its jurisdiction and that too for a brief period, not more than three months.
- The commission recommended that suitable amendments should be made to incorporate the guidelines established by SC in the Bommai case.
- The commission recommended the provision of a 'Localized Emergency' which implies that the center can tackle issues at town/district (local) level without dissolving the state legislative assembly while at the same time, performing the duty of the Union to protect States as per Article 355.

Way ahead:

- The need of the hour is to amend Article 356 and provide a specific definition of phrases 'otherwise' and 'failure of Constitutional machinery' so that scope of Article 356 can be fixed.
- The legislature should define the intensity or gravity of acts that can be cited as reasonable and justifiable grounds to contend that there is a failure of Constitutional machinery and hence, the elected government should be dismissed.

Conclusion:

However, even if Article 356 would be amended while taking into consideration all the recommendations of the Sarkaria Commission, still, there will be a chance of abuse of power because the efficiency of any law depends upon the condition that how well it has been implemented. Therefore, it can be only expected through a strict interpretation of Article 356 that the spirit of 'co-federation should be maintained while opting for President rule and union government shouldn't use this power to achieve their own political interests.

H49- Internal Emergency of 1975 – An Analysis

Introduction

The Indira Gandhi government announced an emergency on 26 June 1975. The goal of the 21-month-long Emergency in the country was to control "internal disturbance", for which the constitutional rights were suspended and freedom of speech and the press withdrawn. Government of the day justified the drastic measure in terms of national interest, primarily based on three grounds.

- First, India's security and democracy was said to be in danger owing to the movement launched by Jayaprakash Narayan.
- Second, the government of the day believed that there was a need for rapid economic development and upliftment of the underprivileged.
- Third, the government also believed that the intervention of powers from abroad could take place which could destabilize and weaken India.

Reasons behind imposition of internal emergency:

1. **Economic:**
   a) India's support for the independence of Bangladesh has had a serious effect on India's foreign reserves.
   b) In 1972 & 73, consequent monsoon failure affected the availability of food and fuel prices in India.
   c) This led to — growing unemployment, rampant inflation and scarcity of food.
   d) George Fernandes, a labour leader who led railway workers in a national strike in 1974 in an attempt to paralyze the transportation system of the country and its economy.
2. **Social:**
   a) The dismal condition of the Indian economy was accompanied by widespread riots and protests in several parts of the country.
3. **Political and administrative:**
   a) **Navnirman Andolan in Gujarat**- starting from December 1973, there was widespread student protest in Ahmedabad against the government. It called itself the 'Navnirman movement' or the movement for regeneration. The student protests against the government escalated and soon factory workers and people from other sectors of society joined in. The agitation was aimed at the removal of Chief Minister Chimanbhai Patel for leading what the protesters called a "corrupt and inept" administration,
   b) **The JP movement**: At the same time, agitation in Bihar for the removal of Bihar CM Abdul Ghafoor began. This was led by Jayaprakash Narayan, he called for "Sampuran Kranti," or Total revolution, JP, as he was popularly known, initiated a nationwide agitation, starting with Bihar.
   c) His first and foremost mission was to "throw out Mrs. Gandhi's government" and then create a "partyless democracy" after crushing Congress. This was a vague idea that was never completely established and attracted media scrutiny.
   d) **JP's address to government employees and the Army** and the police not to follow "illegal" orders.
4. **Legal or Judicial causes:**
   a) The Raj Narain verdict: Allahabad high court ruled that Indira Gandhi was guilty of electoral malpractice during the 1971 general election. The verdict invalidated the election of Mrs. Gandhi as an MP and for six years debarred her from holding an elective office. There were fairly minor charges in which Indira Gandhi was found guilty.

Impact of Emergency on India as a democracy:

- Declaration of emergency exposed the fault lines in Indian democracy which can be exploited to bring about a totalitarian rule.
- The **42nd constitutional amendment act** was enacted in 1976, during the period of internal emergency, which strengthened the union executive and led to the further centralization of power. This amendment had four major purposes:
  - Excluded the courts entirely from election disputes;
  - Strengthen the central government vis-à-vis the state governments

- To give maximum protection from judicial challenge to social revolutionary legislation;
- To curtail the interventions of the judiciary in legislative matters.

- The federal distribution of powers was suspended and all the powers were concentrated in the hands of the Union government.
- Government assumed powers to restrict or limit any or all of the fundamental rights during the emergency. This included the right of citizens to move the Court for restoring their fundamental rights.
- All newspapers needed to get prior approval for all their materials to be published, known as press censorship.
- General elections, the very basis of democratic set up in the country, were suspended.
- Extraordinary restrictions were placed on civil liberties, particularly the freedom of speech and expression including the press.
- The government made blatant and extensive use of its power of preventive detention. Negating the judgment of several High Courts, the Supreme Court in April 1976 gave a judgment upholding the constitutional validity of such detentions during emergency.

Consequences of Emergency:

1. **Constitutional Safeguards:**

Prominent changes were introduced to place safeguards against misuse of Emergency provisions through the 44th constitutional Amendment Act:

- Article 226 was amended to restore the power of the High Courts to issue writs on matters other than the protection of fundamental rights.
- Article 352 was amended to put sufficient check on the powers of Prime Minister to prevent misuse of Emergency provisions. For instance, Internal Emergency can be imposed only on the written advice of the Cabinet, not Prime Minister. Moreover, Parliament has to approve the proclaimed emergency within a month by special majority instead of simple majority.
- A 20 and 21 cannot be violated even during a national emergency- whether internal or external.
- A 19 cannot be suspended in case of internal emergency.

2. **Political:**

- millions cutting across class, caste and regional barriers, rose as one against an authoritarian regime.
- It gave birth to a new class of leadership for example from Nitish Kumar, Lalu Prasad, George Fernandes to Sitaram Yechuri, a pack of young leaders emerged from the movement and they went on to determine the future of the country in myriad ways. These young turks and their followers paved the way for a new phase of politics in India.

- **Judicial:**

- Faced with embarrassment by its pronouncement in the ADM Jabalpur case, the judiciary asserted its independence. Judges became activist in nature and from the 1980s onwards liberally interpreted the Constitution to safeguard the liberties of citizens. Best example of this is the institution of Public Interest Litigation.

Lessons Learnt from Emergency

- Extremely difficult to do away with democracy in India.
- It brought about some ambiguities regarding the emergency provision in the Constitution that have been rectified.
- Emergency made every citizen aware of their rights and liberties and importance of those in leading meaningful life.

H50- Reorganization of States

Introduction

Reorganization of states refers collectively to any process which involves formation of new states from existing states, increasing or decreasing boundaries of any state etc.

Reorganization of states has been one of the most contentious issues since the Independence of India. Besides political bargains, creation of new states has attracted the attention of policy makers and intellectuals who hold divergent views regarding the formation of smaller states.

Arguments in favour of new states in India:

- New states offer better and efficient administration which leads to the creation of infrastructure, strengthening the connectivity in the area, expanding its access to market and boost trade for the overall economy of the country.
- People of the region gain control over its resources and an organic model of growth can emerge to address their economic aspirations.
- Political stability that arises from the better representation of people creates a conducive environment for investment in the region. Thereby encouraging regional economic development.
- There are instances that after the creation of new states- there is a marked increase in economic activity immediately across the border in the new states. School enrolment also increased suggesting greater investment in human capital.
- Given the greater social heterogeneity of India, there should be a higher number of states.
- One main reason for the creation of new states in India is cultural or social affiliations. For instance, the state of Nagaland in the Northeast was created taking tribal affiliations into account.
- Regional development strengthens the equitable and symmetric growth of India.
- Small states ensure that there is better democratic governance as there is greater awareness among the policymakers about the local needs.
- Factual analyses show that the development and efficiency argument does work in favour of the new states when compared with the parent states.
- Good governance means lesser government, responsive government, closer government, and quicker government.

Arguments against the formation of new states in India:

- Small states do not generate enough revenue for the state, thus are heavily dependent on the central assistance.
- Creation of new states means establishing new administrative machinery and new institutions which leads to increased revenue expenditure in turn puts pressure on fiscal pressures for the government.
- Telangana, recently carved out from the state of Andhra Pradesh is heavily relying on the central grants to pay for its newly created administrative and institutional machinery.
- Small states do not guarantee good governance for example,
    - Jharkhand has failed in the governance and administrative perspective and became a state of coal scams and corrupt practices.
    - Chhattisgarh has witnessed the largest tribal displacement in recent times. The inclusive economic development is far from the reach of the state given the increased miserable conditions of the tribal and their forceful displacement.
    - Uttarakhand continues to be at the end in the Human Development Index. The recent floods showed the inability of the state to deal with the rehabilitation of the displaced residents.
- Small states can lead to the hegemony of the dominant community or tribe or caste over their power structures. In such states, regionalism can develop and lead to the growth of the sons-of-the-soil phenomenon and consequently migration.
- The attainment of statehood can also lead to the emergence of intra-regional rivalries.
- There can be the risk of centralization of powers in the hands of the Chief Minister and the members of his family.
- The creation of a smaller or new state can also lead to an appreciable increase in the inter-state water, power, and boundary disputes.

- Smaller states are prone to instability, for example, Goa.

Has the formation of linguistic States strengthened the cause of Indian Unity?

Linguistic reorganization has **strengthened the cause of Indian unity** as:

- It put an end to fissiparous tendencies that would've balkanized the country on the basis of language.
- It fulfilled the aspirations of people to have autonomous political units for governance.
- Led to development of vernacular languages and imparting of education in them, thus facilitating literacy.
- Development and adoption of vernacular language also enabled political participation by the common man and enabled the common man to voice issues of concern in a familiar language.
- Enabled the preservation of local customs, culture, and festivals. Over time, the people of India have come to cherish the myriad customs of different states. E.g: Chhath celebrations have become popular in Gujarat.
- It did not lead to complaints regarding discrimination in the matter of distribution of resources on the basis of language, nor did it affect the federal structure of the country.
- States can have their own official languages and official works could be carried on more efficiently to the lowest level.
- Fear of majority language imposition on minorities was averted.
- However, linguistic reorganization also led to several unintended consequences such as regionalism, linguistic chauvinism and the foundation of the "Sons of the soil" doctrine.

Is there a need for the Second States Reorganization Commission?

Yes:

- India has passed 60 years of Independence and a new vibrant economy and emergence of new regional disparities, regional consciousness requires a restructuring of the Indian Union of states.
- Carving out smaller states is too important and complex an issue to be taken in the heat of inflamed passions and under the pressure of political agitations.
- In the absence of a political consensus, and when concerns are raised above the wider implications for the other parts of the states, decisions will have to be made after wide-ranging consultations and on the basis of a well-laid out roadmap for the creation of new states.
- At present, there is a demand for the creation of a separate State for Gorkhaland, Vidarbha,Bodoland etc.
- Indian states are simply too big. Even after the creation of Telangana as the 29th state, the average Indian state has 42 million people. The European Union, with as many states as India currently has an average per-country population of 18 million and the USA 6.5 million population with each state. Thus, scholars like Bibek Debroy suggest that India should have at least 50 States.
- In a larger state, the problem is that the allocation of funds by the centre can never be evenly distributed. So some parts stand to lose and thus remain backwardly developed, while the part which holds maximum political affiliate gains. Dividing states definitely solves this problem.

However, for creation of smaller states 2nd states reorganization commission is not needed instead recommendations of first are sufficient which suggested that any reorganization should consider 4 factors:

- Preservation and strengthening of the unity and security of the country.
- Linguistic and cultural homogeneity.
- Financial, economic and administrative considerations.
- Planning and promotion of the welfare of the people in each state as well as of the nation as a whole.

Way Forward

- Instead of creation of more and more states, effective and concrete devolution of powers to the grass root level and an accountable bureaucracy is what you need for governance.

- In case of formation of new states following needs to be kept in mind:
    - There is a need to give economic and social viability rather than political considerations.
    - Parents state that losing out in terms of physical and human resources should be adequately compensated.
    - It is necessary to allow democratic concerns such as development, decentralization and governance rather than religion, caste, language, or dialect to be the valid bases for conceding the demand for a new state.
    - There is also a need to address some of the fundamental problems related to development and governance such as concentration of power, corruption, administrative inefficiency etc.

Conclusion

Internal map of India is constantly evolving to accommodate dynamic challenges and make governance people centric. However, any reorganization process should be consensus based and involve widest possible deliberations before taking any concrete shape.

H51- First Past the Post System (FPTP) Vs Proportional Representation

There exist various types of electoral systems like First Past the Post System, Proportional Representation, Mixed systems which are sometimes referred to as Hybrid System.

In India, we follow both FPTP as well as Proportional Representation systems for voting at various stages. For example, in the elections for the Lok Sabha and state legislative assembly we have the FPTP system and for the Presidential Elections, elections to Rajya Sabha, election of the Vice President we follow Proportional Representation.

FPTP electoral system:

- The First Past the Post system is the simplest form of plurality/majority system, using single member districts and candidate-centered voting.
- The voter is presented with the names of the nominated candidates and votes by choosing one, and only one, of them.
- The winning candidate is simply the person who wins the most votes; in theory, he or she could be elected with two votes, if every other candidate only secured a single vote.

Why did we choose the FPTP system?

- Simplicity – As most of the population was not literate at the time of independence, PR SYSTEM would have been complex to understand.
- Familiarity - Before independence several elections were held regularly on FPTP basis.
- Promotes stability – PR system seemed unsuitable to the parliamentary government due to the tendency of the system to multiply political parties leading to instability in government.
- PR SYSTEM establishes a party as a major centre of power whereas FPTP gives an individual as a representative of the people of a certain specific area. Given India's condition at the time of independence this was a big concern for our leaders as people connected more to their leaders rather than a political party.

Proportional Representation system:

- Proportional Representation is a type of voting system used for elections in which parties gain seats in proportion to the number of votes cast for them.
- If x% of the electorate supports a particular political party as their favorite, then roughly x% of seats will be won by that party.

Various types of PR system:

- The most widely used types of PR electoral systems are party-list PR, the single transferable vote (STV), and mixed-member proportional representation (MMP).

Party list PR	Single transferable vote	Mixed member proportional representation (MMP):
With party list PR, political parties define candidate lists and voters vote for a list. The relative vote for each list determines how many candidates from each list are actually elected.	It uses multiple-member districts, with voters casting only one vote each but ranking individual candidates in order of preference (by providing backup preferences). During the count, as candidates are elected or eliminated, surplus or discarded votes that would otherwise be wasted are transferred to other candidates according to the preferences. STV enables voters to vote across party lines, to choose the most preferred of a party's candidates, and vote for independent candidates, knowing that if the candidate is not elected his/her vote will likely not be wasted.	It is also called the additional member system (AMS), it is a two-tier mixed electoral system combining local non-proportional plurality/majoritarian elections and a compensatory regional or national party list PR election. Voters typically have two votes, one for their single-member district and one for the party list.

Difference between FPTP & PR (Advantages and disadvantages of FPTP and PR system):

- **PR faithfully translates votes cast into seats whereas FPTP does not completely translate** the number of votes into seats. Example, the 2014 Lok Sabha elections saw the BSP become the third-largest national party of India in terms of vote percentage, having 4.2% of the vote across the country but gaining no seats.
- PR **facilitates minority parties' access to representation.** FPTP might not encourage minority parties.
- **PR makes power-sharing between parties and interest groups more visible.** The power sharing between various groups is not as visible in FPTP.
- In **PR the single party dominance is difficult to achieve.** FPTP gives rise to single-party governments.
- The **PR system does not exclude the smaller parties from representation.** FPTP excludes smaller parties from 'fair' representation.
- However, it is **difficult to organize the by-polls** in the PR system which is very easy in the FPTP system.
- FPTP **allows voters to choose between people rather than just between the parties**. Voters can assess the performance of individual candidates rather than just having to accept a list of candidates presented by a party which is the case in the PR system.
- PR system is **not conducive for stability** as it is very difficult for any single party to get a majority of votes, whereas FPTP provides greater stability of the government as single party or pre-poll coalition majority is possible.

What is a Hybrid Electoral System?

A hybrid/mixed system refers to an electoral system in which two systems are merged into one combining the positive features from more than one electoral system.

Why is there a Demand for Hybrid System?

- It is argued that the majority aspirations and the will of the people is not getting reflected in election results with the current electoral system i.e FPTP.
- The situations have changed since the current system of FPTP was adopted (one party rule). But now because of a division of votes, a party with even 20%- share does not get a single seat, while a party with 28% can get a disproportionately large number of seats. Example, Uttar Pradesh Assembly elections held in March, 2017.
- This system is followed by various European countries successfully.
- The Law Commission's 170th and 255th report also suggested that 25% or 136 more seats should be added to the present Lok Sabha and be filled by Proportional Representation.
- Many points out that the current system reflects a "Minority democracy" which has been ruling the country since independence.

H52- Delimitation Commission

Meaning of delimitation:

Delimitation literally means the act or process of fixing limits or boundaries of territorial constituencies in a country to represent changes in population.

Purpose of delimitation:

- Article 81 of the Constitution of India prescribes that every state and Union territory (UT) would be allotted seats in the Lok Sabha in such a manner that the ratio of population to seats should be as equal as possible across states.
- Thus, to provide equal representation to equal segments of a population.
- Fair division of geographical areas so that one political party doesn't have an advantage over others in an election.
- To follow the principle of "One Vote One Value".

Problems with Delimitation:

Delimitation is correlated with population of states. States with high populations end up with higher numbers of seats in the parliament, while states which have undertaken population control measures will be at a disadvantageous position. This can upset the political equation in the country.

History of delimitation:

- The government froze delimitation in 1976 until after the 2001 Census by the 42nd constitutional amendment (1976). This freeze was extended to 2026 by the 84th constitutional amendment (2002).
- The aim of this move was to promote family planning and population stabilization in the country. Thus an incentive was given to states towards working for family planning programs, without worrying about changing their political representation in the Lok Sabha.
- As a result, the Delimitation Commission could not increase the total seats in the Lok Sabha or Assemblies. It may be done only after 2026.

Issues arising out of Unequal Representation due to freeze on delimitation:

- **Dilution of the principle of "One Citizen One Vote"** e.g. the average MP from Rajasthan represents over 30 lakh people while the one in Tamil Nadu or Kerala represents less than 18 lakhs. This means the voter in Tamil Nadu and Kerala has more say than the one in Rajasthan.
- **Representation Crisis**- If candidates cannot reach out to enough voters, then elections may become less about hearing the voices of the voters and addressing the issues they care most about. It has also resulted in lower voter turnouts of people during elections.
- **Doesn't include changing dynamics**- In 1988, the voting age was lowered from 21 to 18 via 61st Amendment Act. This led to a substantial increase in the size of each constituency. Further, Migration to urban or industrialized areas has made such an increase skewed in direction and intensity.
- **Implications if the limitation freeze is lifted:**
- Concerns of family planning remain- where the states may not go for such measures as it may reduce their seats in Parliament.
- Presiding Officers of House- may find it extremely difficult to conduct the proceedings of the House. With an increased number of members, disruptions of proceedings may increase.
- Working of the house- will become very difficult because the hourly window for the Zero Hour, Question Hour etc. will be too small for increased members.
- Also, it may create a divide of politically important vs. unimportant states for the political parties. It may also lead to demand for smaller states.

Way Forward:

- The Chairman of Delimitation Commission 2002 recommended that delimitation should be carried out after every census so that changes are not too extensive and the value of every elector's vote remains more or less steady.
- There needs to be a debate and consensus on how to deal with the problems that are likely to arise.

The Jammu and Kashmir Delimitation Commission Report,2022:

Following are the three major takeaway from the report:

- Increase of assembly constituencies in Jammu from 37 to 43, in Kashmir from 46 to 47; totaling 90 from an earlier 83.
- The report allegedly has violated the population criteria while awarding the seats. This is evident as Jammu with 44% population has now got 48% stake in seats while Kashmir with 56% of population now has only 52% of seats. In the earlier case, Kashmir had approximately 56% of seats while Jammu had 44% only.
- The commission further proposed that the Union Territory's Legislative Assembly include at least 2 people from the Kashmiri migrant population, one of whom be a woman, with voting rights equal to nominated members, as in the Legislative Assembly of Puducherry.

H53- Declining Performance of Parliament

The Parliament of a country is central to the very essence of democracy. Thus, it is called the 'temple of democracy'. It is assigned with the pivotal roles of framing legislation, ensuring accountability of government and holding debates and discussion on matters of national importance.

What do you understand by the term 'Decline of Parliament'?

1. The 'Decline of Parliament' is a phenomenon of parliamentary paralysis characterized by curtailment of the functioning and lowering of the general stature of Parliament.
2. It can be reflected in the decline in procedural practices and productivity, unnecessary disruptions, rampant absenteeism of members, dilution of the measures of accountability in the parliamentary process, etc.
3. As India celebrates its 75th year of independence with the 'Amrit Mahotsav', the glaring irony of a dysfunctional Parliament can no longer be ignored.

What are the issues leading to the 'Decline of Parliament'?

1. **Shorter Parliamentary Sessions:** The Parliament sittings have been reduced from 120 days/year to 65-70 days/year due to various reasons, including disruptions leading to adjournment. E.g.:
   - The Budget Session 2021 ended 2 weeks before the planned time (as MPs were busy campaigning for the state assembly elections) and for 2020 it was curtailed during the nationwide lockdown imposed due to the Pandemic.
   - The 18 days Monsoon session in 2020 also lasted for only 10 days while the winter session was cancelled.
2. **Weakening Legislative check of the Executive:** Parliament ensures this accountability of the Executive through various devices. But the use of such devices has been on the decline (see table), which reflects a deliberate stifling of any and all kinds of constructive criticism by the Opposition.

Parliamentary Devices	During 14th & 15th LS	During 16th & 17th LS
Short duration Discussion	113	42
Calling attention	152	17
Half-hour discussion	21	5

3. **Gradual Marginalization of Parliamentary Committees:**
   - According to data by PRS Legislative Research, the % of Bills referred to Departmentally Related Standing Committees (DRSCs) declined from 71% in the 15th LS to 27% in the 16th and just 11% in the 17th Lok Sabha (LS).
   - The number of Bills referred to the Parliamentary Committees has declined. Many contentious bills were directly passed in the Houses. E.g., Aadhar and Other Laws (Amendment) Bill, the Right to Information (Amendment) Bill, the Unlawful Activities (Prevention) Amendment (UAPA) Bill, etc.
   - Circumventing the Parliamentary committees in the passing of significant legislation is a sign of weakening democracy.
4. **Lack of Debates and Discussions**: The Constitution requires LS to approve the expenditure Budget of each Department and Ministry. E.g., this year 76% of the Budget was approved without any discussion.
5. **Absence of the Deputy Speaker of Lok Sabha:** Article 93 of the Constitution provides for the election of a Deputy Speaker, but the current LS has no Deputy Speaker.
6. **Fall in Ethical standards**: The Concern of the legislator towards the country and responsibility for the society is declining day by day. Moreover, elections have just become an avenue to acquire a position of power and privileges.
7. **Other factors**:
   - **Anti-defection law**: as it made it less necessary for MPs to prepare for their work

in Parliament as they run under the command of the party whip.

- **Lack of Expertise of MPs**: amplified by no research staff. Also, the Parliament library doesn't provide sufficient research support.
- **Coalition politics** has made managing inter-party mechanisms more difficult. ("Multiple PMs")
- **Live telecasts of Parliament:** as it increased the incentives MPs for grandstanding on issues to seek media coverage.
- **Criminalization of politics:** As per ADR report 2019, 46% of the MPs in 17th Lok Sabha have criminal records.
- **Continuous election cycle:** in one state or another narrows the scope of cooperation between the opposition and the ruling party.

How can the trend of 'Decline of Parliament' reversed?

To preserve the very 'idea of India', the Parliament must function actively, especially in the terms:

1. **Parliamentary Scrutiny:** Parliament must ensure sufficient scrutiny over the proposals and actions of the government. A system of research support with sufficient time can be provided to the MPs.
2. Transparency in Legislative Procedures: Ensuring that Bills and budgets are examined by committees and public feedback is taken. It will help citizens know where we went wrong and how it can be corrected.
3. **"Legislative Impact Assessment" (LIA**): A detailed framework for pre and post LIA is needed. Every legislative proposal must incorporate a detailed account of social, economic, environmental and administrative impacts.
    - Besides, a new Legislation Committee of Parliament should be constituted to coordinate legislative planning.
4. Parliamentary Committee Reforms: Measures for the effective functioning of DRSCs - longer tenure, promoting specialization, etc. are needed.
    - India can learn from global best practices - In Sweden, it is mandated to send either all / specific bills to the parliamentary committees.
5. **'Shadow Cabinet':** can be institutionalized in India. (It is a unique tool in British cabinet system where each action of a Cabinet Minister is countersigned by the 'Opposition minister in waiting'.
6. **Increase in the days of sitting:** The NCRWC (National Commission to Review the Working of the Constitution) recommended the minimum number of sittings for Lok Sabha and Rajya Sabha be fixed at 120 and 100 respectively.
7. **Changes in Anti-Defection Law**: like making whip mandatory only in those cases where existence of the government is under threat. On normal policy issues allow members to vote and voice their concerns independently.

In order to fulfill the constitutional mandate of the Parliament, it is imperative that Parliament functions effectively. The task of Parliament is not to merely play second fiddle to the executive leadership but to discuss, debate, deliberate, shape and reshape measures for public good and ensure oversight over the executive.

Thus, holistic reforms are required to ensure Parliament remains a place of socio-economic revolution in India. In the 75th year of Independence, having a healthy and functional Parliament can help celebrate the most important 'Mahotsav' called Democracy.

H54- Speaker of the Lok Sabha

The Speaker is the presiding officer and the highest authority of the Lok Sabha, in fact he is the guardian of the constitution inside the Lok Sabha. In the order of precedence, the speaker is placed higher than all the cabinet ministers except the PM and Deputy PM.

Whether the office of speaker lived up to the expectations of founding fathers of constitution?

The office of speaker has not lived up to the expectations of founding fathers of constitution as mentioned below:

- **Increasing partisan role:** Although, the Speaker is generally chosen from the ruling party, he is expected to be bipartisan in his approach and conduct of proceedings of the house, however it is not the case as speakers have been partisan:
  - In deciding money bill: for example, accepting the government's view of Aadhar bill being a money bill during 16th Lok Sabha.
  - In disqualifying or not disqualifying members under the 10th Schedule as his decision is final.
  - In punishing members in case of violations of house etiquettes.
- **Failure in ensuring smooth conduct of the business:** The Speaker's responsibility is to ensure that the decorum of the house is maintained at all times and that there is smooth conduct of business, however the speaker has failed as there has been an increase in the time lost to disruptions.
  - According to PRS Legislative Research data, the Monsoon Session 2021 was the third least productive Lok Sabha session of the last two decades, with a productivity of just 21 %.
  - The Budget Session of 2018 witnessed a productivity of 21 % in Lok Sabha. The second part of the Session was completely paralyzed.
- **Party Interest Over National Interest**: There are also few instances of speaker refusing to allow any debate or discussion that may be essential in national interest but may embarrass the ruling party.

However, there are few positive precedence which creates standards about office of the speaker as discussed below,

- **Putting national interest over party interest:** In the year 2008 the then Speaker Shri. Somnath Chatterjee was directed by his party to step down as speaker. He was of the view that he was above party politics as the Lok Sabha speaker, he continued and saw the passage of the India US nuclear deal. He was later expelled by his party.
- **Incorporating good practices to run the house smoothly:** The current Speaker of the Lok Sabha has brought about tweaks in the proceedings of the House. Up to the last Parliament, the Speaker would move onto the next agenda after a Ministers reply. The opposition MPs would shout their displeasure at the reply but the agenda would have moved on. Leaving things in limbo. Mr. Om Birla has assured the members of getting a chance to seek clarification after the minister's response, which has garnered inter party appreciation. **This has reduced disruptions and shouting after minister's reply as it brought clarity of communication and house members getting better and clear information.**
- To ensure bipartisanship, in 1967, late N **Sanjiva Reddy** resigned from his party when he became the Speaker.

What should be done to improve the functioning of the Speaker and ensure bipartisanship?

The following practices can be adopted:

- UK model of once a speaker always a speaker.
  - In this practice, the speaker is elected uncontested and he gives up the membership of the party which he earlier used to serve once he is elected as a speaker.
- In the Keisham Meghachandra Singh case the Hon'ble Supreme Court held that an independent tribunal ought to be appointed instead of the Speaker to determine the fate of the MLA or MP who switched parties as the Speaker himself also is a member of a political party.
- Whether a bill is a Money bill or not should be decided by a committee headed by the speaker and the parliamentary secretary as a member.

Conclusion

As Pandit Jawaharlal Nehru correctly said, "The Speaker represents the house. He/She represents the dignity of the house, the freedom of the house, and because the house represents the nation, in a particular way, the Speaker becomes a symbol of the nation's freedom and liberty. Thus, it is very important for speakers that his conduct should not only be impartial but such impartiality should be perceptible."

H55- Types of Bills

Law-making is the prime function of the legislature. Parliament, being the supreme law-making institution of the country, is involved in taking legislative decisions such as enacting or amending a law.

What is a Bill and what are its types?

1. A Bill is a proposal for the legislation which becomes an act or law when duly enacted. Every Bill has to pass through various stages in each House.
2. A Bill can be classified into different types in the following ways:

On the basis of source of origin	On the basis of the procedure of passage
1. Public/ Government Bills 2. Private Bills	1. Ordinary Bills 2. Money Bills 3. Financial Bills (not to be confused with Finance Bill) 4. Constitution Amendments Bills

Private Members' Bill – an analysis

How has the journey of Private members' Bills been?

1. According to PRS Legislative Research, to date, Parliament has passed only 14 Private Members' Bills with 6 cleared in 1956 alone.
2. No Private Members' Bill had been passed by Parliament since 1970, when 'The Supreme Court (Enlargement of Criminal Appellate Jurisdiction) Bill, 1968' was enacted.
3. In the 14th LS, 328 such Bills were introduced (only 14 discussed; none was passed)
4. The Rights of Transgender Protection Bill, 2014 - was the last such Bill that was passed in Rajya Sabha unanimously, but was never discussed in Lok Sabha.

What are the reasons behind the low success rate of Private Bills?

1. Ultimately, government (with majority in LS) decides the legislative business during a parliamentary session, most Private Members' Bills lapse without discussion.
2. If at all discussion is allowed, a relatively short time is allotted for their discussion.
3. Lack of time due to reduction in parliamentary sittings.
4. Increased disruptions leading to frequent adjournments.
5. MPs often skip the last session of Friday (the time allotted for such Bills) to visit their constituencies and other party related works.

What steps can be taken to improve private members' bills?

1. The number of days for discussing PMBs should be increased and the day for discussing such Bills can be shifted to any other day than Friday.
2. A 'Private Members' Committee' should be constituted to make the system of PMBs more functional, systematic and vibrant.
3. An open mindset of the ruling government is needed so as to pass the important Private Bills.
4. The quality of the Bills can be improved by due research and seeking public opinion.

Money Bills – an analysis

What are the past controversies surrounding the Money Bill?

There have been instances of routing a non-money bill as a money bill:

1. **Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016:**
   - Critics: The Act was passed as a Money Bill, despite not satisfying the requirements set out in Article 110 to be certified a Money Bill.
   - Government: As the act dealt with 'targeted delivery of subsidies' for which funds come from the Consolidated Fund of India. Thus, it was a money bill.
   - Supreme Court: held that passing the Aadhaar Act as money bill was justified.
2. **Passing of Finance bill of 2017 as Money bill:**
   - It had amended various Acts which were not in compliance with matters provided under A110.
   - E.g., amendment related to Appointments to various tribunals; gave the Central government the powers to frame rules regarding the tribunals (Section 184).
   - Later the passage of the Act as a Money Bill was held unconstitutional.

What are the issues with routing a Non-Money Bill as a Money Bill?

1. It damages the delicate balance of bicameralism as it denies the rich and diverse expertise of the Rajya Sabha from providing its input.
2. This affects the process of law making as insufficient debate or hasty passage via money bill may leave lots of loopholes in the Act.
3. It violates the principle of 'separation of power' as the Executive with majority in the LS can easily avoid scrutiny on controversial issues in the RS.
4. Ultimately, it makes democracy only a 'head-counting exercise' instead of deliberative exercise.

Which steps are needed to check routing of Money Bills as non-Money Bills?

1. **Bipartisan panel for certifying Bills as Money Bills:** rather than just Speaker. It can be constituted from the representatives from both government and opposition.
2. **Parliamentary secretary** can recommend and scrutinize tagging of Money Bills.

Curbing the abuse of Money Bills can be an important step towards enhancing checks and balances on executive control. Discussion, debate and dissent are essential features of any democracy.

Notwithstanding the need to ensure continued government spending, Article 110 can be reconceived to reduce discretionary powers. This can ensure that money Bills are used for their correct purpose — to fund the government, not undermine the 'separation of powers'.

H56- Opposition in parliamentary democracy

Parliamentary democracy is characterized by a system of accountability of the ruling party and opposition performs a key role in ensuring that. Opposition plays a crucial role in preserving the true essence of the democracy and raising the issues of a larger number of people of the country. Today, however, India's parliamentary opposition is not merely fragmented but also in disarray.

Reviving and strengthening the parliamentary opposition of India becomes extremely important for the world's largest democracy, especially, when its global rankings, in various indices evaluating democracy, are declining.

What is the meaning of Opposition in Indian democracy?

- Opposition is a form of political opposition to a designated government, in a parliamentary system.
- The title of "Official Opposition" usually goes to the largest of the parties sitting in opposition with its leader being given the title "Leader of the Opposition".
- The entire gamut of non-ruling parties in the parliament is referred as opposition. Further, the leaders of largest non-ruling party are designated as Leader of Opposition to represent the collectivity, in both the houses of parliament.
- The Leader of the Opposition in the Rajya Sabha is the parliamentary chairperson of the largest political party in the Rajya Sabha that is not in government.
- The Leader of the Opposition in Lok Sabha is an elected Member of Lok Sabha who leads the official opposition in the Lower House. He/she is the parliamentary chairperson of the largest political party in the Lok Sabha that is not in government (provided that said political party has at least 10% of the seats in the Lok Sabha). The post is vacant since 26 May 2014, as no opposition party secured the mandate.

What is the significance of the role played by the Opposition?

- To ensure effective checks and balances: For example, the legislature is expected to check the functioning of the executive and the opposition helps the legislature in holding the executive accountable.
- The role of the opposition is to ensure that the government sticks to the constitutional provisions and walks on the path provided by the constitution.
- It provides critical inputs which might have escaped the ruling party's attention.
- It helps in making governance, laws inclusive of all sections of the society, and sees no section is discriminated against by the government.
- The presence of a vigilant Opposition is necessary not just for a vibrant democracy but for its very survival as without an effective Opposition, democracy will become dull and legislature will become submissive hence losing credibility and relevance in the long run.
- Thus, the significance of the opposition can be concluded with the statement of the Ramnarayan Singh in constituent assembly that said, "A government which does not like opposition and always wants to be in power is not a patriotic but a traitor government."

What are the challenges faced by the Opposition in India?

- The biggest challenge faced by the opposition today is **to make itself credible and relevant**.
- Current opposition is also failing to **feel the pulse of the people.**
- **Active hostilities from the government**: as highlighted by the CJI Ramana, there used to be "mutual respect" between the government and the Opposition earlier, but the Opposition space is now "diminishing" and government opposition relations ``translating into hostility". For example, the use of central agencies by the government against opposition leaders and parties.
- **Instead of adherence to the ideology,** opposition parties are getting united only on a singular agenda of anti BJPism, for example in Maharashtra - NCP, Congress joined hands with the shivsena. This reduces the credibility of the opposition.
- **Lack of adherence to high moral standards** for example opposition leaders are readily defecting to the ruling party.

- **Lack of matching leadership** which can provide the alternative vision and expose issues in the policy and implementation of the current government.
- The opposition parties are always stuck with **clustered forms of representativeness limited to some specific social groups** and are unable to extend this umbrella beyond a few identities.
- A key failure of the opposition in the past few years has also been **its failure to set the political agenda and persuade fence-sitters** to their side. This is reflected in its inability to corner the government on its numerous failures.
- **Weak numerical strength:** The post of leader of opposition in Lok Sabha is vacant since 26 May 2014, as no opposition party has 10% Seats as mandated.

What steps are required to strengthen the opposition?

- **Reviving Opposition:**
  - There is a need to revive and reconstitute parties in villages, blocks and districts as opposed to dictating from the top.
  - The opposition parties require a sustained perennial campaign and mobilization.
  - There is no shortcut or "artificial stimulus" that could build an effective opposition.
- **Strengthening the Role of the Opposition:** In order to strengthen the role of the opposition, the institution of 'Shadow Cabinet' can be formed in India.
  - Shadow cabinet is a unique institution of the British cabinet system formed by the opposition party to balance the ruling cabinet.
  - In such a system each action of a Cabinet Minister must be countersigned by the minister in the shadow cabinet.
- **Ensure Internal democracy**- with steps like regular elections to choose leaders and party affiliates so that merit gets due chance instead of dynasty
- **Increased connect with the masses**- to go for mobilization and acquaint the masses with respective party programmes.
- **Effective coordination and collaboration among opposition parties**: to ensure coordination on common issues, strategise on parliamentary procedures and above all, endeavor to represent the suppressed voices.

Engendering a parliamentary opposition that is the conscience of the nation is important for India to function as a true democracy, however here ruling party also need to understand that opposition is equal partner and not an enemy in nation building as it is the cooperative functioning of the government and the Opposition which will lead to a progressive democracy. After all, Project Democracy is a joint effort of all the stakeholders.

H57- Parliamentary Privileges

What are Parliamentary Privileges?

Parliamentary privileges are special rights, immunities, exceptions enjoyed by the members of the two houses of parliament and their committees. The concept of parliamentary privilege in the Constitution of India has been taken from the British Constitution.

Originally the constitution envisaged two types of privileges under the Article 105 of the Indian constitution. One is freedom of speech in Parliament and the right of publication of its proceedings.

Who enjoys Parliamentary Privileges?

Mainly, these privileges are enjoyed by the members of both the Houses of Parliament. Apart from this, 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.

It should be noted here that the President, even if he is part of Parliament, does not have parliamentary privileges.

What is the Constitutional provision related to Parliamentary privileges?

Article 105 and article 194 deal with Parliamentary privileges.

- Under Article 105 - it gives the members of parliament freedom of speech under clause (1) and provides under Article 105(2) that no member of parliament will be liable in any proceedings before any Court for anything said or any vote given by him in the Parliament or any committee thereof. Also, no person will be held liable for any publication of any report, paper, votes or proceedings if the publication is made by the parliament or any authority under it.
- The same provisions are stated under Article 194, in that members of the legislature of a state are referred to, instead of members of parliament.

Parliamentary privileges can be broadly divided into two categories;

Collective Privileges	Individual Privileges
• No person (either a member or outsider) can be arrested and no legal process (criminal or civil) can be initiated within the premises of the house without the permission of the presiding officer of the house. • No Court has the right to investigate proceedings of the House or any of its committees. • Parliament can exclude guests from its proceedings and in some cases of national interest it can also hold a secret meeting on any important matter. • Parliament can punish members as well as outsiders for breach of its privileges or its contempt by reprimand, admonition or imprisonment (also suspension or expulsion in case of members).	• When the Parliament is in session, a Member of Parliament or a privileged person may refuse to appear in court or to present any evidence in a court. • The members of Parliament can't be arrested during the session of the Parliament and 40 days before the beginning and 40 days after the end of the session. However, this privilege is available in civil cases only not in criminal cases. • No member is liable to any proceedings in any given court for anything said or any vote by him/her in the parliament or its committees.

What is the process of determination of breach of privilege?

- In case of breach of privilege or contempt of the house, the question is referred to the committee of privileges.
- The committee shall have the power to summon or give direction to call the members or strangers before it.
- Refusal to present in front of the house or to answer or knowingly give misleading statements

is itself considered as contempt of the house.

- The committee's recommendations are given to the house which discusses them and their conduct and regarding this give their decision.

What is the Significance/Need of Parliamentary Privileges?

- They secure the independence and effectiveness of the actions taken by Members of Parliament and their committees, thus enabling them to work without any favor or fear.
- The parliamentary privileges help maintain the dignity, authority and honor of the members of parliament.
- The parliamentary privileges help secure the members of the houses from any obstruction in their discharge of actions.
- The houses can deal with their respective issues internally without any interference of the statutory authority.
- It requires less personnel and less cost and hence results in faster and quicker decision making.

What are the Concerns/ Issues related to Parliamentary privileges?

- **They are often misused.**
  - Eg recently, Kerala government filed a plea to withdraw criminal cases against its MLAs who were charged in the assembly. The government claimed parliamentary privilege, arguing that the incident occurred inside the Assembly hall.
  - In P.V. Narsimha Rao v. State (JMM Bribery Case) Supreme court has held that the privilege of immunity from court's proceedings in Article 105 (2) extends even to bribes taken by the Members of Parliament for the purpose of voting in a particular manner in Parliament.
- Often **misused to stifle the voice of journalists and critics.**
  - The Speaker of Karnataka assembly had ordered the imprisonment of two journalists for a year.
- Thus, it **violates Article 19 (1)** of the constitution- freedom of speech and expression.
- It **allows politicians to become judges in their cause** and raises concerns of conflict of interest and violating basic fair trial guarantees. Thus, it goes against the principle of natural justice.
- The issue of Parliamentary privileges also **leads to the conflict between judiciary and legislature.** On one hand, Parliament claims absolute sovereignty in the matters of its privileges, while on the other hand, the Judiciary as a custodian of the Indian Constitution does not admit any restraint on its power of judicial review.
- The problem arises because parliamentary privileges are not codified. Therefore, the Parliament can always misuse a situation to its benefit by claiming privilege, where it should not be.

Whether Privileges should be codified?

The priviliges needds to be codified due to the reasons mentioned below:

- With more power the members of the parliament will become too arrogant and likely to abuse power.
- Codification will bring clarity on when to term any action as a breach of privilege thus reducing discretion of the legislature.
- Codification will also help accused as well as courts to resolve cases of arbitrary punishments by legislature.
- It will differentiate valid criticism from defamatory statements hence helps in enriching the quality of the legislative work.

How can privileges be codified?

- There is a need to codify the privileges and this can be done by the Supreme Court of India by laying down what amounts to a breach of parliamentary privilege.
- It can also be done by enacting legislation. For example, Australia enacted its Parliamentary Privileges Act in 1987.
- One other thing which can be done is subject parliamentary privileges to go through the Speaker of the House, instead of exercising them individually, on similar lines with New Zealand.

Conclusion

There is a need for codifying privileges. By giving primacy to a citizen's right to free speech over legislative privileges, legislators should remember the purpose behind these privileges and act within these limits. Any overstretching will not only result in loss of credibility but also will give the judiciary a reason to intervene.

H58- 'Parliamentary Sovereignty' v/s 'Judicial Supremacy'

The Executive, **Legislature and Judiciary are the three pillars** on which the effective functioning of the democracy rests. Despite the doctrine of separation of power, there is a **continuous power struggle among these organs for supremacy and primacy.** There come the concepts of 'Parliamentary Sovereignty' and 'Judicial Supremacy'.

What is 'Parliamentary Sovereignty'?

According to AV Dicey, Parliamentary Sovereignty is the Parliament's right to make / unmake any law while no person / body has the authority to override or set aside the legislation of Parliament.

1. The role of Judiciary is only confined to interpretation of statute.
2. Parliamentary Sovereignty, thus, can be summed up as "True is what the Parliament does that no authority on earth can undo"
3. Parliamentary sovereignty is a cornerstone of the UK constitution.

What do you mean by 'Judicial Supremacy'?

It means that the Judiciary remains superior body and its decisions will be deemed as binding on the other branches and levels of government, until constitutional amendment or subsequent decisions overrule them.

1. It reaffirms the idea that the Judiciary remains the final and authoritative interpreter of the Constitution.
2. The US Constitution confers explicit power of 'Judicial Review' on the US Supreme Court. Thus, US follows the idea of Judicial Supremacy.
3. In Indian Constitution, there is no explicit provision, but many articles, like Article 13, 32, 126, 142 etc., implicitly confer the power of Judicial Review on the Judiciary.

Whether India, like Britain, is a case of parliamentary sovereignty?

- **Yes - India partially follows the principle of 'Parliamentary sovereignty':**
  1. By passing a new law, Parliament can overturn the decisions of the Judiciary. E.g. overturning of Shah Bano Case judgement 1985, passage of SC & ST (Prevention of Atrocities) Amendment Act, 2018.
  2. Parliament is the sole authority which can increase the jurisdiction of the Supreme Court and High Courts. (under Article 138 and 230)
  3. Only Parliament can amend the Constitution (unlike in the USA where states can also amend the constitution).
- **No - India cannot be considered as a case of 'Parliamentary Sovereignty':**
  1. Indian Parliament works within the boundaries set by the Constitution and India adopted the American policy of Judicial review (Article 13).
  2. Further, the scope of judicial review was expanded in Maneka Gandhi case – 1978 - by adoption of the principle of 'due process of law'.
  3. The Indian constitution is a written document, unlike in UK, which limits the scope of Parliament's power.
  4. In India, there is a difference between statutory law & constitutional law. To amend the rigid features of the Constitution (under Article 368) requires special majority.
  5. Increased Judicial Activism has also limited the power of the Parliament.

Whether India can be considered as a case of Judicial Supremacy?

- **Yes - India partially follows the principle of 'Judicial Supremacy':**
  1. Over time, through its 'creative interpretation', Judiciary has acquired a superior position compared to the other organs of the state. E.g., the scope of 'Basic Structure' remains undefined and unlimited.
  2. Judiciary adopts an 'activist' approach enters into the Legislature and Executive domain - in dealing with matters under the garb of doing 'complete justice' under Article 142. E.g., Cases like 2G case, BCCI case, etc. (Sometimes called as 'Judicial Overreach').
  3. Appointment of Judges is done by the judiciary itself via collegium system and the President is made virtually bound by the recommendations of the collegium.
  4. The declaration 99th CA Act (passed with the 100% majority) as ultra vires to the

Constitution is a glaring example of Judicial Supremacy.

5. Doctrine of 'Basic Structure': In Kesavananda Bharati case, the imaginative interpretation by the Supreme court limited the constitutional amending power of the Parliament.

- **No - India cannot be considered as a case of 'Judicial Supremacy':**
  1. Executive has the discretion to accept or reject the recommendations of the collegium. E.g., names of 23 candidates recommended by various high court collegiums since 2018 and reiterated by the Collegium were pending with the government.
  2. Parliament can initiate the process to remove the judges of both the Supreme court and High court, other constitutional officials like the President, CAG etc.
  3. In case of River water disputes, Parliament (under Article 262) may by law provide that Judiciary shall not exercise jurisdiction in this respect.

In the sea-saw struggle of primacy, the framers of the Indian Constitution opted for a synthesis of Parliamentary sovereignty and Judicial supremacy. Eventually, India also opted for the doctrine of Checks & Balances, wherein each organ keeps a check on the excesses by another. Thus, the Indian system is balanced between the two extremes to ensure that 'We, the people of India' and the Constitution remains the sovereign.

H59- Rajya Sabha

The Rajya Sabha (RS), or the Council of States, is the Upper House of the Parliament reflecting its Bicameral nature. It is a Permanent House (never dissolved like LS), as elections take place at the start of every 3rd year for 1/3rd of the seats. The tenure of its members is 6 years (Tenure for LS: 5 years).

What is the origin of Bicameralism?

1. The US Constitution initiated Bicameralism as a feature in 1787. At present, globally 41% of the Parliaments are Bicameral.
2. Indian scenario:
   - Its origin can be traced to the Montague-Chelmsford report of 1918 and consequently, the Government of India Act 1919 provided for a second federal chamber of Parliament.
   - This year, RS completed 70 years of its existence since its establishment on April 3rd 1952.

What is the significance of RS?

As held by Montesquieu, checking one another by 'mutual privilege of rejection' is the basis of the doctrine of checks and balances.

1. **Maintains Federal equilibrium:** As RS represents the interest of states as a federal chamber.
2. Provides **developmental continuity** as RS is a permanent chamber.
3. Representation to **eminent professionals and experts** enriches the debate and helps in plugging loopholes of policy and laws.
4. RS **checks hasty, defective, ill-considered legislations** which are the outcome of passions of the lower house. (N Gopalaswami Ayyangar)
5. It **acts as a conduit between the states, people and Parliament**, furthering the principles of decentralization by lending an independent voice to the states.
6. **Promotes Participatory Democracy:** as 12 members are nominated for their contributions towards arts, literature, sciences, and social services.

Why is RS criticized as the 'Secondary Chamber', devoid of any utility?

1. **Professor Lal Saxena** in the Constituent Assembly, criticized RS as a "**clog in the wheel of progress**" - as it delays the process of law making. E.g.,
   - RS rejected 24th CA Bill 1970 related to abolition of privy purses,
   - RS delayed the passage of Prevention of corruption Bill 1987 etc.
2. **Limited Powers Related to Money Bills:** A Money Bill can be introduced only in the LS and not in RS; RS can't amend or reject a Money Bill. Sometimes, Ordinary bills are being passed in the form of a Money Bill, circumventing the scrutiny by RS.
3. RS MPs are **indirectly elected** by the state Assemblies (unlike LS MPs). Also, Political parties often use RS as the platform for electing their defeated candidates in the LS.
4. **A no-confidence motion cannot be introduced in RS;** RS has a limited role in the functioning of the Public Accounts Committee and has no part in the Estimates Committee.
5. **Other criticisms:**
   - **Declining productivity**: According to RS secretariat, Productivity till 1997 was 100 % and from 2015-19 it was just 61%.
   - **Issues with the Provision of Joint Sitting:** It is governed by the Rules of Procedure of LS. Due to larger strength, LS MPs have a natural advantage.
   - **RS loses its federal character:** as there is no requirement of domicile to contest for RS. This has affected the federal spirit for which RS was envisioned.

What are the achievements of RS?

1. The incorporation of suggested amendments to the Money Bills by RS. E.g., Union duty of excise distribution Bill 1957, Income tax Bill 1961 etc.
2. Passage of important Bills: like GST, Insolvency and Bankruptcy code, Triple talaq, Reorganization of Jammu and Kashmir etc.
3. Under Article 108, only three joint sittings are called since independence Dowry prohibition act 1961, Banking service commission act 1978, Prevention of terrorism act 2002.
4. According to 2020 Analysis by Rajya Sabha Secretariat, in 68 years, 4000 bills have been passed by RS in 5500 sittings.

Thus, it is not fair to criticize RS as a secondary chamber devoid of any utility.

Which steps that can be taken to make the functioning of the Rajya Sabha more effective?

1. Equal representation for each **state** represented in the RS, so that large states do not dominate the proceedings in the House.
2. According **to Vidhi Center for Legal Policy**, two key structural changes are necessary:
    - First, there ought to be a limitation that at least 50% of the members elected must be persons of eminence, not belonging to any political party.
    - RS can strike a careful balance between capable elected legislators and men & women of eminence from outside the political sphere.
    - Residency requirements of MPs, who are elected need to be strengthened such that persons are elected from states where they currently reside.
3. **Increase number of sittings**: The NCRWC recommended the minimum number of sittings for RS be fixed at 100.
4. Provide **adequate research staff** to Rajya Sabha members.

Rajya Sabha is neither a very weak house like the British House of Lords nor a very powerful house as the American Senate. Its position is somewhat mid-way between the two and if requisite reforms are undertaken then it can emerge as a significant body in socio-economic transformation of India.

H60- Legislative Councils

India has a bicameral system i.e., two Houses of the legislature. At the state level, the equivalent of the Lok Sabha is the Vidhan Sabha or Legislative Assembly and that of the Rajya Sabha is the Vidhan Parishad or Legislative Council. Legislative Council is a permanent body, which can be formed or abolished under the provisions of the Constitution of India. Article 169 provide for creation and abolition of legislative councils in states.

Why do we need legislative councils?

Legislative councils are important to formulate better and detailed discussed legislation in the states. The significance of these councils can be understood from following discussion,

- To check against the Hasty Legislation: A second House of legislature is considered important to act as a check on hasty actions by the popularly elected House.
- Prevent autocracy: Lower house can be guided by populist policies, emotive issues and can cater to the limited sections of the society, 2nd house can prevent such issues with debates and amendment suggestions.
- Accommodation of Talent: To allow leaders, professors, and other people who shy from elections to participate in legislative process. Experts from various fields like literature, art etc., who cannot-bear the costs of electioneering and campaign.
- Accommodation of Ideas: Nominated members such as graduates, teachers, outstanding persons in the fields of art, literature, science and social service, check-mate the radicalism of the lower House.
- Reduce workload of legislative assembly: Legislative council lessens the burden of the lower House and enables assembly to fully concentrate on measures of greater importance.
- Helps in finding talent and provide platform for them to evolve, for example, Rajnath Singh, Nitin Gadkari, Sadananda Gowda, Mulayam Singh Yadav etc. were earlier MLCs.

What is the criticism against the state legislative councils?

- **Not an Effective Check:** Powers of the Legislative Councils are limited and hardly impose any effective check on the Assemblies. Whether a Bill is approved by the Council or not, assembly can still go ahead after four months.
- **Backdoor Entry to the Defeated Members**: Legislative Council are utilized to accommodate discredited party-men who may not be returned to the Assemblies.
- **Expensive Institution**: It is expensive and a big drain on the State's exchequer.
- **Not providing talent and expertise:** for example, representing graduates in the house has outlived its utility, politicization in selecting nominated members etc.
- This house is **used to delay the laws** enacted by the popular house.

Second chambers in our States have proved to be ornamental which is a burden on public money. The members of the Legislative Council also owe allegiance to one party or the other and eventually act according to the dictates of a party to which they belong.

There is a need for changes in the election process of the state legislative councils, for example like Rajya Sabha where state legislative assemblies elect members, state legislative councils' members should be elected in the same way by local bodies-municipalities and gram panchayats. This will not only increase representation to the grass root level but also help in raising issues of local governance thus helping in democratic decentralization. If meaningful reforms are taken state legislative councils can emerge as a productive body and help in strengthening democracy at state level.

Difference between the state legislative councils and Rajya Sabha:

State legislative councils	Rajya Sabha
• The position of the council as compared to legislative assembly is much weaker than the position of the Rajya Sabha as compared to the Lok Sabha.	• The Rajya Sabha has equal powers with the Lok Sabha in all spheres except financial matters and with regard to the control over the Government.
• The councils consist of people from diverse backgrounds like graduates, teachers, outstanding persons in the fields of art, literature, science and social service and thus does not reflect the federal element of the polity.	• The Rajya Sabha consists of the representatives of the states and thus reflect the federal element of the polity.
• State legislative council doesn't have any special powers.	• Rajya Sabha enjoys certain special powers: o like in case of legislating on state subject resolution passed by the rajya Sabha is necessary(A249). o It can authorize parliament to create a new all India services(A312)
• At max council can delay ordinary bills for four months, thus council is not even a revising body but it is only an advisory body.	• Whereas Rajya Sabha is a revising body and it has equal powers with lok sabha in case of ordinary bills and constitutional amendment bills.
• Further councils are not permanent and its constitution depends upon the states. Many states don't have legislative councils.	• Rajya Sabha is a permanent and a continuous chamber where representatives are elected for the house.

H61- Parliamentary System

India has adopted a Parliamentary system on the lines of the British Westminster model.

What are the forms of Parliamentary democracies?

There are 2 forms of Parliamentary democracies:

1. **Westminster Model:** Some parliaments in this model are elected using "First Past the Post" system (E.g., Australia, Canada, India and the UK), while others using "Proportional representation" system, (E.g., Ireland and New Zealand).
2. **Western European Parliamentary Model:** Here, Proportional representation systems are used, where there is more of a tendency to use party list systems (E.g., Spain, Germany).

What is the Parliamentary form of Government?

The parliamentary system of government is based on a close relationship between the executive and legislature. The executive is accountable to the legislature.

1. Under it, there are dual Executives – nominal Executive / Head of state (President) and real Executive / Head of Government (PM).
2. It is the form of government where the Head of the Government (PM) is not elected directly by the people, but he is normally the leader of the majority party in Parliament.
3. He chooses his own Cabinet which again, normally should be out of Parliament only. It is also called a 'cabinet system' (Ivor Jennings) because the cabinet is the nucleus of power in a parliamentary system.
4. The Constitution of India provides for a parliamentary form of government, both at the Centre (Articles 74 and 75) and in the states (Articles 163 and 164).

What are the challenges faced by the Parliamentary form of Government?

1. 'Plebeianisation' of Parliament: It has created a system where a legislator is largely unqualified to legislate.
2. The legislature cannot truly hold the executive accountable since the government wields the majority in the House.
3. Political defections and horse-trading have defeated the purpose of elections and betrayed the popular mandate.
4. Our system has also produced unstable coalition governments which have to focus more on politics than on policy or performance. It has forced governments to concentrate more on staying in the office instead of governance.
5. Criminalization of the Parliament: As per 2019 ADR report, nearly 46% of 17th Lok Sabha faces various criminal charges.
6. Constant undermining of the Legislature by the Executive E.g., routing non-money bills as money bills, not referring legislations to the committees, increased use of ordinance etc.

How can a parliamentary form of government be made more effective?

Reform in the parliamentary form of government begins with Parliament. Therefore, in order to make the parliamentary system more effective and functional the following measures can be adopted:

1. Parliament can give MPs more teeth in questioning the government and empower its committees to become critical stakeholders in the law-making process.
2. To revive deliberation, the government should raise funding for Parliamentary research.
3. Strengthening the role of the opposition by institutionalizing the idea of shadow cabinet in India, like Britain. In order to revive debate and deliberations in Parliament, the use of whip can be restricted to no-confidence motion only.
4. A new Legislation Committee of Parliament to oversee and coordinate legislative planning should be constituted.
5. The Parliamentary privileges of legislators should be defined and delimited for the free and independent functioning of Parliament and state legislatures.
6. To check criminalization of politics, a greater number of fast-track courts must be established.
7. Strengthening intra-party democracy and improving representation to women in parliament.
8. Simultaneous elections can save public money, reduce the burden on administrative setup and security forces, and ensure timely implementation of the government policies.

9. Implementing recommendation of Sarkaria commission and 2nd ARC w.r.t to center – state relation.
10. British convention of independent (non-party) speakers should be implemented to ensure transparency and objectivity in the decision of the speaker.

Considering a diverse country like India, where nearly 40% of the people are still below poverty line and nearly 30% still illiterate, the consent of the governed can effectively be ensured through the Parliamentary form as it favors "responsibility and representation over stability".

James Madison, the chief architect of the US Constitution, once wrote, "If men were angels, no government would be necessary." A good system of government is needed precisely because politicians have a lust for power and people can be parochial. Thus, reforms in the Parliamentary form of government are needed to reduce these fragilities.

Democracy is vital for India, but we can't be proud of how it is practiced now. It is time we should seriously think of making relevant changes so that democracy is practiced in its substantive and true sense.

H62- Parliamentary System vs Presidential System

On the basis of the relations between the Executive and the legislature, two major systems of democratic government have developed - the Parliamentary System and the Presidential System. India has adopted a Parliamentary System on the lines of the British Westminster Model, in which the executive gains political legitimacy by commanding the support of the legislative, usually a parliament, to whom it is accountable.

What are the major differences between Parliamentary and Presidential Form of Governments?

Basis	Parliamentary / Cabinet / Responsible Form of Government	Presidential Form of Government
Meaning	Here, the legislative & the executive branch are intimately correlated and citizens elect representatives to the legislative body.	Here, the Executive, legislature and judiciary - all act independently of one another. The President serves as the chief executive and is directly chosen by the people.
Executive	It has a dual executive - Head of the state (President) and Head of government (PM)	it follows single executive - The head of the state and government is the same (President).
Ministers	Belong to the ruling party and are MPs.	Can be chosen from outside the legislature and are usually experts.
Accountability	Executive accountable to the Legislature	Executive not accountable to Legislature
Dissolution of the lower house	The President can dissolve the lower house.	The President cannot dissolve the lower house.
Tenure	The PM's tenure is not fixed and depends upon majority support in Parliament.	Fixed tenure for President
Separation of Power	No clear-cut separation of power	The strict Separation of powers is followed.
Party Discipline	Relatively stronger party discipline	Party discipline is comparatively less
Autocracy	Less autocratic	More autocratic
Followed by	India [This type of government at the Centre (Articles 74 and 75) and in the states (Articles 163 and 164)]	US

Should India shift to a Presidential form of government?

During the debates in Constitutent Assemblies, this question was argued in detail. Our Constitution draws inspiration from both American and British form of governments. Thus, many argued in favor of a presidential form of government.

- **Yes - India must shift to a Presidential form of government:**
  1. It provides greater accountability as it separates executive and legislative powers, making both work under real checks and balances.
  2. Its unique structural strengths promote stability in governments. E.g., direct election of executive officials.
  3. It is much less likely to be subverted by a dominant political party or a corrupt culture.
  4. It delivers a more robust democracy because it is direct elections.
  5. By its very design, it offers the best protection against centralization. E.g., the autocratic tendencies are being suppressed by the Congress. While the parliamentary system fuses both legislative and executive powers in the PMO.
  6. Ensures true representation: Any politician who aspires to be a national leader would be forced to win the support of people across the country, not just catering to only one geography or ethnic group at the cost of others. E.g., Hindi Heartland domination.
  7. High rates of defections in the parliamentary system: Instead of being answerable to the people, the leaders concentrate on keeping the elected representatives together. A group of representatives could quickly expel a popular CM (E.g., Punjab Assembly).

- **No – India should stick to the Parliamentary form of government**
  1. Considering the vast number of political parties in India and maturing stage of democracy, it is preferable to continue with the Parliamentary form.
  2. A shift to a presidential system will create legal issues as the Parliamentary system is a part of the 'basic structure' of the Constitution.
  3. It avoids deadlock and provides for fresh elections in case the legislature and executive are unable to resolve their differences.
  4. It is more decisive because since powers are fused, executive-legislative clashes are rare.
  5. India is unfamiliar with the presidential system, and it would take a great national effort to make such a switch. Moreover, the transition may not be smooth and could prove detrimental to the growth of the nation.

Every system, whether it is Presidential or Parliamentary has its own pros and cons. Every country is different in its structure, population and culture. It is important to identify the needs of the country. India being the diverse country, the parliamentary system has worked satisfactorily in India. India needs to "democratize democracy", without abandoning the present system.

H63- Coalition Government

India, as an 'experiment', has worked very well as a vibrant democratic system for around 75 years now. The political system, however, is bound to be dynamic before a new equilibrium is reached. Coalitions can be seen as a natural stage in the evolution of our democracy.

What is a Coalition Government?

1. The term 'coalition' is derived from the Latin word 'coalition' which means 'to grow together.
2. A coalition government is a form of government in which political parties cooperate to form a government by consensus.
3. India is not the first nation to form a coalition government; we find it even in England, France, Germany, Switzerland, etc.

What are the reasons for forming a coalition government?

1. **No single political party** is able to secure a working majority in the Legislature. Thus, like-minded political parties form a coalition to run the government.
2. **Deadlock in a bi-party system** may be created - leading to one of the two parties allying itself with a minor group to tilt the majority in its favor.
3. **National crisis:** When various political groups collaborate to protect and promote national interests. E.g., British coalition government during the 1st World War.
4. Political parties may enter pre-election coalitional arrangements **for vote-pooling and resource-pooling incentives.**
5. Post-election coalitions to share the spoils of power if it brings them to office or **to safeguard their base from being poached** if they are sitting on opposition benches.

Discuss the emergence of a coalition governments in India?

1. With the breaking of 'Nehruvian consensus' during the 1960s began the era of Coalition Politics.
2. After 1967, there emerged a multi-party system - indicating a significant shift from centralized governance towards federal governance.
3. Though coalitions in India existed earlier too, but first-ever coalition government at the national level was formed under PM Morarji Desai (1977-79).
4. 1990s-2014: Coalition politics became a regular feature at the national level.
5. Since 2014, India gave rise to a single party majority at national level. However, coalition governments continue to exist there too and also at state level.

What are the features of the Coalition Government in India?

- India has witnessed 'Ideological coalitions' (discussed below)
- India has also seen 'Coalitions of convenience'. E.g., the 1st coalition government was a 'coalition of convenience' (Aim: to remove Indira Gandhi).
- A coalition government, especially post-poll alliance, is generally based on an agreement or 'Common Minimum Program'. E.g., NDA-I alliance under PM AB Vajpayee; BJP-PDP alliance in J&K.

What are the merits of a coalition government?

- It promotes consensus-based politics, leading to inclusive policy making and development.
- They are more representative in nature and reflects the popular opinion of the electorate, especially in a highly diversified country like India.
- It strengthens the federal fabric of the political system as it is more sensitive and responsive to regional demands.
- Prevents authoritative tendencies and centralization of power in a few hands.

What are the different phases of Coalition Government?

1. **Pre-Election Coalition / Ideological coalitions:**
   a. It fosters better understanding and proper seat distribution between the political parties to provide a joint manifesto to covey its agenda to the voters.
   b. E.g., the Left Front experiment in West Bengal, Kerala etc.). These are more homogenous and likely to succeed.
2. **Post-Election Alliance / Coalitions of convenience:**
   a. Here, understanding between the parties occurs only after elections are done with the

general election. It is a union to share political power and run the government.

b. They do not have coherent policy and can be internally divisive. E.g., the recent Maharashtra coalition of NCP, Congress and Shiv Sena.

What is the impact of Coalition Government on Centre-State Relations?

Coalition governments at the center have improved the federal axis and hence reduced center state conflicts.

1. **Office of Governor**: is exposed to vulnerabilities of the political pressures. E.g., appointment of Governors to satisfy the coalition partner from the state.
2. **Instances of President's rule have come down** during the era of coalition governments at the Centre.
3. With the emergence of regional parties, the **demand for state autonomy has increased => empowering state governments** to focus on the development of their own region.
4. It **promotes the bargaining tendencies between Centre and states.** The outlook changed from confrontationist to co-operative in respect of Centre-State relations.

What are the issues associated with the coalition governments?

- They are prone to instability and the differences can lead to the collapse of the government.
- Due to coalition, the status of PM is reduced to a manager, rather than the leader of the Council of Ministers.
- The Steering Committee of the coalition acts as the 'Super-Cabinet' => undermining the position of the actual cabinet.
- Sometimes, smaller constituents punch above their weight to play the role of a 'king-maker'.
- Difficult to place responsibility and accountability: thereby escaping collective and individual responsibilities.
- The regional parties at the center attempt to affect the overall agenda of the government. E.g., PM Manmohan Singh could not visit Sri Lanka to attend the summit of Commonwealth countries due to opposition from a coalition partner.
- It often results in 'policy paralysis' as most of the energy of the government goes into saving the government, instead of focusing on governance.
- To forge a consensus, the leaders of ruling coalition parties silence their disagreements on an issue which becomes counter-productive in policy making.

What can be the suggestions for improving the performance of the Coalitions?

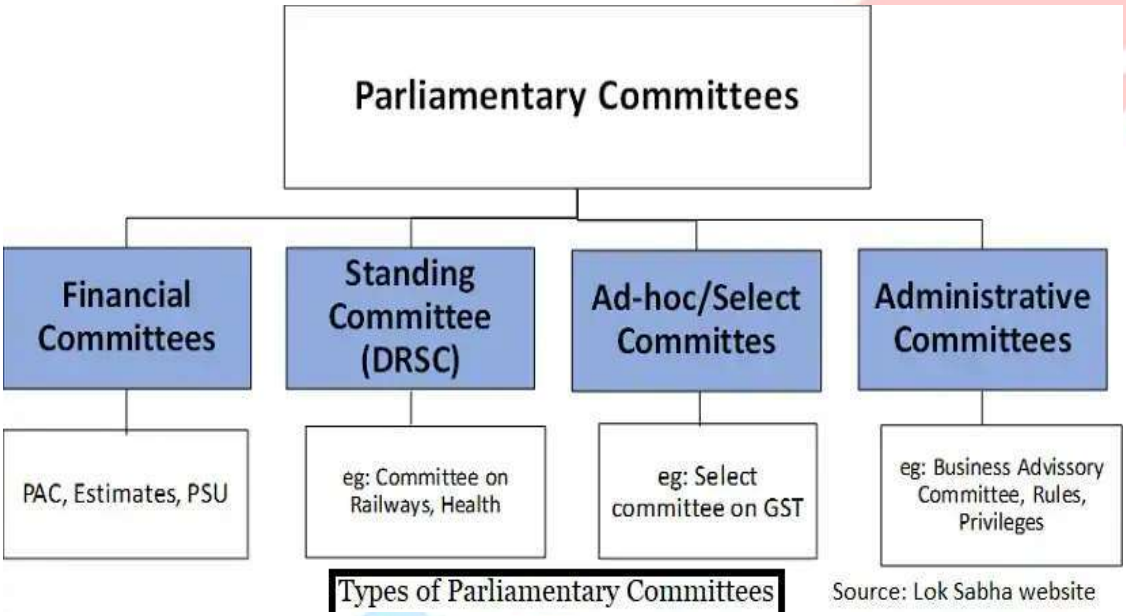
- For a healthy coalitional democracy, pre-poll alliance(s) should be considered keeping in mind the common goals, policies and programmes.
- The 2nd ARC's broad base programme must be adopted so that Socio- economic development of the country is met.
- Post-poll alliance(s) are more opportunistic in nature. However, each party should stick to a 'common minimum programme'.
- Parties in coalition should strictly avoid comments on each other in public and instead deal with any issue only through officially appointed spokespersons to avoid disputes and consequent destabilization.

Coalition governments might be a step towards a bi-party system in India. It assumes high importance, especially in India, which has multiple political parties and countless diversity. However, necessary understanding between coalition partners and above-mentioned reforms are needed to avoid demerits of the coalition governments and to make them reliable.

H64- Parliamentary Committees

The functions of Parliament are varied, complex and voluminous. Parliament, inter alia, effectively deliberate the issues that come up before it. However, it has neither the adequate time nor necessary expertise to make a detailed scrutiny of all legislative measures and other matters. Therefore, it is assisted by a number of committees in the discharge of its duties.

What are the various types of Parliamentary committees?



Types of Parliamentary Committees Source: Lok Sabha website

What is the significance of Parliamentary committees?

- Can ensure detailed scrutiny:
  - As committee meetings are 'closed door' and members are not bound by party whips, the parliamentary committee works on the ethos of debate and discussions.
  - Parliamentary committees are not bound by populistic demands that generally act as a hindrance in the working of Parliament.
- **Effective check on the Executive:**
  - Committee reports are usually exhaustive and provide authentic information on matters related to governance.
  - They ensure economy and efficiency in public expenditure. E.g., PAC brings to notice cases of waste, loss, corruption, extravagance and inefficiency.
  - The estimate committee ensures 'Demands for grants' are not exaggerated.
- They provide opportunities for all MPs to participate and understand the functioning of the government and contribute to it. They can avail themselves of expert opinion or public opinion to make the reports.
- They are also used as a forum for consensus-building among parties and smooth inter-ministerial Coordination.

What are the limitations of parliamentary committees?

- The recommendations of these committees are advisory in nature and hence not binding on Parliament.
- Non-discussion of committee reports: The reports of the committees are not taken up for discussion in Parliament except for references in certain debates on bills.
- There are no specified criteria for referring bills to the standing committees and hence their constitution and referrals of bills depend entirely at the discretion of the chair.
- Non-referral of significant and controversial bills:
  - For example, Jammu and Kashmir reorganization act, three farm bills, labour code bills etc.

- According to data by PRS Legislative Research:

Lok sabha	14th Lok Sabha	15th Lok Sabha	16th Lok Sabha
Bills referred to DRSCs	60%	71%	27%

- Their functioning is also affected by the low attendance of MPs at meetings and the constitution of DRSCs for a very short duration. E.g., 1-year leaves very little time for specializations.
- Increasing partisanship, curtailing deliberation:
  - E.g., discussion by a standing committee on demonetization was not agreed to be taken up by MPs of the ruling government.
  - Two members of the standing committee on Information Technology filed privilege motions against each other.

What steps can be taken to improve the functioning of the Parliamentary committees?

- Mandatory referral of bills to standing committees: like in Britain, where every bill is referred to parliamentary committees.
- The minimum tenure of DRSCs to be increased to 30 months.
- Clear guidelines mentioning minimum % as mandatory attendance for a member to continue as a member.
- Where there is significant disagreement between the committee and government - a mandatory discussion should be held in parliament on the report of the standing committee.
- As held by the National Commission to Review the Working of the Constitution (NCRWC), DRSCs should be periodically reviewed so that the committees which have outlived their utility can be replaced with new ones.
- Institutional research support: will allow committees to serve as expert bodies to examine complex policy issues.
- The NCRWC argues for a case for establishing the Standing Committee on Economy providing space for deliberations on economic policies and its implementation separately.
- Some best practices which can be adopted:
  - Like in Britain, the committees interact on certain overlapping subjects. Committees related to Defence, foreign affairs, international development, and trade & industry form the Quadripartite Committee which examines government's arms export licenses.
  - In several countries, the concerned minister appears before the committee to elaborate and defend the government's policies. In India, ministers don't appear before the committees.

As the VP K R Narayanan said, the main purpose of establishing parliamentary committees is to ensure the accountability of Government to Parliament through more detailed consideration of measures in these committees. Thus, strengthening the committee system can go a long way in improving the quality of laws drafted and minimize potential implementation challenges.

H65- The Executives

What is the meaning of executives?

Legislature, executive and judiciary are the three organs of government. Together, they perform various functions of the government. Executive is that organ of government which primarily looks after the function of implementation and administration. It is also involved with policy making.

Executives are divided: Union level executives and the state level executives.

What is the difference between Political and Permanent Executives?

Political/Temporary Executives	Permanent Executives
1. Executives who are elected by the people for a specific period are called the political executives.	1. The permanent executives are civil servants who are appointed by the government at various levels on a long-term basis.
2. Example-Political leaders like the Prime Minister, Council of Ministers and so on.	2. Persons working in civil services. For example - IAS, IFS, IPS etc.
3. They remain in office only so long as they command the confidence of the majority members of Parliament.	3. They remain in office even when the ruling party changes. Their tenure of office is fixed.
4. They are answerable to people for all the consequences of their decisions.	4. They are not answerable to the people.
5. They are more powerful. They take all the final decisions.	5. They are less powerful compared to temporary executives. They do not take decisions independent of political executives. They assist political executives in carrying out day-to-day administration.

What is the meaning of Executive Accountability?

- One of the significant features of Parliamentary democracy is the doctrine of checks and balances to ensure no organ of the government concentrates power in its own hand and misuses it. Executive accountability is thus a part of the doctrine of checks and balances.
- The executive is accountable to the legislature for all its actions involving the implementation of laws or policies.

What are the instruments the legislature uses to ensure executive accountability?

- The Parliamentary debates- Question hour, zero hour, calling attention motion etc. on policies.
- Amendments procedures, by which the legislature checks provisions of the draft policy or laws and sometimes amend if necessary.
- The control of the legislature over the spending of government monies, through various committees set up for this purpose. E.g. Public Accounts Committee, Estimates Committee, etc.
- Parliament's control over taxes, which cannot be imposed without the consent of the parliament. For example, the executive cannot withdraw money without the passage of the Appropriation bill.
- Various motions like no confidence motion by which COMs can be removed, privilege motion, censure motion, cut motions etc.
- Discussion of various reports submitted by constitutional and statutory bodies like CAG, UPSC etc.
- Removal of people appointed by the executive for example, Judges of Supreme court and High court.

What are the issues involved in ensuring accountability of the Executive?

- Use of Ordinance route by the executive to bypass the scrutiny of legislature.
- Since the political executive enjoys a majority in parliament, the parliament is unable to enforce the Executive's accountability in real sense.

- Moreover, by determining the agenda of parliament, the Executive effectively controls the legislature.
- Political partisanship in parliamentary committees means that they could not scrutinize the functioning of the executive the way they are expected to do.
- Anti-defection act, as this act negated individual members' initiatives and binded them to their political party.
- Partisan role performed by the speaker of the Lok sabha for example there are instances where ordinary bills are passed by the executive as money bills hence bypassing scrutiny of Rajya Sabha.
- Live telecasting of parliamentary proceedings- this has increased disruptions and emotive drama instead of quality debate.
- Criminalisation of Politics, has increased the nexus of criminal elements in politics
- All these developments mean that the spirit of separation of power is being undermined.

Conclusion

For an effective, efficient and responsive government, a system of checks and balances is pre-requisite and as the executive is involved in the crucial functions like policy formulation, implementation, use of people's money etc., it becomes much more important to arm legislature with proper reforms so that effective accountability of the executive is ensured.

H66- President's Election Process in India

Electoral College

- Elected members of the Upper and Lower Houses of Parliament
- Elected members of the Legislative Assemblies of States and UTs having assembly.

Number of Electors are 4896 = 543 LS MPs + 233 RS MPs + 4120 MLAs of States and UTs

Calculation of vote of MPs and MLAs

- Fixed value of each vote by an MP (LS or RS) = Total value of votes of all MLAs of all states/Total no. of elected MPs= 708
- Value of each MLA differs from state to state depending on population
- Value of each MLAs vote = Population of the State/no. of MLAs, the quotient is further divided by 1000
- Example: UP's population (in 1971) = 83,848,797, No. of MLAs = 403
- 83,848,797/403 = 208,061 208,061/1000 = 208 = Value of each vote in UP
- Similarly, in Maharashtra it is 175 and in Arunanchal Pradesh it is just 8.

Total value of vote of each Legislative Assembly = Vote value of each MLA *No. of MLAs

E.g. UP = 403*208 = 83,848

Total votes of all MLAs = 5,49,495

Nomination process

Candidate files the nomination along with signed list of 50 proposers and 50 seconders. The proposers and seconders can be any one from the electoral college.

Victory vote

A nominated candidate does not secure victory based on a simple majority but through a system of bagging specific quota of votes.

Victory vote = 50 % of the total votes cast

What is the principle of election used in the President's election?

Proportional Representation with means of a single transferable vote

How does voting take place in the election of Indian President?

It is a secret ballot system of voting

What is a quota of votes in President's elections?

Electoral Quota = [Total number of valid votes polled / (1+1 =2)] + 1

What is the procedure of counting in a Presidential election?

- In accordance with the system of proportional representation by means of single transferable vote, every elector can mark as many preferences, as there are candidates contesting the election. These preferences for the candidates are to be marked by the elector, by placing the figures 1,2,3, 4, 5 and so on, against the names of the candidates, in the order of preference.
- The value of votes which each contesting candidate gets is ascertained by multiplying the

number of ballot papers on which the first preference is marked for him, by the value of vote which each ballot paper of a member (MP or MLA) represents as indicated on the ballot paper itself.

The total votes secured by each contesting candidate are then ascertained by adding together the value of votes secured by him from the Members of Parliament and the Members of the State Legislative Assemblies. This is the first round of counting.

How is the quota of votes to be secured by the winning candidate determined?

- For ascertaining the quota sufficient to secure the return of a candidate, the value of votes credited to each contesting candidate in the first round of counting is added up to determine the total value of valid votes polled at the election. Such total value of valid votes is then divided by two, and one is added to the quotient so obtained, ignoring the remainder, if any. The number so determined, is the quota, which a candidate should secure to be declared elected.
- If the total value of the votes credited to any candidate at the first count, is equal to, or greater than, the quota sufficient to secure the return of a candidate, that candidate is declared elected by the Returning Officer.

If, however, after the first round of counting, no candidate secures the requisite quota, then the counting proceeds on the basis of a process of elimination and exclusion, whereby the candidate credited with the lowest number of votes is excluded and all his ballot papers are distributed among the remaining (continuing) candidates on the basis of the second preferences marked, if any, thereon.

H67- Ordinance Making Power of the President

Article 123 of the Constitution empowers the President to promulgate ordinances during the recess of Parliament. These ordinances have the same force and effect as an act of Parliament, but are in the nature of temporary laws.

- Purpose - It has been vested in him to deal with unforeseen or urgent matters.

What is the arguments for the Justification of Ordinance making?

Dr BR Ambedkar said in the Constituent Assembly that the mechanism of issuing an ordinance has been devised in order to enable the Executive to deal with a situation that may suddenly and immediately arise when the Parliament is not in session.

What are Supreme Court`s views on promulgation of ordinance?

- **DC Wadhwa case (1987)** – "The power to promulgate an Ordinance is essentially a power to be used to meet an extraordinary situation and it cannot be allowed to be "perverted to serve political ends. Though it is contrary to democratic norm for an executive to make a law, this power is given to the President to meet emergencies so it should be limited at some point of time."
- **Cooper case (1970)** - The Supreme Court held that the President's satisfaction can be questioned in a court on the ground of malafide, for instance, to bypass the parliamentary decision and thereby circumvent the authority of Parliament.

What is the trend in use of Ordinance Route?

- During the first thirty years of our parliamentary democracy, there was one ordinance promulgated for every ten bills introduced in Parliament.
- In the 30 years that followed, the ratio was two ordinances for every 10 Bills. In the sixteenth Lok Sabha (2014-19), it jumped to 3.5 ordinances for every ten bills. In the current Lok Sabha session, it is, so far, 3.3 ordinances to every 10 Bills.
- In the 1950s, central ordinances were issued at an average of 7.1 per year. However, the number peaked in the 1990s at 19.6 per year. The last couple of years has also seen a high spike in ordinance promulgation (16 in 2019, 15 in 2020).

Recent Ordinances:

- **Land Acquisition Act:** ordinance was issued in December 2014 and promulgated twice in 2015.
- **Commission for Air Quality Management in NCR** and Adjoining Areas: In 2020 and 2021 it was promulgated twice and finally withdrawn.
- **Three Farm Laws 2020** brought via ordinance route.

What are the issues with promulgation and re-promulgation of ordinances?

- Undermines Parliament: The Supreme Court in the Krishna Kumar (2017) case said that "re-promulgation of ordinances is constitutionally impermissible since it represents an effort to overreach the legislative body which is a primary source of law-making authority in a parliamentary democracy".
- Violates Separation of Power: Law making authority is the function of the legislature. But through ordinance route the Executive makes the law.
- Lack of due deliberation before passage of acts via ordinance can lead to confrontation with stakeholders: for example, in the case of Farm Laws, the government bypassed the Parliament by bringing ordinance. When the parliament took it up for discussion, barely any debate took place. Finally, the government has to withdraw these three laws in the face of farmer agitation. Had parliament discussed it in depth covering all the issues involved, it would have carried more legitimacy in the eyes of people.
- The Supreme Court in the Krishna Kumar (2017) held that re-promulgation of ordinances without any attempt to pass it in the Parliament or State Legislature is a fraud on the Constitution and a subversion of democratic legislative processes.
- Repeated promulgation without any attempt to pass leads to centralization of power.

Way Forward:

- Ordinance routes should be opted only in exceptional circumstances and not to bypass the scrutiny or political opposition. For instance, in the case of Farm Laws, there was no hurry and the government could have brought this bill before parliament first.
- Bring ordinances only where a larger political consensus is visible.

- Make it mandatory for the government to mention reasons to bring ordinance during the ordinance itself instead of the government providing reasons at the time of its introduction in the Parliament for passage.

Conclusion

Indian Constitution has provided for the separation of power among the legislature, executive and judiciary where enacting laws is the function of the legislature. The executive must show restraint and should use ordinance making power only in unforeseen or urgent matters and not to evade legislative scrutiny and debates.

H68- Vice President

India, recently, elected Jagdeep Dhankhar as the new Vice President (VP) of India. The post of VP of India is modeled on the lines of the American VP. However, the office of Indian VP has no exact parallel in the countries of other democratic constitutions of the world.

In India, the office of VP occupies the 2nd highest office in the official warrant of precedence, next to the President. He is the ex-officio Chairman of the Rajya Sabha. Article 63 to Article 71 of the Indian Constitution deals with the election, qualification, and removal of Vice Presidents of India.

What is the relevance of the Office of VP in Indian Polity?

- It ensures much needed administrative continuity in case of vacancy or absence of the office of the President.
- He would preside over the Upper House and act as President in certain contingencies. Thus, the VP has been clothed with a dual capacity.
- Addressing disruptions: by calling an all-party meeting. E.g., the productivity of the House improved by 79% after an all-party meeting during the Winter Session of 2015
- Introduce reforms to improve the efficiency of the conduct of business in the Rajya Sabha. E.g., the question hour was shifted from 12 noon to 1 pm to address the issue of low productivity at the start of the day.

Thus, the office of the VP is of great significance and an able VP with his administrative experience can tackle emerging challenges of the decline of Parliament. Thus, enabling Rajya Sabha to function as a second house, rather than the 'secondary house', and aid in socio economic development of India.

H69- Governor

Articles 153 to 167 in Part VI of the Constitution deal with the state executive. The state executive consists of the governor, the chief minister, the council of ministers and the advocate general of the state.

The governor is the **chief executive head of the state.** But, like the president, he is a nominal executive head (titular or constitutional head). The governor also acts as an agent of the central government. Therefore, the office of governor has a dual role.

Should the office of Governor be abolished?

- **Arguments for: The office should be abolished:**

1. As it **undermines the essence of federalism;** since governors are appointed by the President (in a sense the Union government) it leads to centralization of power.
2. Office of governor has **become highly politicised.**
3. **Misuse of discretionary power:** Governor's discretionary powers to invite the leader of the largest party/alliance, post-election, to form the government has often been misused to favor a particular political party. E.g., Goa 2019, Maharashtra 2019 etc.
4. **The Governor is acting as an agent of the center**: The Governor is being criticized for being a puppet of the central government rather than being the constitutional head of state.
    - **Misuse of Article 356**: As a discretionary power, the Governor needs to submit a report to advise the President to proclaim emergency in case of constitutional breakdown. E.g., Arunachal Pradesh case 2016.
    - **Power of Reserving bill (Article 201):** Constitution provides that Governor can reserve the bill for consideration of President.
    - **Arbitrary Removal of Governors:** There have been instances of removal of governors in States with Government change at the centre. Thus governors most of the time due to fear of removal favour political parties in centre and work as agents for them.

- **Arguments against: The office should not be abolished:**

1. According to the Punchhi Commission, the importance of Governor hasn't declined, rather it has increased because there has been growth in internal security threats like communal violence.
2. Moreover, the governor has certain special responsibilities to discharge, according to the directions issued by the President. E.g., In the establishment of separate development boards in the state of Maharashtra, Gujarat, with respect to law and order in Nagaland, Arunachal Pradesh, etc.
3. The office acts as a vital link between the Centre and the States and is crucial for the smooth functioning of democracy.
4. Maintenance of national interests and integrity advocates central supervision for which the governor is required.

What are the reasons behind the tussle between the governor and state governments?

1. **Political appointees:** Although the Constituent Assembly envisaged the governor to be apolitical, but the truth is, politicians become Governors and then resign to fight elections.
2. The state government is neither consulted nor taken into confidence in appointing the Governor.
3. **Answerability:** The CM is answerable to the people. But the Governor is answerable to no one, except the Centre. This is the fundamental defect in the Constitution.
4. **No Impeachment provisions:** There is no provision for impeaching the Governor. While the Governor has a 5-year tenure, he can remain in office only until the pleasure of the President.
5. **No guidelines related to discretionary powers:** There are no guidelines for the exercise of the Governor's discretionary powers, there is no limit set for how long a Governor can withhold assent to a Bill.

What steps are required to avoid issues experienced with the Governor's office?

1. **Bipartisan panel for selection of Governors:** It may contain members of the opposition, ruling party, civil society and the judiciary in the selection process.

2. An agreed **'Code of Conduct'** approved by the state governments, the central government, the parliament, and the state legislatures should be evolved with respect to functioning of the office of Governor.
3. **Sarkaria Commission Recommendations: (1988)**
   - **On appointment:**
     - The governor should be an eminent person and not belong to the state where he is to be posted.
     - The state chief minister should have a say in the appointment of the governor.
     - Governors should be detached figures without intense political links or should not have taken part in politics in the recent past.
     - Governor should not be a member of the ruling party.
   - **On Removal:**
     - Governors must not be removed before completion of their five-year tenure, except in rare and compelling circumstances
     - Governor should appoint CM based on following principles:
       - Leader of the majority party or parties,
       - Should seek the vote of confidence in the assembly within 30 days of his appointment as the CM.
       - As long as the council of ministry possess a majority in the assembly the governor cannot use his discretionary powers.
   - **Article 356:**
     - It should be used in very rare cases when it becomes unavoidable to restore the breakdown of constitutional machinery in the State.
     - Before taking action under Art. 356, a warning should be issued to the state government that it is not functioning according to the constitution.
4. Abide strictly to **Supreme Court Judgements:**
   - **Bommai vs. Union of India, 1994:**
     - Cases of proper and improper use for applying A356.
     - The floor of the Assembly is the only forum that should test the majority of the government of the day, and not the subjective opinion of the Governor.
   - **Nabam rebia case- Arunachal Pradesh, 2016:**
     - The Governor is only an executive nominee whose powers flow from the aid and advice of the Cabinet.
     - Governors can't unilaterally summon the Assembly or send messages.
     - Governor is not ombudsmen of Legislature, nor are mentor of Speaker and what happens within four walls of political party not the concerns of Governor.
     - The Governor to keep itself away from horse trading, manipulation as the Governor was not the conscience-keeper of the Legislative Assembly and he had to stay away from the business of the Assembly.

The role of the governor is indispensable for the successful working of constitutional democracy. As held by the Supreme Court, in **Hargovind Vs Raghukul Tilak Case (1979)**, the office of Governor is an independent constitutional office of dignity, which is not subject to the control of the Union government.

Thus, **his loyalty must be to the constitution and to none else** and his commitment to the well-being of the people of his state and not the party ruling in the Centre. Thus, the Governor's choice of action should not be arbitrary or fanciful. It must be a choice dictated by reason, actuated by good faith and tempered by caution.4

In **Chief Justice of India, Justice Khehar's** words, unelected Governors were never envisaged as wielding significant powers related to State administration, but merely as a 'safety valve' in case of Constitutional breakdown.

H70- Comparative analysis - Governor vs President

In India, the President and Governor are considered to be the titular head of the state under Central and state, respectively. All executive decisions are taken in the name of President and Governor in Parliament and State legislature respectively. The Governor is appointed by the President, by warrant under his hand and seal, under Article 153 of the Indian Constitution.

Like the President, the office of Governor has been made just a nominal official. The real official comprises the council of ministers headed by the PM at Centre and CM at state. But there are certain differences with respect to the functions and power of two constitutional authorities.

How does the constitutional position of Governor differ from the President?

Comparison	President	Governor
Appointment	• Indirectly elected by an electoral college comprising both houses of the Parliament of India and the legislative assemblies	• Nominated by President; representative of union in states.
Advice of Council of Ministers	• Binding (42nd amendment), can return the advice once (44th amendment)	• Binding, save for exceptional circumstances (various supreme court judgements)
Constitution amendment bill	• Has to give his assent (24th amendment)	• He has no role regarding the Constitutional amendment bill.
Ordinary Bills	• According to Article 111 of Indian Constitution President has 3 alternatives: Give assent; Withhold assent; Return 1 time.	• Under article 200, the governor has 3 options- Give assent; Withhold; Return 1 time. • Further, under article 201, the Governor can reserve the bill for the President's consideration.
Money Bills	• Assent or withhold, cannot return (For Parliament & State Legislature)	• Assent or withhold, and reserve for the President's consideration.
Clemency power	• Can pardon death sentence and court martial sentences.	• Can't pardon death sentence, no role in military matters.
Nominations	• The President nominates 12 members in Rajya Sabha.	• The governor nominates 1/6th members of the State Legislative Council, wherever bicameral legislatures exist in states.

What is the difference between the discretionary powers of the President and the discretionary powers of the Governor?

Discretionary power	President	Governor

Constitutional discretion	The President doesn't have any constitutional discretion.	• Given under Article 163 of the constitution. • Reserving a Bill passed by the Legislative Assembly for the consideration of the President; (under Article 201) • Recommending President's Rule in the State; • Certain functions with respect to Schedule VI States (Assam, Meghalaya, Tripura, Mizoram); • Seeking information from the Chief Minister on legislative and administrative matters; • When he is given an additional charge as the administrator of the Union Territory, he can take actions at his own discretion. • What constitutes discretion of the governor is also the discretion of the governor.
Situational discretion	• In case of the appointment of PM when no party secures clear majority. Also, when the PM dies in office and no successor is available. • Dismissal of CoMs- when it cannot prove the confidence of the House of People. • Dissolution of House of People, if CoMs lost Majority.	• Appointing the CM, when no party has a clear majority; • Dismissal of CoMs when unable to prove confidence of the Legislative Assembly; • Dissolution of Assembly when the CoMs loses majority.

Both constitutional positions are important in the smooth functioning of democracy. The Indian President is the first citizen of India and a vital part of the union executive whereas the Governor is the linchpin of the constitutional apparatus of the state.

H71- PRIME MINISTER

"The Government is the master of the country and he (Prime Minister) is the master of the Government." H.R.G. Greaves

In a parliamentary form of government like in India, the President is the nominal executive authority (de jure executive) and Prime Minister is the real executive authority (de facto executive). The President is the head of the State while the Prime Minister is the head of the government.

Why is PM considered a keystone of the Constitution?

The PM is described by Ramsay Muir as the "steerman of the steering wheel of the ship of the state". If a Prime Minister resigns, the entire Council goes with him or her. The Prime Minister's special position is that of the first among equals.

Prime Minister is considered as the keystone of the constitution because of the following reasons:

- **Head of the Government:**
  a. Though the President is the head of the state, the Prime Minister is the head of the government. All the decisions are taken in the name of the President but with the aid and advice of the Prime Minister and council of ministers.
- **Head of the Cabinet:**
  a. He selects other ministers and also advises the President to dismiss any of them individually or require any one of them to resign. Ministers hold office during the pleasure of the Prime Minister.
  b. He decides on various portfolios to be allocated to various ministers. He has authority to transfer one minister from one department to another.
  c. As a chairperson of the Cabinet, he summons its meetings and presides over them. He can impose his decision if there is a crucial opinion difference among the members.
  d. His resignation or death dissolves the whole Cabinet. However, in the cases of a minister such happenings only create a vacancy.
  e. He is the link between the President and the Cabinet. All communications relating to policy decisions are made only through the Prime Minister.
- **De - Facto Chief of Defence:**
  a. Though the Chief of the Defence Forces is the President of India, the real power lies in the Prime Minister. The National Security Council which takes all the important decisions related to the Defence and Security of the nation advises the PM.
- **Master of Economic Affairs:**
  a. Cabinet Committee on Economic Affairs is the crown to take the final decisions related to the Economic affairs of the country. The Prime Minister serves as the chairman of this committee.
- **Architect of Foreign Policy:**
  a. Foreign Policy of India is the reflection of the personality of the Prime Minister in Office. Foreign Policy evolves and changes with the change in the Prime Minister.
- He ensures supervision and coordination over all other departments of the Centre government.
- **Chairman of various bodies:**
  a. He is the head of the Nuclear Command Authority, NITI Aayog, Appointments Committee of the Cabinet, Department of Atomic Energy, Department of Space and Ministry of Personnel, Public Grievances and Pensions.
- **Leader of the Parliament:**
  a. He is the leader of the parliamentary party where the party commands majority in the Lok Sabha.

Thus, with the above role and responsibility he is the primary person on whose command constitution gets implemented in letter and spirit. Thus, for these reasons, Sir Ivor Jennings said "PM is, rather, a sun around which planets revolve. He is the key-stone of the constitution". "All roads in the constitution lead to the Prime Minister."

How coalition politics impacted the institution of the PM?

In a parliamentary democracy, coalitions arise mainly as a result of political compulsion. The political factors responsible for formation, shape, politics, continuation, dissolution, success and failures etc. of coalition government are broadly referred to as coalition politics.

Coalition politics impacted the institution of PM in the following ways:

Negative Impact:

- In the coalition era, the politics of "support from outside" has made the office of the Prime Minister a "lottery", and this phenomenon has decisively weakened the position of the PM.
- Leadership of the Prime Minister is a principle of parliamentary form of government. This principle is curtailed in a coalition government as the Prime Minister is required to consult the coalition partners before taking any major decisions.
- Prof N K Singh also acknowledges this fact and calls the coalition Government as "fractured government", due to the presence of not one but many PMs.
- The post of PM is reduced to manager of Council of Ministers rather than leader of Council of Ministers.
- The members of the coalition governments do not assume responsibility for the administrative failures and lapses. They could play blame games and thereby escape collective and individual responsibilities.
- His ability to take structural reforms which are essential but unpopular reduces with the coalition government.
    a. Regional parties' participation in the coalition government at the center impedes the functioning and freedom of the prime minister in operationalizing policies and programmes.
    b. For example, Political scientist, Irfan Nooruddin, held that coalitions create constraints as a government can't change policies "suddenly and arbitrarily".

Positive impact:

- It removes arbitrariness which occurs mostly in governments with a strong PM having a single party majority. For example, the imposition of an emergency during 1975.
- It makes the PM sensitive to regional aspirations and concerns thus leading to consensus-based solutions instead of hard-nosed measures. For example, Ex PM Rajiv Gandhi could not have engaged militarily in Sri Lanka if he was representing the coalition government.
- According to a political scientist, Christophe Jaffrelot has suggested that coalition governments generate more inclusive policies because the coalition represents a wider group of political parties.
- Coalition politics strengthens the federal fabric of the Indian political system.
- However, scholars like Rajni Kothari who call PM as Primus Inter Pares (first among equals) deny arguments of coalition politics weakening the position of the PM who instead held that PM with single party majority leads to kitchen cabinet and distorts democratic institution of PM and make PMO excessively powerful which is undesirable.

Thus, the coalition politics certainly affects the position of the PM however, whether it weakens or strengthens the position of the PM remains a subject of the debate as there are examples which can substantiate both the cases, it also depends on the functioning and nature of the PM, for example Atal Bihari Vajpayee led a coalition government successfully and could take major socio economic and strategic decisions which have changed the direction of the country.

H72- Council of Ministers

The Union Council of Ministers is the highest executive body of the Government. The council is responsible for exercising chief administrative authority over the state and advising the President of India. It is chaired by the Prime Minister and includes ministers of various ministries.

Article 74 of the Constitution deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers. The council of ministers consists of three categories of ministers namely, cabinet ministers, ministers of state, and deputy ministers.

Further, The Constitution (91st Amendment) Act, 2003 limited the total strength of the Council of Ministers to 15% of the total number of Lok Sabha MPs. Similarly, it restricted the strength of the council of ministers at state level to 15% of the strength of the respective state legislative assembly.

What is the new trend observed in the composition of councils?

The composition of council of ministers has changed over the period of time in the following ways:

- Many young leaders have been given a chance since 16th lok sabha. This seems to be a move towards promoting the next generation of leaders and to prepare them for the future. Present council of ministers is known as "Yuvaon ki Sarkar".
- Greater representation from the Scheduled Caste, Scheduled tribes and Other Backward Classes. The share of ministers from either Scheduled Castes (SCs) or Scheduled Tribes (STs) is the second highest since 1952.
- Multiple charges given to a single minister for example, Ashwini Vaishnaw will be the Railway Minister with additional charge of Information and Technology and Communications, Dharmendra Pradhan will handle Education with Skill Development while Home Minister Amit Shah will have additional charge of the new Ministry of Cooperation.
- The changing trend includes more women representation at key positions. Most recent example is the 16th Lok Sabha where there were three women cabinet ministers - External affairs minister, Education minister and the Defence minister.
- The spread of the Council of Ministers has been to reflect not just marginalised sections of society but also marginalised regions like the north-east with a Minister each from Tripura [Pratima Bhowmick] and Manipur [Rajkumar Ranjan Singh], a Cabinet Minister [Virendra Kumar] from Tikamgarh in Madhya Pradesh etc.
- The new trend in composition of council of ministers giving chance to all sections of society is defined by the new Union Cabinet as the "rainbow council "that brings out the vibrancy and colors across India's communities and regions.
- However, representation of minorities is still very low and in fact it is decreasing since 2014.
- Apart from civil servants, professionals are given more chance in new trend. For example, the current government has 13 lawyers, six doctors, five engineers, seven civil servants, seven PhDs and three MBAs along with 68 Ministers with graduate degrees.
- As compared to the previous CoM's, there is an increase in the number of wealthier ministers.
- There is also a trend of appointing ministers from poll going states.

What is the significance of the changing trend?

- Inclusion of more young persons as ministers will help in innovation and change.
- Inclusive development: as inclusion of ministers from marginalised communities and marginalised regions help in focusing on marginalised areas.
- More educated ministers help in providing able leadership with understanding of issues in detail.
- Minimum government: as giving charge of multiple ministries to a single person reduces duplication of work, brings synergy and helps in preventing wastage of money.
- Inclusion of more civil servants helps in holistic policy formulations as they can provide quality inputs and in minimising gaps in implementation.

What are the criticisms of this changing trend?

- Giving multiple charges to a single minister leads to inefficiency as the work doesn't get

demarcated clearly. This results in a lack of accountability.

- Reshuffle in the council of ministers for political reasons may affect functioning of the ministry as the new minister may require time to understand the work and policy of his predecessor and to align with them.
- No minimum government for example after the recent reshuffle there is 78 ministers out of maximum 81 which can be appointed. This increases costs and red tapism.
- Low representation to minorities affects perception of society and may generate insecurity among minorities which is not a sign of healthy democracy.
- Role of PMO has increased: It is being said that PMO has become an over-grown, over-arching, all-powerful organization, which at times undermines the council of ministers, this is not conducive for representative democracy.

The Central Council of Ministers plays a key role in helping the ruling government to function in a better way taking into account the increasing complexities of democracy. Therefore, for enriching the role of the council of ministers there is a need to check that all regions and all sections of the country get adequate representation to have more democratic representation.

H73- Collegium system

What is the collegium system?

- The collegium system is one where the Chief Justice of India and a forum of four senior-most judges of the Supreme Court recommend appointments and transfer of judges. However, it has no place in the Indian Constitution. The system was evolved through Supreme Court judgeents in the Third Judges Case (1998).
- Names recommended for appointment by a High Court collegium reaches the government only after approval by the CJI and the Supreme Court collegium. The government is mandated to appoint a person as a Supreme Court judge if the collegium reiterates its recommendation.

What is the need for a Collegium System?

- It separates the judiciary from the influence of the executive and legislative. This ensures impartial and independent functioning. So, the collegium system strengthens the principle of separation of powers (no organ of State should intervene in the functioning of another).
- The State is the main litigant in Indian Courts. About 46% of total cases pending in India pertains to the government. If the power to transfer the judges is given to the executive, then the fear of transfer would impede justice delivery.
- The executive organ is not a specialist or does not have the knowledge regarding the requirements of the Judge. Therefore, it is better if the collegium system appoints Judges.
- The political vulnerability in India- The government handling the transfers and appointments is prone to nepotism and corruption.
- May weaken checks and balances doctrine as an independent judiciary can effectively check the arbitrariness of the executive.
- Further, it provides stability to the judges.

What are the issues in the functioning of the collegium system?

- It gives enormous power to judges that can be easily misused. The collegium system has made India, the only country where judges appoint judges.
- The selection of judges by collegium is often termed as undemocratic. Since judges are not accountable to the people or representative of people i.e. executive or legislative.
- There is no official procedure for selection or any written manual for functioning. This creates an ambiguity in the collegium's functioning.
- Law Commission (230th report):
  1. Nepotism, corruption, and personal patronage are prevalent in the functioning of the collegium system (Uncle Judges Syndrome).
  2. Violation of Article 74: President to act on the aid and advice of the Council of Ministers.
- The delays over the appointment are still persistent. The Supreme Court last appointed a judge in September 2019, and it currently has four vacancies, which is expected to be increased further this year.
- The procedure lacks uniformity- Sometimes a judge of HC is elevated as chief justice of the same HC while in other cases he/she is made chief justice of some other high court.
- The Collegium system leads to secrecy. People hardly know why a particular judge is recommended or not recommended.
- Autocratic: Collegium has been evolved by the judiciary itself for retaining the power to select judges by itself.
- Against established conventions: The convention of seniority has long been held as the procedure for appointments but supersession ignores and abdicates this convention, creating space for subjectivity and individual bias in appointments.
- No reforms made after fourth judges case: After striking down the NJAC, the court did nothing to amend the NJAC Act or add safeguards to it that would have made it constitutionally valid. Instead, the court reverted to the old Collegium-based appointments mechanism.

What steps have been taken to improve the efficiency of judicial appointments?

The following steps have been taken in the recent past for improving the efficiency of judicial appointments:

1. The National Judicial appointment commission was established by the 99th constitutional amendment (2014).

a. The NJAC consisted of 3 judges of SC, a central law minister, and 2 civil society experts.

b. A person would not be recommended by NJAC if any 2 of its members did not accept such a recommendation, making the appointment process more broad-based.

c. However, it was struck down by the supreme court in the 4th judge's case. It would jeopardize the independence of the judiciary as guaranteed under the existing collegium system.

2. Memorandum of Procedure (MOP): Drafted in 2016 to set a fresh set of guidelines for making higher judiciary appointments. It has the following key recommendations:

a. Seniority & Merit: For the promotion of a High Court Chief Justice or a judge to the Supreme Court, the criteria of seniority, merit, and integrity would be followed. However, seniority preference should be given to Chief Justices of the High Courts.

b. Written explanation: - If a senior Chief Justice is overlooked for elevation to the Supreme Court, the reasons for the same should be recorded in writing. This will ensure transparency and avoid favoritism.

c. The quota for jurists: Upto three judges may be appointed from the Bar or distinguished jurists with proven track records.

d. Committee & Secretariat:

i. Committee: Institutional mechanism to assist the Collegium in the evaluation of the suitability of prospective candidates.

ii. Secretariat: To maintain a database of judges, schedules Collegium meetings, maintain records, and receives recommendations and complaints related to judges' postings.

e. Rejection criteria: The government proposed to add national security and larger public interests as a reason for the rejection of the Collegium recommendation.

Which steps are required to improve the functioning of the collegium system?

- The Centre needs to act on collegium's decision within a specific time frame so that delays are minimized.
- Both the Centre and Judiciary must stop the blame game and focus collectively on reforming the appointment process. A consensus needs to be developed on a memorandum of procedure.
- Further, a written manual should be released by the Supreme Court. The manual should be followed in letter and spirit during appointments and transfers.
- Incorporate the practice of disclosing the reasons while announcing the collegium's decision.
- The Supreme Court should also release the records of all collegium meetings in the public domain in order to ensure transparency and rule-based process.
- Apart from reforming the collegium system, the quality of judges can also be improved through the implementation of All India Judicial Services (AIJS).
- The government supported the need for the collegium to have a "permanent and proper" secretariat that would collect background information and "assess the judicial worth of a particular candidate".
- On the eligibility criteria, one suggestion was to ensure a regional balance is maintained with adequate representation, including women.

During the Constituent Assembly debates, Alladi Krishnaswamy Iyer had warned against vesting untrammelled power in the judiciary, which, he believed, could engineer the creation of a super legislature. This is precisely the role that the Supreme Court performed in the Second Judges Case, by effectively rewriting the Constitution to create a self-serving body, usurping powers from both Parliament and the executive.

The system of appointment of judges should be reformed expeditiously as there is a shortage of judges in the country. A future rise in the pendency of cases can be tackled only when the judiciary and executive are willing to negotiate with a citizen-centric spirit. For that, reforming the collegium system is a good step in the right direction.

H74- Performance of Judiciary

"If the lamp of justice goes we cannot imagine the amount **of darkness."- James Bryce.**

What is the significance of the Judiciary as the pillar of democracy?

In the Indian democratic framework, the judiciary is the third pillar of democracy. As a guardian of the Constitution, the judiciary ensures that the laws of the land are implemented in letter and spirit and a sense of justice and fair play pervades in society. It is the sole authority and has the responsibility to interpret laws to ensure that the legislature and the executive adhere to the constitutional framework and enact and implement laws in consonance with the **basic tenets of our Constitution.**

What are the achievements of the judiciary since independence?

- Neutral and Independent Arbiter: Despite other organs of the state losing public trust, the judiciary has been able to act as neutral arbiter and secure a high level of public trust.
- Creative interpretation of the Constitution: The judiciary has strengthened the fundamentals of our polity by resorting to creative interpretation of the Constitution. For example, through 'Doctrine of Basic Structure' the judiciary has made sure that the foundations of our democracy are not turned upside-down for political purposes.
- Enlarging the rights of people: For instance, Article 21 has been interpreted by the judiciary to include not only having 'right to life' but also right to live with dignity.
- Consideration of due process of law doctrine (Maneka Gandhi case) while reviewing actions of the executive and the Legislature, despite the original constitution having adopted only procedure established by law doctrine.
- Public Interest Litigation: The institution of PIL is a milestone in the evolution of Indian judiciary. It is a relaxation to the traditional rule of 'locus standi'. The objective of PIL is to secure public interest and bring justice to the socially disadvantaged parties.
- Expansion of Judicial review: The court has been active in seeking to prevent subversion of the Constitution through political practice. Thus, areas that were considered beyond the scope of judicial review such as powers of the President and Governor, disqualification decision of Speaker/Chairman, etc. were brought under the purview of the courts.
- Environmental activism when other two branches chose development in development vs environment dilemma.

What are the challenges faced by the Indian judiciary?

- **Huge pendency of cases:** As per National Judicial Data Grid as of May 2022, over 4.77 crore cases are pending in courts across different levels of the judiciary. Of them, 87.4% are pending in subordinate courts, while nearly 1,82,000 cases have been pending for over 30 years.
- **Huge vacancy:** The Department of Justice stated that in the 25 High Courts out of the combined sanctioned strength of 1,104 judges, 717 are working judges while 387 seats were vacant.
- **Corruption:** As per Transparency International, judiciary is the 2nd most corrupt institution after police. Judicial corruption takes two forms:
    - Political interference in the judicial process: This is by the legislative or executive branch. The pressure to rule in favor of political interests remains intense. And for judges who refuse to comply, political retaliation can be swift and harsh.
    - **Bribery:** Bribery can occur throughout the chain of the judicial process: judges may accept bribes to delay or accelerate verdicts, accept or deny appeals, or simply to decide a case in a certain way. Court officials coax bribes for free services; and lawyers charge additional "fees" to expedite or delay cases.
- **Legal system is too expensive:** "80 percent of our country is shut out of the judicial system because they cannot access lawyers in the first place and the quality of legal aid is poor." the survey found that just one per cent of the respondents were making use of this service ('Access to Justice' survey)
- **Poor State of infrastructure:** The total sanctioned strength of judicial officers in the country is 24,280, but the number of court halls available is just 20,143, including 620 rented halls. As much as 26% of the court complexes do not have separate ladies' toilets and 16% do not have gent's toilets. Only 32% of the courtrooms have

separate record rooms and only 51% of the court complexes have a library.

- **Lack of judicial accountability:**
  - **Conduct of judges:** Recent allegations of corruption on Justice Ramaswami, Allegation of sexual harassment on Justice Ranjan Gogoi raises a question on the character of CJI.
  - **Opacity in operation:** Under the blanket of judicial independence judiciary restricts outside body's involvement in the investigation of corruption cases and sets up in-house mechanisms.
  - Outside the RTI.

What steps are required to strengthen the judiciary?

Role of Govt:

- Increased budgetary allocations: for example, 2nd ARC recommended 1% of allocation of flagship schemes being earmarked for upgradation and creation of the judicial infrastructure.
- Expeditious filling of vacancies in subordinate courts.
- Reform litigation policy - follow Economic survey recommendations 2017-18 to reduce government litigation.
- Police reforms as per the guidelines of the Supreme court in Prakash Singh case.
- Creation of Gram Nyayalayas in accordance with Gram Nyayalaya Act.
- Introduce Judicial Standards and Accountability Bill.
- The National Judicial Oversight Committee should be created by parliament to scrutinize the complaints and investigation.
- Early Finalisation of Memorandum of Procedure (MoP).
- The Vice President recommended establishing regional benches of the supreme court.
- Law Commission and Supreme court in Vasantha Case: Separate supreme courts function into the court of appeal and constitutional court.
- Reforms in the free legal aid scheme of the government.

Role of Judiciary:

- To ensure accountability:
  - Independent judicial Lokpal for complaint against judges.
  - Two-level judicial discipline model - 1st level: Fine/suspend; 2nd level: Removal.
  - Judiciary and Bar Associations should formulate the Model Code of Conduct for both lawyers and judges.
- Increasing court productivity:
  - Increase the number of working days.
  - Strict codes of conduct for judicial officers to ensure the adequate performance of duties.
  - Business process reengineering.
  - Deployment of modern technology: NJDG under e-court; Big data analytics of cases. - Online filing of cases.
- Three-pronged approach as recommended by Justice Ramana:
  - Improving judicial infrastructure through the use of e-platforms and setting up of more courts.
  - Disputes settlement at the pre-litigation stage through counseling.
  - Strengthening the existing Alternative Dispute Resolution (ADR) mechanism
- Refrain from activism at the cost of normal business.
- Refrain itself from entertaining a large number of appeals.

Role of Civil Society:

- Create awareness about the legal rights of citizens

Why is there a demand for All India Judicial Services?

- Articles 233 and 234 of the Constitution: They deal with the appointment of the subordinate judiciary which falls within the domain of the concerned state governments and respective high courts.
- 14th Law Commission: It first mooted the idea of a centralized judicial service in its 'Report on Reforms on Judicial Administration'.

- 42nd Amendment: In 1976, the 42nd constitutional amendment amended Article 312(1) empowering Parliament to legislate for the creation of one or more All-India Services, including an AIJS, common to the Union and the States.
- Law Commission 116th report: In 1986, comprehensive guidelines for the creation of the AIJS were laid down by the Law Commission in its 116th report.
- All India Judges' Association vs Union of India 1992: Supreme Court directed the Centre to set up an AIJS.
- Strategy for New India @ 75, released by the NITI Aayog, amongst other things, proposed creation of an AIJS akin to the other central services like the IAS and the IPS.

- Solution to judicial vacancies:
  - Approximately, there are 5,133 vacancies (22,036 posts) across the District and Subordinate Judiciary in India.
  - Women judges account for only 9% of the total strength of the Judiciary.
- To attract the best talent: It will ensure that subordinate court judges are paid salaries and given perks at parity with government bureaucrats, thereby incentivizing the option of the state judiciary as a viable career prospect.
- The quality of judgments will improve as the best legal talent across the country would be selected on the basis of merit.
- Transparent and efficient method of recruitment would be followed.
- The issue of corruption, nepotism etc. would be strongly dealt with.
- Public faith in the judiciary would be restored.
- It will lead to greater inclusion of marginalized sections into the lower judiciary as in the case of bureaucracy by means of reservations.

To this end, the Central government is contemplating the establishment of an All-India Judicial Service (AIJS) for the subordinate judiciary.

What are the challenges in the formation of All India Judicial Services?

- Cannot fill vacancies: As Article 312 only permits the appointments of District Judges to such a prospective AIJS, it will not solve the shortage of judges at the subordinate level that account for vast majority of over 5000 vacancies.
- Contentious issue: The idea has been vehemently disagreed by almost half the High Courts and many State Govts.
- Federal issues: Many states see this as an attempt by the central government to encroach is state's domain. Thus, it will be another ground for conflict between the Union and other federal units.
- Localisation issues: In a country like India, with such diversity of customs, religion and language, the spectre of an outsider, not familiar with the customs of the state, deciding cases may affect the legitimacy of the judicial system in the eyes of local population and reduce its efficiency.
- Representation: Many states already reserve posts under their State Judicial Service Rules for different communities and classes. These include quotas for SC, ST, other backward communities (OBCs), women and rural candidates. Thus the argument for representation of marginalized sections is futile.
- Judicial Independence: Currently, the independence of District Judges from the State Governments, is guaranteed by the fact that the High Court's play a significant role in the appointment, transfer and removal of District Judges. However, AIJS may not ensure independence of the judiciary.

Way forward:

- As they will be appointed by high courts and state governments, the issue of federalism should not arise as UPSC will conducting the exams.
- Despite the limitations, the establishment of AIJS makes a strong case because, if Civil servants can learn the local language of the state they are posted in, even a judicial service officer can. Thus, the language, local customs shouldn't be a barrier.

- AIJS can lead to quick disposal of the cases. As it can ensure adequate judges are appointed in large strength through AIJS just like we see in case of IAS, IPS, IFS and other civil services.
- Any groundbreaking reform is bound to receive criticism. The feasibility of the AIJS in the current context requires to be studied.
- The reasons for these vacancies should be studied and appropriate steps should be taken. For example, the Allahabad High Court filed an affidavit stating that they lacked courtrooms to house additional judges.

Thus, merely centralizing recruitment through the creation of an AIJS will not be a silver bullet to address the large number of vacancies in a few states.

H75- National Court of appeal

The idea of a National Court of Appeal – an intermediary court between the High Courts (HC) and the Supreme Court (SC) – has been mooted repeatedly over the last few decades.

What is the concept of the National Court of appeal?

- The National Court of Appeal is meant to act as the final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in both civil and criminal matters.
- It will have regional benches in Chennai, Mumbai, and Kolkata.
- In the past, various Law Commissions as well as specific SC benches have supported the setting up of a National Court of Appeal with regional benches.

Why there is a demand for NCA?

- Overburdened judiciary: It will help judiciary in reducing pendency of cases.
- Accessibility: For appeals in supreme court litigants have to visit Delhi, this increases costs as well as time.
- It will eliminate various roadblocks that the common man faces, like language, or cultural expectations and foremost distance.
- Creation of NCA will give enough time to SC to focus on substantial question of law which violates citizen's fundamental rights, constitutional interpretations etc.
- Save time and money: It will make the process streamlined, saving both the litigant's and the court's lot of time and money.
- Increase Efficiency: as it deals specifically with appeals.

What are the issues associated with the NCA?

- Delay and time consuming: It will add another layer of decision-making.
- It will not reduce the litigation: as huge pendency is with the subordinate courts and not the apex courts.
- Financial burden: It will raise the financial burden on the government's budget.
- Unconstitutional: It is unconstitutional because the hearing of appeals by the supreme court is a fundamental right.
- Further, it is held that the establishment of NCA would require an amendment in Article 130 of the Constitution which in turn would change the constitution of the Supreme Court completely.
- Opposition by Judiciary: Successive Chief Justices of India have been against the establishment of Benches outside Delhi.

What are the views of the Supreme Court, government and Law Commission with respect to NCA?

Supreme Court viewpoint on NCA:

- In the case Bihar Legal Support Society vs Chief Justice of India, the Supreme Court considered the establishment of the NCA "very desirable" and stated that the current highest court should only hear cases involving constitutional and public law issues.
- The proposal of bifurcating judicial authority and constituting regional benches of the supreme court was rejected by subsequent Chief Justices of India.

The Government's Stance on the NCA

- In 2014, the government issued an order rejecting the argument that such a court of appeal is unconstitutional.
- Government is of the view that The Supreme Court, according to the Constitution, must always sit in Delhi.

Law Commission Report:

- The 229th report of the Law Commission suggested retaining the New Delhi bench of the Supreme Court as a Constitutional court and establishing Cassation Benches of the Supreme Court at New Delhi, Chennai/Hyderabad, Kolkata and Mumbai.
- The report viewed that no constitutional amendment is required since Article 130 of the Constitution provides that the Supreme Court can be located in Delhi or at any other place as the Chief Justice of India with the approval of the President may decide from time to time.
- It also gives example as how this basic model with necessary changes has performed effectively in countries like Italy, Egypt, Ireland, the U.S. and Denmark.

What is th Current Status of the NCA?

- In March 2016, the Supreme Court established a Constitution Bench to debate the possibility of an NCA.
- It argued that Supreme Court was too burdened to offer equal justice to all, according to a bench led by Chief Justice of India T.S. Thakur.

What should be the way forward?

- A more robust subordinate judiciary is required to support our justice delivery system, rather than the current frail infrastructure.
- Need to strategize and rearrange our present judicial hierarchy to meet the mounting issues before introducing a new layer.
- A strong political will is needed to effect changes to ensure the smooth and effective functioning of the Supreme Court.
- Reforms in appointment system at the Supreme court and High court: by early finalization of memoranda of procedure.
- Increasing budgetary allocation to build required infrastructure at lower levels.

More debate and consensus are required before accepting or rejecting this proposal. Also, being a policy decision, the judiciary should refrain from directing the executive and the legislature in this regard. However, till the consensus is reached, the other most important steps as mentioned above can be fast tracked as they promise to resolve much of the issues Indian judiciary faces.

H76- Contempt of Court

What is contempt of court?

Contempt of Court is the offense of being disobedient to or being disrespectful towards a court of law. Any action which defies a court's authority or impedes the ability of the court to perform its functions or willfully fails to obey a court order. A judge may impose sanctions such as a fine or jail on the person, if found guilty of contempt of court.

What are the constitutional provisions for contempt of court?

The contempt powers of the Supreme Court trace their source to different provisions in the Constitution of India, namely, Article 32, 129, 131, 139A, and 142(2).

- **Article 129**: "The Supreme Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt not only of itself but also of High courts, subordinate courts and tribunals functioning in the entire country"
- **Article 142(2):** Enables the Supreme Court to investigate and punish any person for its contempt.
- **Article 215:** "Every High Court shall be a court of record and shall have all the powers of such a court including the power to punish for contempt of itself"
- High Courts have been given special powers to punish people for the contempt of subordinate courts, as per Section 10 of The **Contempt of Courts Act of 1971.**As per the Contempt of Courts Act 1971, contempt of court is of two types: civil and criminal contempt.

Whether contempt provisions should be retained or abolished?

Should be retained because of the following reasons (Need of the contempt proceedings):

- To Uphold court's honor: Judiciary rests on the trust of people. In Pritam Lal v. The High Court of M.P SC held that it is the duty of the Court, to punish the contempt act to preserve its dignity.
- To uphold rule of Law: Disobedience of court's order violates the principle of Rule of Law. Hence contempt power holds together the basic structure of the Constitution.
- To ensure equality before law: Tool against the rich and the powerful by forcing compliance with the court orders.
- To ensure independence of the judiciary: Protection from the opinion of public and media trials.
- To ensure Credibility and efficiency of judiciary: E.g., contempt proceedings against Justice Karnan for his demeaning conduct.
- Reasonable restriction: Article 19(1) of the Constitution provides contempt of court as a reasonable restriction for curbing the freedom of speech and expression.
- Several inbuilt safeguards to protect against its misuse:
    - E.g., Section 13 of the Contempt of Courts Act, 1971: If the degree of harm is slight and beneath notice, the court won't punish for contempt.
- Impact on subordinate court: If the definition of contempt is removed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.

Should be abolished because of the following reasons (Issues with the contempt of court):

- Antithetical to freedom of speech: contempt of court proceedings may lead to chilling effect against the freedom of speech under Article 19(1).
- Subjective definition: The law is not objectively defined and can be used against even bonafide intentions. It is often used by judges arbitrarily to suppress their criticism by the public.
- Conflict of interest: as judiciary is itself the victim and the judge simultaneously.
    - Also goes against the Principle of Natural justice: No man should be the judge in his own case.
- Against democratic ethos: True democracy sustains with constructive criticism and contempt law suppresses criticism of judiciary by the public.
- An enforced silence, in the name of preserving the dignity of the judiciary, would cause more resentment, suspicion and disrespect for the judiciary among people than the opposite.
- Discontinued elsewhere: The offense of "scandalizing the court" continues in India while it was abolished in England and Wales long ago.

- The contempt jurisdiction is not intended to uphold the personal dignity of the Judges.
- High pendency: Despite the maximum duration for initiating contempt proceedings is one year but many of the contempt cases are pending for more than ten years.

Which steps are needed to avoid its misuse?

- The right of the citizens to free speech and expression under Article 19(1)(a) should be treated as primary, and the power of contempt should be subordinate.
- This extraordinary power must be sparingly exercised considering the subjectivity involved in its definition and only when public interest is under threat.
- Identify the difference between contempt of court and contempt of judge.
- Proportional Punishment: Punishment for contempt is inadequate and is not a sufficient deterrent.it should be sufficiently enhanced to deal with interference in justice delivery.
- Elements of 'mens rea' (legal concept denoting criminal intent or evil mind) may be incorporated in the act. Establishing the 'mens rea' of an offender is usually necessary to prove guilt in a criminal trial.
- Establishing a review mechanism, as a safeguard against judicial tyranny and to remove the conflict of interest, by instituting an independent panel to verify the actions which extract contempt law.
- The Law Commission has held that there is a need to retain the provision regarding the contempt of courts. However, it also recommended the definition of contempt should be restricted to civil contempt, i.e., willful disobedience of judgments of the court.
- Lessons from other democracies for example Canada- ties its test for contempt to real, substantial and immediate dangers to the administration. American courts also no longer use the law of contempt in response to comments on judges or legal matters.

Contempt powers are needed in genuine cases like civil contempt or real obstruction of justice (threats to the lives of judges etc.), but criminal contempt for scandalizing the court has no relevance in contemporary democracies. It evolved in monarchical times when royalty used to deliver judgments. In current times, principles of accountability and impartiality are important for institutions. Hence criminal contempt for scandalizing the court has to be removed and contempt laws must be reformed.

H77- Witness Protection in India

Jeremy Bentham rightfully says, "Witnesses are the eyes and ears of Justice".

Who is a witness?

- A witness is a person who sees a crime happen and who has the ability to express it when asked by the court.

What is meant by witness protection?

- Witness protection is the security provided to a person providing testimonial evidence to the justice system, including defendants and other clients, before, during and after trial, usually by police.

What is the importance of witness protection?

- The witnesses are the "eyes and ears of justice," thus they help in the effective justice delivery system.
- To uphold the Right to Fair Trial under Article 21 as powerful, influential or rich perpetrators can easily intimidate or allure the witness and hence obstruct the justice system.
- To strengthen state's capacity to more effectively prosecute the perpetrators of serious crimes like terrorist attacks, organized crime etc.
- Girls and women who report sexual violence are often even more vulnerable and face extreme pressure or direct threats from the accused.
- Witnesses need to have the confidence to come forward to assist law enforcement and prosecutorial authorities.
- While offenders have a range of constitutional and legal rights, witnesses have limited rights and protection in the current setup. This imbalance of rights many times compels the witnesses to turn hostile.
- Threats to Witness: In many high-profile cases/scams like NRHM scam in UP, Fodder scam in Bihar key witnesses were killed adversely affecting the investigation in these cases.

Why is there a need for statutory protection for witnesses?

- Malimath Committee held the existing system "weighed in favor of the accused and did not adequately focus on justice for the victims of crime."
- Fourth Report of the National Police Commission (1980): handicaps of witnesses:
  - "A prisoner suffers from some act or omission but a witness suffers for no fault of his own. All his troubles arise because he is unfortunate enough to be on the spot when the crime is being committed and at the same time 'foolish' enough to remain there till the arrival of the police."

What are the important judgements related to witness protection?

- Zahira Habibullah H. Sheikh v. State of Gujarat, the apex court observed that "if the witnesses get threatened or are forced to give false evidence then it would not result in fair trial".
- State of Gujarat Vs Anirudh Singh case, apex court held that "It is the salutary duty of every witness who has the knowledge of the commission of the crime, to assist the State in giving evidence."
- Himanshu Singh Sabharwal v State of Madhya Pradesh,
  - the court observed that "Witnesses are the eyes and ears of Justice system and when a witness is threatened or killed or harassed, it is not only the witness who is threatened but also the fundamental right of a citizen to a free and fair trial is vindicated.
  - The protection of the witness is the duty of the state and when the state fails to protect a witness, it actually fails to uphold the national motto – Satyamev Jayate".
- Neelam Katara v UOI Supreme Court observed that "the edifice of administration of Justice is based upon witnesses coming forward and deposing without fear or favor, without intimidation or allurements in court of law.

What is the Witness Protection Scheme 2018?

Witness Protection Scheme, 2018 provides for protection of witnesses based on the threat assessment and protection measures which include protection of identity of witnesses, their relocation, etc. The witness protection scheme is the first attempt in India to protect witnesses.

A witness protection scheme has been recommended in State of Gujarat Vs Anirudh Singh (1997), the 14th Law Commission Report and the Malimath Committee Report.

Features of witness protection scheme:

The identification of categories of threat perceptions and preparation of a Threat Analysis Report by the head of the police.

- The programme identifies 3 categories of witnesses as per threat perception as follows:
  a. Category A: Cases where the threat extends to life of witness or family members during investigation, trial or thereafter.
  b. Category B: Cases where the threat extends to safety, reputation or property of the witness or family members during the investigation or trial.
  c. Category C – Cases where the threat is moderate and extends to harassment or intimidation of the witness or family members, reputation or property during the investigation, trial or thereafter.
- Protective measures for witnesses include:
  a. Ensuring that the witness and accused do not come face to face during probe.
  b. Protection of identity or change of identity.
  c. Relocation of witness.
  d. Witnesses to be apprised of the scheme.
  e. Confidentiality and preservation of records.
  f. Recovery of expenses, etc.
- Other features are in-camera trial, proximate physical protection and anonymizing of testimony and references to witnesses in the records.
- The application for protection will have to be filed before the competent authority. The Authority will dispose of an application within five days from the date of receipt of the Threat Analysis Report.
- The scheme will be the law under Article 141/142 of the Constitution, until the enactment of suitable Parliamentary and/or State Legislation on the subject.

What are the concerns over the witness Protection Scheme?

- Time frame of protection: It may be difficult to assess the time frame for protection. E.g., protection of witnesses may be required not only before, but also during and after trial and that too for years considering the delays in Criminal Justice System.
- Issues with the categorization of witnesses according to threat perception: it is vested in the police department which itself suffers from political pressure and corruption.
- The Law Commission mentioned that concealing the identity of witness for his/her protection can compromise the rights of the accused to demand a fair trial in case he/she wants to establish authenticity of witness.
- Privacy of Witness: Providing physical security to witnesses may not be appreciated by witnesses as it curtails privacy and movement.
- It does not penalize any violation of the confidentiality of personal information.
- Scheme has not addressed the harassment of the witnesses from the frequent adjournment of cases, monetary loss and other kinds of deprivation due to their repeated appearances in the court.
- The arrangements to change identity and relocate witnesses may not fit Indian conditions.

What are the general issues towards witness protection in India?

- Lack of resources: Indian police force has acute shortage of manpower (136 personnel per lakh population) and funds even to handle day to day policing. The witness protection duties will further increase the pressure.
- Huge political interference in administration of law and order turning witness hostile. For example, Unnao rape case 2017.
- Extraordinary delay in resolution of cases also leading to disinterest of witness in coming forward.
- Lack of infrastructure especially at the lower courts, where all the witnesses have to appear, to satisfy the mandate of the present WPS.
- Lack of international cooperation as most often organized crimes and terror activities are transnational in nature.

Which steps are required to make witness protection effective?

- The utilization of practices like - videoconferencing, remotely coordinating, voice

and face contortion to protect witness identity and prevent unnecessary presence of them during adjudication.

- There is a need for states to develop the capacity of existing institutions and agencies.
- Overhauling the Criminal Justice System with faster and scientific investigation, trials and convictions will reduce the need for witness protection.
- Police reforms as per the Prakash Singh guidelines of the supreme court to reduce political interference in the police departments.
- There is a need for a higher degree of international cooperation.
- Change of Identity needs to be done without undermining the witness's professional and property rights and educational qualifications.

Owing to the significance of witnesses in upholding the rule of law and ensuring timely justice, it is of paramount importance that government takes requisite measures to strengthen witness protection and plug the existing loopholes in criminal justice system as reconstructing trust of the individuals in the conventional arrangement of law is the best type of witness security.

H78- Digital Delivery of Justice

Indian courts are associated with long delays and pendency of cases. As per the data released by the SC in June 2020, around 3.27 crore cases are pending before the Indian courts. Technological intervention in the form of digitalization and e-courts are being established to address this issue.

What is Digital Delivery of Justice?

- Digital delivery of justice means use of information and communication technology like video conferencing, e-filing of cases, virtual hearing, live streaming of court proceedings etc. to provide timely and efficient delivery of justice.

What are the advantages of digitization of courts?

Technology will bring drastic changes in the field of law and will transform the court system in the following ways:

- It will prevent the requirement of a large space needed to store so many files and old documents.
- It will prevent the consequences of missing of court records by ensuring these documents and files traceable electronically.
- It will reduce delays in resolving cases:
  - The time consumed in summoning records from the lower courts to the appellate courts cause a lot of delay in cases.
  - Through digitalization, lawyers and litigants both can check the status of the filling.
  - It would prevent the cases being adjourned due to unavailability of record or documents.
- It will ensure fast, efficient, and transparent delivery of justice.
- Judicial accountability: Audio-video recordings of court proceedings will increase transparency of court processes and also discourage improper conduct in courts and wastage of court time.
- Better case categorization and effective monitoring by HC.
- Addressing Infra constraints: Audio-Video hearings will reduce cost on building, infrastructure, staff, security etc.
- Ease of doing business: Online dispute resolution of the contract will boost the confidence of domestic and foreign businesses.

What are the issues faced in the digital delivery of justice?

- Internet connectivity issue: specially at lower courts
- Digital Literacy: Judges, court staff and lawyers are not well-versed with digital technology and its benefits.
  - Human capacity: Lack of technical skills of court staff and absence of dedicated in-house technical support.
- Data Privacy Issue: Data aggregation cannot violate the privacy standards set in Puttaswamy v. Union of India (2017), especially since India does not yet have a data protection regime.
- Cybersecurity and hacking: attacks like ransomware, theft of data etc.
- Fear of Targeted Surveillance: 360-degree profiling of an individual has been perfected by social media platforms and technology companies for targeted advertisements.
- Threat to national security: Live streaming of the Courts is susceptible to abuses and it can involve national security concerns.
- Financial constraints: To deploy new age technology like high-speed internet, the latest audio, and video equipment, cloud computing, etc.
- Accuracy issues: Tools like deep fake, edited audio-video can mislead proceedings.

What are the steps taken by Govt. and Judiciary for digital Delivery of Justice?

- **FASTER Platform:**
  - The Chief Justice of India has launched the FASTER (Fast and Secured Transmission of Electronic Records) platform.
  - Purpose: It is a digital platform to communicate interim orders, stay orders, and bail orders of the Supreme Court to authorities concerned through a secured electronic communication channel.
  - Significance:
    - It will ensure that undertrials are not made to wait for days, behind bars because the certified hard copies of their bail orders took time to reach the prison.
- **National Judicial Data Grid (NJDC):**
  - NJDG works as a monitoring tool to identify, manage and reduce the pendency of cases.

- It is a database of orders, judgments, and case details created as an online platform under the eCourts Project
- It provides information relating to judicial proceedings of all computerized district and subordinate courts of the country by connecting District and Taluka courts.
- It is applicable for both civil as well as criminal cases.
- Significance:
  - Provide timely inputs for making policy decisions to reduce delays in disposing cases.
  - Facilitates better monitoring of court performance and systemic bottlenecks, and, thus, serves as an efficient resource management tool.

- **E-court project:**
  - It is a Pan India project monitored and funded by the government for the District Courts across the country.
  - Major Objectives:
    - Affordable Justice: The expansion of e-Courts will ensure easy access to justice at affordable courts for all sections of society.
    - Faster Delivery of Justice: The proliferation of e-Courts will make litigation faster, given that required logistics are provided.
    - Integration of Judiciary: Data sharing between different courts and various departments will also be made easy as everything would be available online under the integrated system.
    - Transparency: e-Courts can overcome the challenges and make the service delivery mechanism transparent and cost-efficient.
    - Litigants can view the status of their case online.
- **Artificial Intelligence (AI) Committee:**
  - It was constituted by SC to explore the use of AI technology in the judicial system. The committee has identified the application of AI in the translation of judicial documents, legal research assistance, and process automation.
  - SC various initiatives in this regard:
    - SUVAS: The Supreme Court Vidhik Anuvaad Software is an AI system that can assist in the translation of judgments into regional languages.
    - Supreme Court Portal for Assistance in Court Efficiency (SUPACE): It is an artificial intelligence-based portal to assist courts in improving efficiency and reducing the pendency of cases through AI. It collects relevant facts and makes them available to a judge.

Which steps are further required to make digital delivery of justice more effective?

- Political will and the support of judges and lawyers are necessary.
- Capacity development: Training through online courses for judges and court staff for using online systems and maintenance of e-data.
- Using seminars to raise awareness about e-courts and technologies in the judiciary.
- Digital infrastructure: Convergence with schemes like common service centers to facilitate e-filing and video conferencing.
- Data privacy act and rules: To prevent breach of data and ensure the privacy of people.

Access to justice is a key citizen need that requires a futuristic approach to enhance efficiency, equity, and ease. Technologies like artificial intelligence, big data can be a game changer in the 21st century, in transforming justice delivery system provided requisite reforms are fast tracked and placed on high priority.

H79- Fast Track Courts

"Justice delayed is democracy denied" - John F Kennedy, US president.

Fast track courts significantly help in reducing delays in resolution of cases and thus, ensuring timely justice which is prerequisite for any democracy to survive.

What is the concept of fast track court?

- These are special kinds of courts having exclusive jurisdiction over a particular category of law.
- The setting up of FTCs and their functioning generally lies within the domain of State Governments in consultation with the respective High Courts.
- Article 247: Gives powers to Parliament to establish certain additional courts for the better administration of laws made by it or of any existing laws with respect to a Union List.

Discuss the Evolution of FTCs in India / (What is the scheme of fast-track courts in India?)

- Fast track courts (FTCs) were first recommended by the 11th Finance Commission in 2000 "to substantially bring down, if not eliminate, pendency in the district and subordinate courts".
- Following the Finance Commission's report, Rs 502.90 crore was granted by the Centre to create 1,734 additional courts in different states for a period of five years.
- In 2005 the Centre extended support for the scheme for another six years, by the end of which 1,192 FTCs were functioning.
- In 2011, the central government stopped funding fast-track courts. While Arunachal Pradesh, Assam and Tripura had converted the FTCs into regular courts, Chhattisgarh had shut down all its FTCs.
- Also, after the December 2012 gangrape, Delhi High Court directed the state government to establish five FTCs for expeditious adjudication of sexual-assault cases.
- In 2013, the UPA government at the Centre set up a 'Nirbhaya Fund', and set up fast-track Mahlia Courts.
- The 14th Finance Commission had recommended the setting up of 1800 FTCs during 2015-20 dealing with cases of heinous crimes; civil cases related to women, children, senior citizens, HIV/AIDS etc. and property related cases pending for more than 5 years.
- In 2017 the Union govt set up 12 FTCs to exclusively prosecute and dispose 1,581 criminal cases pending against MPs and within a year.
- In 2019, the Union government approved a scheme for setting up 1,023 fast-track special courts (FTSCs) for expeditious disposal of pending rape cases under the IPC and crimes under the POCSO Act.
    - In July 2019, the SC also directed setting up of a centrally funded special court in each district where more than 100 FIRs are registered under the POCSO Act in to deal exclusively with these cases.

What is the need of fast-track courts in India?

- FTCs can lessen the general case-load burden for judiciary under pending cases and To boost the efficiency of the judiciary.
- To give proper attention and time to a particular type of cases like 'sexual assault cases'.
- To uphold the fundamental right to speedy trial as FTCs in India have the highest case disposal rate.
- To reduce the number of undertrials in jails. There are over 3,71,848 undertrials as of 2020 (NCRB).
- To fulfill constitutional obligation under A39A-equal justice.
- Promotes specialization which in turn increases professionalism.
- Consistency and Predictability: FTCs have high-performance rates and are stable and steady.

Highlight the performance of the fast-track courts in India?

Performance of the FTCs has not been up to the mark:

- Nearly 81% of the 26,965 cases completed by fast-track courts in 2019 took anywhere between 1-10 years for the trial to be completed, according to NCRB data.
    - Further, 69% of the 17,155 cases disposed of by the Protection of Children from Sexual Offences (POCSO) courts in 2019 took between one and 10 years, the data show.

- Pending cases more than doubled in nearly two decades--from 4.9 million cases under the IPC in 2000 to 11.3 million in 2019 (NCRB data).
- Fast-track courts in Delhi dispose of a case in 122 days on an average, while a regular court takes 133 days.

What are the issues faced by fast-track courts in India?

- FTCs operate no differently than regular courts. E.g.: fast-track courts in Delhi dispose of a case in 122 days on average, while a regular court takes 133 days (Daksh's research).
- An insufficient number of FTCs and judges compared to cases to be handled.
- There is also the question of clear mandate --what kind of cases are fast-track courts supposed to hear. E.g.: the fast-track courts set up under the Nirbhaya Fund, for instance, were not clear whether all cases of gender-based violence such as 'eve-teasing' (street harassment) or domestic violence came under their purview.
- Repeated adjournments due to issues of investigation and prosecution.
- Increased pendency in FTCs e.g. As per PRS data 5.9 lakh pending cases in 581 operational FTCs.
- Lack of infrastructure: Often housed in an existing court and lack various equipment needed to conduct video and audio recordings of victims.
- The issue of capacity and time: the same problems that are visible at these stages in regular courts. E.g., Ad-hoc judges are appointed to FTCs from among retired district and sessions judges, given the extra responsibilities.
- Financial issues of states: As per PRS data 56% of the States and UT had no FTCs as of 2019.

What steps are required to improve the functioning of the fast-track courts in India?

For fast-track courts to be more effective, trials must be completed in a time-bound manner. For this, a multi-pronged approach is needed:

i. **Capacity building:**
   a. Fast-track courts must have dedicated judges so that cases can be heard on a regular basis.
   b. Regular training of staff like stenographers and clerks can help with evidence processing and serving notices to witnesses and investigating officers, which saves a lot of time.

ii. Process engineering: realistic assessment of the time taken for each hearing and then have a proper timetable which offers ample time to every case.

iii. Clear Mandate: for FTCs as is the practice in countries such as Spain and Liberia. E.g., Any case pertaining to gender-based violence can be automatically transferred to FTCs.

iv. Coordination: FTCs and special courts are under different judicial bodies with little coordination, thus a separate agency to be established by Central and State Governments to streamline the functioning of courts.

v. Other Comprehensive reforms:
   a. Police reforms to improve investigation,
   b. Fast tracking of digital delivery of justice and technology adoption for the same.
   c. Ensure separate and adequate funding for implementation of the scheme, improvement of infrastructure etc.

Despite issues in their functioning, FTCs have proved to be very beneficial and have helped resolve millions of cases. In a country like India where nearly 4 crore cases are pending fast track courts assume greater significance. Thus, various reforms need to be undertaken to ensure that fast-track courts remain fast not only in the letter but also in the spirit.

H80- Judicial Activism and Overreach

"Judiciary must interpret if there is one, not to make if there is none."

Judiciary, as a pillar of democracy, has tried to fill the gaps in policies and laws. For instance, recently, Judicial Activism was witnessed in the orders given by the Supreme Court in reopening of the internet services in the J&K in January 2020.

What is Judicial Activism?

- Judicial activism refers to the proactive role played by the judiciary in the protection of the rights of citizens and in the promotion of justice in society.
- It pushes other organs of the state to discharge their constitutional duties diligently.
- In India, it implies the authority of the Supreme Court and the High courts to go beyond their functional domain, even if it interferes in the matters of executive and legislature.

Discuss some cases of Judicial Activism:

- In 2016, the SC ordered the Centre to craft a **new policy to handle droughts.**
- **Sabarimala judgment 2018**, the court held that women should be allowed entry in the Sabarimala temple against popularly held religious beliefs.
- **Triple Talaq case 2017:** Here, Judiciary declared Triple Talaq as ultra vires to fundamental rights of Muslim women.
- **Naz Foundation Case 2013**: Here, Judiciary applied the concept of constitutional morality to strike down Section 377.

What are the tools used by the judiciary for activism?

- **Article 13, read with Article 32 and 226**, allows the higher judiciary to review and declare void any law which is inconsistent with the fundamental rights.
- **Article 142** provides that the Supreme Court in the exercise of its jurisdiction may pass such a decree or order as is necessary for doing complete justice.
- **Public interest litigation** (PIL): The introduction of PIL has broadened the scope of judicial activism.
- **International statutes**: like the UDHR (Universal Declaration of Human Rights) that are used by courts for doing judicial activism.
- **Due Process of law:** Acceptance of due process of law doctrine by the judiciary in Maneka Gandhi case expanded the scope of Judicial Activism.

Is Judicial Activism desirable?

A. **YES:** (Advantages)

- **Executive and Legislature Apathy:** While other organs fail to deliver proactive resolution of issues. Also, it can curb legislative adventurism and executive tyranny by enforcing Constitutional limits. E.g., Sexual harassment at work place.
- **Doctrine of Checks and Balances:** compels a monitoring mechanism to bring objectivity in the application of the laws and orders. E.g., S.R. Bommai Case in case of President's rule.
- **Uphold Justice:** It is a tool for delivery of justice and uphold principles of democracy by prioritizing human rights. E.g., Use of Article 142 to release undertrials and for granting compensation to victims of the Bhopal gas tragedy.
- **Speedy resolution:** It is helpful when Legislature fails to act in a swift manner. E.g., Banning of old vehicles in Delhi.
- **Accommodates civil society activism:** by using law to promote social change through legal assistance, and reforms. E.g., PUCL led petitions for electoral reforms, like disclosure of information by the candidates.
- **Social engineering:** Judicial activism allows judges to adjudicate in favor of progressive and new social policies helping in social engineering.
- **Good governance**: Judicial activism can improve the quality of service delivery by providing simple, fast and inexpensive avenues to individuals.

B. **No:** (Issues)

- **Violates the spirit of separation of powers**: It interferes with the proper functioning of the legislative or executive organs of government. Thus, damaging the balance between various organs of government.
- At times, it **leads to inactivity of legislature and executive**, which may tend to run away from duties and responsibilities.
- **Courts are often ill-equipped with time and resources** to weigh the economic, environmental, and political costs involved like liquor ban cases. It can otherwise be used for adjudicating other important matters relating to public importance.
- **Weaken the democratic culture:** as it reduces the trust people have in Parliament and elected representatives. It signals executive inactivity and incompetency.
- **Lack of expertise**: Judiciary lacks experience to enact legislation. E.g., Ban on BS-IV vehicles from April 2020 had to be extended many times.
- Judiciary is the **least representative organ of the state.** Thus, it lacks the democratic backing of its excesses in other domains. It can appear as 'tyranny of unelected' in a democracy.

What is Judicial overreach? (Differentiate between overreach & activism).

- There is a thin line between Judicial activism and Judicial Overreach. Often, unrestrained activism on the part of the judiciary leads to its overreach.
- Judicial activism, due to its usefulness, is more or less accepted by society as well as the other two organs of government. However, Judicial overreach is considered highly undesirable.
- Examples of Judicial Overreach: Misusing the power to punish for contempt of court.
- Into the domain of the Executive:
    - The Supreme Court on December 2016, passed its judgment in the case of Shyam Narayan Chouksey v. Union of India to play National Anthem in cinema halls.
    - Ban of Firecrackers: In 2020, the prohibition on firecrackers during Diwali was criticized by VP Naidu as 'Judicial overreach'.
    - The Andhra Pradesh High Court's recent gag order on the media from reporting on the Amaravati land deal case is also a clear instance of judicial overreach.
    - Others: Liquor ban judgement, cancellation of telecom licenses in 2G case.

- **Into the domain of Legislature:**
    - Vishaka guidelines 1997: Supreme court gave these guidelines to prevent sexual harassment at workplace.
    - The Supreme Court struck down the NJAC, established through the 99th CA Act on grounds that it was unconstitutional.
    - Instituting collegiums by denying the executive role in the appointment of judges.

How can judicial overreach be avoided?

- Judicial restraint: The judiciary must resort to self-imposed discipline in order to prevent judicial governance. It is the exact opposite of judicial activism.
    - It helps in preserving a balance among the three branches of government, judiciary, executive, and legislative.
    - It allows the legislature and the executive to follow their duties. To mark a respect for the democratic form of government by leaving the policy on policymakers.
    - It encourages courts to debate on constitutional matters to accord the elected branches considerable credibility and to only reject their acts when they violate the constitution.
- Maintaining 'independence': Judiciary is expected to maintain its primary allegiance to the law and the Constitution i.e., to the text of legal instruments and legal interpretation, and to the body of judicial precedents.
- Limiting judicial discretion: All cases invoking Article 142 can be referred to a Constitution Bench and the government must bring out a

white paper to study the effects of the judgments.

- The adjudication must be done within the system of historically validated restraints and conscious minimization of the judge's preferences.
- The courts have to be cautious to ensure that they do not knowingly or unknowingly become a source of obstruction in the performance of states' obligations.

In India, judicial activism has played an important role in keeping democracy alive. Pronouncements like Keshavnanda Bharti case, Minerva Mill Case etc. has helped in keeping all the organs of government in balance and help in keeping society healthy and progressive.

Judiciary, thus, should be mindful to ensure that Judicial overreach is avoided and judicial activism, if at all necessary, should act as a medicine and not a daily bread and butter.

H81- Article 142

"A judge is not a legislator in general but does legislate new law to fill gaps between existing rules."
-Benjamin Cardozo.

Article 142 has been often used by the judiciary as a tool for Judicial Activism. However, it has sometimes led to judicial overreach. Thus, Article 142 has been criticized as a blanket constitutional provision itself. In recent times, it was applied in the Ayodhya verdict which brought the issue into the limelight again.

What is Article 142?

- Article 142 provides discretionary power to the Judiciary as it states that the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing 'complete justice' in any cause or matter pending before it.
- It is meant to provide justice to litigants who have traversed illegality or injustice in the course of legal proceedings.
- Through this article, SC delivers justice in exceptional cases without being hindered by legal or bureaucratic red tape.
- There must be strong and cogent reasons for exercising this discretionary. The jurisdiction is meant to be exercised in order to further the needs of justice.

Why was Article 142 incorporated in the Constitution?

- In the Constituent Assembly, Shri Thakur Das Bhargava held that natural justice is above law. To ensure this, the supreme court shall have full right to pass any order which it considers just.
- Framers of the constitution felt that this provision is of utmost significance to those people who have suffered due to the delay in getting their necessary reliefs.

Discuss some instances where the Supreme Court has invoked Article 142:

The Supreme Court has clarified the scope and extent of Article 142 over time in its various judgments such as:

- **Ayodhya Verdict:** In granting five acres of land in Ayodhya, but outside the disputed area, to Muslim parties, the Supreme Court used Article 142.
    - While invoking Article 142 "to ensure that a wrong committed must be remedied", it implicitly referred to the demolition of the Babri Masjid.
- **Ban on liquor sale on highways case**: In 2016, the Supreme Court, under Article 142, made it illegal to sell alcohol within 500 meters of the highways outside edge. This decision was made to avoid accidents caused by drunk driving.
- **Perarivalan Case:** Recently, the Supreme Court invoked Article 142(1) to order the release of former Prime Minister Rajiv Gandhi assassination case convict A.G. Perarivalan.
- **Union Carbide Case:** The Supreme Court used Article 142 to grant relief in 1989, providing reparation to the Bhopal Gas Disaster victims.
- **Coal Block Allocation Case:** The Supreme Court invoked this clause of the constitution in 2014 to revoke the allotment of coal blocks allocated to wrongdoers from 1993 onwards and levy fines on coal produced unlawfully.

Is Article 142 desirable?

A. **Yes:** (Advantages)

- **Uphold constitutional ideals:** The judiciary used this article whenever the executive or legislature fails to defend people's rights and uphold the constitutional ideals.
- It **enables judicial activism** to plug loopholes in the political space, in extraordinary cases where injustice has been inflicted.
- **Uphold citizen's rights:** It has been invoked for the purpose of protecting the rights of the different sections of the population.
- **Complete justice:** It provides a unique power to the Supreme Court, to do "complete justice" between the parties, where at times law or statute may not provide a remedy.
- **Checks and Balance:** It establishes a system of checks and balances on the executives and legislatures.

B. **No**: (Disadvantages)

- **Unaccountable** Unlike the executive and legislature, SC cannot be held accountable for its decision.
    - For example, in one of the rulings, the highest court outlawed e-rickshaws in Delhi without providing alternatives. It cannot, however, be held liable for infringing basic rights to the profession.
- **Destroy public faith on government:** Public faith in the government's integrity, quality, and efficiency can be eroded by frequent court interference.
- **Ambiguity:** The SC through this article tried to explain the phrase 'complete justice' on several occasions but it's still blurred. Judgment passed by the apex court has created a lot of confusion and there is no clarity on invoking Article 142.
- **Fundamental rights avoided**: There are several instances that while giving "Complete Justice", the apex court sometimes ignored the fundamental rights.
    - For example, in the coal block case without hearing allottees, the apex court imposed a huge penalty on the owner/allottees of coal blocks.

Way ahead:

- There is a necessity for the Supreme Court to make a strict guideline that justifies the use of Article 142 and promotes judicial restraint.
- While delivering the judgments, SC should ensure that it will be a complete justice for the society at large without compromising the fundamental rights of the individual citizens.
- Article 142 should be referred to a Constitutional Bench so that this exercise of discretion can be utilized rationally which is having a far-reaching impact on the lives of many people.
- Also, the government should bring out a white paper to study the beneficial as well as the negative effects of the judgment.

Judiciary infuses life and blood into the dry skeleton provided by the legislature and creates a living organism appropriate and adequate to meet the needs of society. Thus, this corrective and extraordinary power provided under Article 142 should be exercised in such a way, so as to solely thrive on the principles set out by the Constitution.

H82- Criminal Justice system

"Injustice anywhere is a threat to justice everywhere."
- Martin Luther King, Jr.

What is meant by the criminal justice system?

- The principal purpose of the criminal justice system of a nation is to preserve and defend the rule of law.
- It seeks to enforce maintain law & order, promote peace & harmony, speedy trial, penalization of offenders and address criminal behavior.
- It ensures that everyone injured or wronged by others may seek justice.
- The main components of criminal justice are the police, courts, prosecution and prisons.
    - Police: have the duty to maintain law and order in society.
    - Prison: A place where offenders are kept if they are punished with a sentence. The prisoners live in an isolated place and their movement is restricted.
    - Prosecution: Whenever, a crime leads to disturbance in the law and order, the state becomes the party and is represented by a public prosecutor.
    - Courts: to deliver justice to the victim with the help of laws and fair trials.

What are the objectives behind the establishment of CJS?

The objectives of the criminal justice system are:

- To prevent and control crime.
- Keep the public safe and orderly.
- Protect people and their property from crime and criminality.
- Protect the rights of victims and people in trouble with the law. Punish and rehabilitate people who have been found guilty of crimes.

Discuss the evolution of Indian CJS:

- The Indian CJS is based on the Penal legal system that was set up under British India.
- The 'Indian Law Commission' was setup in 1833 and an Indian Penal Code (IPC) defined crime and prescribing appropriate punishments was adopted in 1860, prepared by the first Law Commission of India.
- Code of Criminal Procedure was enacted in 1861 and established the rules to be followed in all stages. This was amended in 1973.
- The first attempt to change India's CJS was made by the Vohra Committee 1993. It made a comment about how criminals, politicians, and bureaucrats in India all work together.
- In 2003, the Malimath Committee gave a report to reform CJS with 158 suggestions.

What are the issues associated with the criminal justice system of India?

A. **Police** (Note: This topic is dealt comprehensively in 'Police reforms' handout)
B. **Prison** (Note: This topic is dealt comprehensively in 'Prison reforms' handout.)
C. **Courts** (Note: This topic is dealt comprehensively in "Performance of judiciary")
D. Prosecution:
    - Lack of coordination in between prosecution and police department.
    - Prosecutors are overburdened with cases, slow pace of trials, lack of proper training, flawed procedure of appointment. This has resulted in a rate of conviction as low as 26% (Japan: 99%)
    - Lack of recognition of the role of prosecutors as the most important cog in the machinery of the criminal justice system.
    - In R. Sarala vs. T.S. Velu, the Supreme Court observed that investigation and prosecution are two different aspects of the CJS. The role of a public prosecutor lies inside the Court, whereas investigation is outside the Court.
    - Absence of accountability: regarding the best possible evidence. It lies first with the investigation and then the prosecution. The evidence is usually compromised due to lack of due diligence, political interference, corruption etc.
    - **Other issues:**
        - Poor infrastructure of offices of prosecutors and lack of facilities such

as libraries, lack of coordination with the investigation;
    - The overflowing docket of the prosecutors;
    - No arrangement for imparting specialized training to prosecutors.
    - Lack of legal awareness amongst individuals.
- Zahira Habibullah v. State of Gujarat: public prosecutor appears to have acted more as a defence counsel rather than whose duty was to present truth before the court.

Discuss the initiatives taken to improve CJS in India?

A. **Police** (Note: This topic is dealt comprehensively in 'Police reforms' handout)
B. **Prison** (Note: This topic is dealt comprehensively in 'Prison reforms' handout.)
C. **Courts** (Note: This topic is dealt comprehensively in "Performance of judiciary")

What are the steps required to improve the CJS in India?

A. **Police** (Note: This topic is dealt comprehensively in 'Police reforms' handout)
B. **Prison** (Note: This topic is dealt comprehensively in 'Prison reforms' handout.)
C. **Courts** (Note: This topic is dealt comprehensively in "Performance of judiciary")
D. **Prosecution:** Penal code should be modified to incorporate the present day societal, economic, and other changes.
    - The Penal code can be divided into various codes incorporating social offences, correctional offences, economic offences and an Indian penal code (which will deal with cases that warrant 10 years punishment or more).
    - Proper coordination between the prosecutor and the Investigating Officer is required.
    - Like in the USA, the system of election of prosecutors by the people of the district must be established in India.
    - Powers can be given to the office of District Attorney to supervise investigations: to ensure effective investigation of crimes. For this purpose, appropriate amendments can be made in Chapter XII of the Code of Criminal Procedure.
E. **Administrative and operational reforms (as suggested by NITI AAYOG):**
    - A Task Force must be created under the MHA to identify non-core functions that can be outsourced to save on manpower and help in reducing the workload of the police.
    - The states should be encouraged to ensure that the representation of women in the police force is increased.
    - India should launch a common nationwide contact for attending to the urgent security needs of the citizens.
    - Incorporate more efficient practices like restorative justice, plea bargaining, etc.

Malimath committee (2003) recommendations for CJS:

- **For the rights of accused:**
    - Right to remain silent: A change to Article 20(3) of the Constitution that protects the accused from having to testify against himself or herself.
    - A schedule of the Code should be made available in all regional languages so that the accused knows what his or her rights are and how to get them upheld.
- **Reforms related to victims' rights:**
    - Justice for the victims: The victim should be able to take part in cases involving serious crimes and should also get enough money for their pain and suffering.
    - Right to free legal aid: If the victim can't pay for a lawyer, the state should pay for one of the victim's choosing.
    - Victim Compensation Fund: Under the victim compensation law, a Victim Compensation Fund can be set up, and the assets taken from organised crime can go into it.
- **Reforms related to appointments and removal of the judges:**

- National Judicial Commission: to deal with the appointment of judges to the higher courts.
- Amending Article 124 to make impeachment of judges less difficult.
- Separate criminal division in higher courts: There should be a separate criminal division in the higher courts, with judges who are experts in criminal law.

- **Other reforms:**
  - Witness protection: The law should allow witnesses to say things, confess, or have their statements recorded on audio or video as they are dying.
  - Offence classification: Instead of the current classification of "cognisable" and "non-cognisable," it should be changed to "social welfare code, correctional code, criminal code, and economic and other offences code."
  - Substitute the death sentence with a sentence of life in prison without parole or commutation.
  - Lok Adalats: To use Lok Adalat to settle cases that have been going on for more than two years.

Laws and processes must reach the common man, and civil society's participation remains crucial. Streamlining policy reforms, strengthening forensic evidence-based investigation, and advanced scientific research to meet modern needs has become need of the hour as criminal justice system forms backbone of any substantive democracy to survive.

H83- Police Reforms

The issue of the need for police reforms is quite old as several committees and judgements of the supreme court dealt with it from time to time. However, recent issues like encounters by Hyderabad police and tussle between DGP & Home Minister of Maharashtra have again brought police reforms to the limelight.

Indian police force has been marred by shortage of personnel. There are 17.2 million police officers across 36 states and UTs, in comparison to recommended strength of 22.6 million (Ministry of Home Affairs).

What is the role performed by the police in governance of the country?

- **State security providers:** Police protects the life, liberty and property of the people through the maintenance of public order, prevention and detection of crimes in the state.
- **Integral part of the Criminal Justice System**: as they link state security and justice provision through the court systems, and penal facilities among others.
- **Police hold special powers:** under specific & legally defined circumstances. Police can temporarily limit the exercise of basic rights, to deprive people of their freedom and to use force to maintain law & order.
- **Reflects the character of the state**: the exercise of their powers and fulfillment of their duties directly impacts the state directions to secure individuals and communities.

Discuss the evolution of Police in India:

- **Indian Councils Act 1861:** created the foundation of a modern and professional police in India by introducing Superior Police Services, (later known as the Indian Imperial Police).
- In 1917, **Islington Commission Report** referred to superior police force as the Indian Police Service (IPS) for the first time.
- After independence **Sardar Vallabhbhai Patel**, in 1949, in the Constituent Assembly, emphasized the importance of having the IPS as an All-India Service.
- **The Police Act, 1949** provides for the constitution of police force at state level.
- The modern IPS was created under the Article 312(2) in part XIV of the Constitution of India.
- As per 7th Schedule, 'Police' and 'Public Order' are State subjects. The primary responsibility of prevention, detection, registration, investigation and prosecution of crimes lies with the State Governments and UTs Administrations.

What are the issues faced by the police force in India?

- **Overburdened Force and Vacancies:**
  - 21% shortfall against the sanctioned strength of 26.2 lakh, this exacerbates an already-existing problems.
  - India's sanctioned strength is 181 police per lakh people, compared to the UN's suggested standard of 222 police per lakh people.
  - Police officer undergoes a massive burden and extended working hours, which hurts his or her efficiency and performance.
  - Understaffing also causes psychological distress and contributes to suicides, case pendency etc.
- **Infrastructure**
  - The purchase process for firearms is lengthy, resulting in a scarcity of arms and ammunition.
  - As per CAG and BPRD, the obsolete weapons are used by lower police forces and cannot match modern weaponry used by anti-social elements.
  - Police vehicles and drivers are in limited supply => impacting their response time.
  - Across the 22 States, 214 police stations do not have access to telephones and About 240 police stations have no access to vehicles.
  - On an average, the police stations in India have 6 computers per police station, (Assam and Bihar have an average of <1 computer per police station)
  - Underutilization of 'Modernization of police force fund' - a recurrent issue.
- **Relationship between police and the public**

- It is troubled by a severe lack of confidence. People view the police as inefficient, corrupt, violent and reflect misuse their power.
- This leads to the problem of less coordination due to which the police find it difficult to perform their functions.
- Poor sensitivity: Representation of SCs, STs, OBCs and women in the police is poor, with huge vacancies in the reserved positions.

- **Investigation of crime**
  - Poor quality of investigation due to higher crime rates, low conviction rates, several vacancies, and overburdened police staff.
  - The police do not have the necessary training or expertise to undertake professional investigations. In last 5 years, on an average, only 6.4% of the police force have been provided in-service training.
  - They also lack legal understanding (e.g., admission of evidence),
  - Forensic and cyber-infrastructure is both weak and antiquated.
  - Frequent transfers of officers => low quality of investigation.
- **Police accountability**
  - Undue interference by the political class in day-to-day administration of police affects their capacity to make professional decisions => thus, biased performance.
  - Lack of accountability of the police and to a misuse of power to abide by the political ideologies.

What reforms are required to make the functioning of the police more effective?

A. Supreme Court guidelines (Prakash Singh case, 2006)

- Constitute a State Security Commission (SSC), wherein members of civil society will:
  - Ensure that the state government does not exercise unwarranted influence or pressure on the police.
  - Lay down broad policy guideline, and
  - Evaluate the performance of the state police.
- **DGP appointment:** through merit based transparent process for a minimum tenure of 2 years.
- Ensure that other police officers on operational duties (including SP and SHO) are also provided a minimum tenure of two years.
- Postings of officers being done by Police Establishment Boards (PEB) to decide transfers, postings, promotions and other service-related matters of police officers.
- Setting up State Police Complaints Authority (SPCA) to give a platform where common people aggrieved by police action could approach.
- Separation of investigation and law and order functions to better improve policing,
- Forming a National Security Commission at the union level to prepare a panel for selection and placement of Chiefs of the Central Police Organizations (CPO) with a minimum tenure of two years.

B. Malimath Committee Report, 2003

- To improve the quality of investigations, it suggested:
  - Appointment of an Additional SP in each district to maintain crime data,
  - Organisation of Specialized Squads to deal with organised crime, and
  - A team of officers to probe inter-State or transnational crimes, and
- Police custody to be extended to 30 days from present 15 days. An additional time of 90 days be granted for the filing of a charge sheet in case of serious crimes.

Smart Policing

- The SMART Policing as an idea was articulated by PM Modi at the Conference of DGPs of State and Central Police Organizations in 2014.
- It envisaged systemic changes to transform the Indian Police to be Strict & Sensitive, Modern & Mobile, Alert & Accountable, Reliable & Responsive, Techno-savvy & Trained (SMART).

Were these reforms implemented?

- According to a report of the NITI Aayog (2016),
  - of 35 states and UTs (excluding Telangana), State Security Commissions (SSCs) had been

set up in all but two states, and Police Establishments Boards (PEBs) in all states.
    - The composition and powers of the SSCs and PEBs were at variance with the Supreme Court directions.
- According to Commonwealth Human Rights Initiative (CHRI), 2020 report, while 18 states passed or amended their Police Acts in this regard, not one fully matches supreme court directions

What were the reasons for non-implementation of reforms?

- Lack of political will: The SSCs were constituted, but there was a preponderance of government representatives and those picked from the civil society too close to the political establishment.
- Lack of adequate manpower and expertise is one important reason for not separating law & order with investigation.
- The states said that establishment of Police Complaints Authority would lead to multiplicity of authorities. There were already SHRCs, Women Commissions, etc. as adequate mechanisms for redressing grievances against police.
- Lack of urgency even from people as it never been an electoral issue.

What should be the way forward?

The Standing Committee on Home Affairs presented its report on 'Police - Training, Modernization and Reforms' 2022 with the following observations and recommendations:

- **Police training:** There is a need to develop soft skills and bring a behavioural change in the police personnel. Also, an understanding and use of new technology to solve crimes is needed. Steps needed:
    - Adding programmes on artificial intelligence, robotics, drone technology, forensic, ballistic sciences etc.
    - Emphasizing on procedures during arrests and rights of the detainee.
    - creating training manuals on the local customs of tribals and other vulnerable groups.
    - States, with the help of MHA, can a link a cluster of police stations to a particular university, which take up research on regional issues related to crime, criminal justice, public safety, and security.
    - Common training module: BPR&D may prepare a common training module for States & UTs. Also, online open libraries of central and state police training academies may be created.
- **Use of technology by state police:**
    - States, with the help of MHA, can deploy UAVs (Unmanned Aerial Vehicles) for: (i) VVIP security, (ii) surveillance of crime hotspots, (iii) crowd control and riot management, and (iv) disaster management.
    - Integrate CCTNS (Crime and Criminal Tracking Network System) data with that of courts, prisons, and forensics to reduce duplication of work and errors.
    - Centre can incentivize states to leverage technologies like artificial intelligence and big data for policing.
    - MHA should advise states to set up cyber cells in all the districts to map cyber-crime hotspots.
- Vacancies in state police forces:
    - States/UTs should conduct police recruitment drives as a concentrated mission and remove the administrative bottlenecks for the recruitment of police personnel at different ranks.
    - BPR&D may conduct a study to determine functions of the police that can be outsourced with requisite training.
- **Adoption of Model Police Act, 2006** by states in letter and spirit.

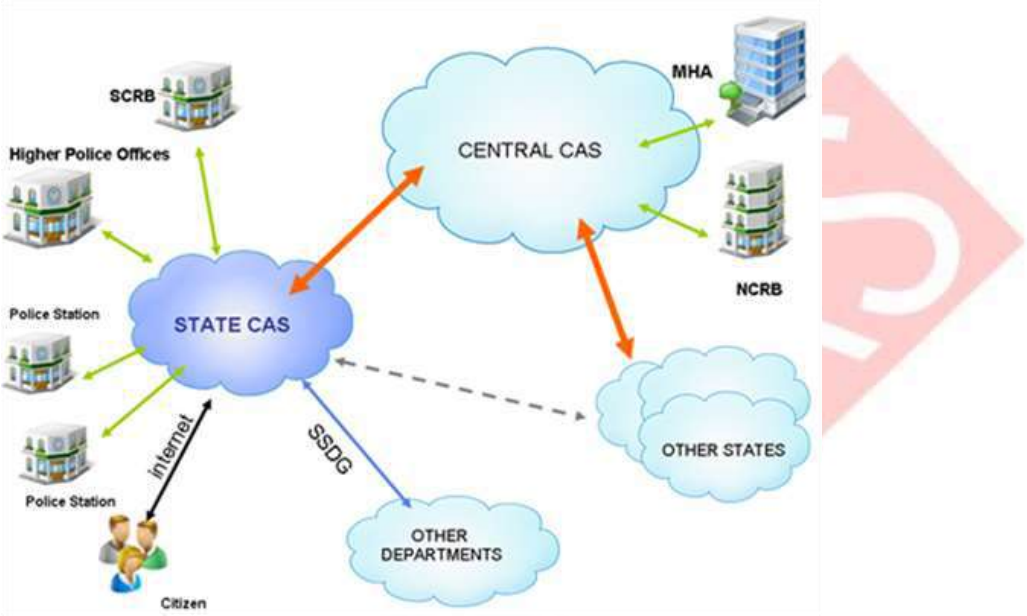
Crime and Criminal Tracking Network & Systems (CCTNS)

It is a Mission Mode Project under the National e-Governance Plan (NeGP) of Govt. of India.

- CCTNS aims at creating a comprehensive and integrated system for creation of a nationwide networking infrastructure for evolution of IT-enabled-state-of-the-art

tracking system around 'Investigation of crime and detection of criminals'.

- Under the CCTNS Project, nearly 14,000 Police Stations throughout the country have been proposed to be automated beside 6000 higher offices in police hierarchy.
- These include scientific and technical organizations having databases required for providing assistance and information for investigation and other purposes e.g., Finger Print Bureau, Forensic Labs etc.



What are the objectives of CCTNS?

- Make the Police functioning citizen friendly and more transparent by automating the functioning of Police Stations. Improve Police functioning in various other areas such as Law and Order, Traffic Management etc.
- To facilitate investigation of crime and detection of criminals.
- Facilitate Interaction and sharing of Information among Police Stations, Districts, State/UT headquarters and other Police Agencies.
- Keep track of the progress of Cases, including in Courts.
- Reduce manual and redundant Records keeping.

What are the challenges to CCTNS?

- There is a shortage of trained man-power in the Police Force who can operate the computers efficiently as per the Mid Term Evaluation of CCTNS Scheme.
- Power outages, at times, last for 8 to 10 hours.
- In far-flung Police stations the hardware is required to be operated under difficult conditions.
- Due to low levels of intake of computer savvy personnel, the absorption of new system/technology has become time-consuming.
- V-Sat connectivity has not yet been completed, which is required for seamless functioning of CCTNS.

What are the advantages of CCTNS?

A. Benefits to Police Department

- Enhanced tools for investigation and to analyze crime patterns and/ or modus operandi.
- Faster turnaround time for the analysis results (criminal and traffic) to reach the officers on the field.
- Reduced workload for the police stations back-office activities such as preparation of regular and ad-hoc reports and station records management.
- A collaborative knowledge-oriented environment where knowledge is shared across different regions and units.
- Better co-ordination and communication with external stakeholders through

implementation of electronic information exchange systems.

B. Benefits to Ministry of Home Affairs (& NCRB)

- Standardized, faster and easier means of capturing the crime and criminal data across the police stations in the country.
- Enhanced ability to detect crime patterns through modus operandi across the States/UTs.

C. Benefits to Citizens

- Multiple channels to access services from police.
- Simplified process for registering petitions, accessing general services (such as requests for certificates, verifications, permissions etc.) and accurate means of tracking the progress of the case during trials.
- Improved relationship management for victims and witnesses.

In theory, one's safety and liberty depend upon the law and constitution, but in practice the laws and judicial decisions are enforced by the police. Thus, the police are the saviour of modern civil society which calls for requisite reforms to ensure the police force remains relevant in changing times.

H84- Sedition

"The prince among the political sections of the Indian Penal Code (IPC) designed to suppress the liberty of the citizens"- M K Gandhi on Sedition Law

In 2021, the provisions of sedition law were applied against the activist Disha Ravi, Shashi Tharoor and Rajdeep Sardesai for various reasons. Also, in this regard, the Supreme Court expressed regret over the enormous potential for misuse of India's sedition law and asked the Union government why a colonial law should not be repealed, this has kept the issue continuously in the news.

What is meant by sedition?

Sedition is defined as words or speech that incite people to rebel against the government or governing authority. For instance, words that inspire a revolution that overthrows the government are an example of sedition.

What is sedition law in India?

- **Historical evolution:**
  - The sedition law was **brought into force by the colonial British rulers in 1860s.**
  - Sedition as an offence was **included in IPC under section 124A through the Special Act XVII in 1890.**
  - **The IPC (Amendment) Act, 1898 amended Section 124A**, making the effort of bringing or attempting to bring hatred or contempt (besides disaffection) towards the established government punishable. Since then, it has largely retained the same form.
  - After independence, the term "sedition" was removed from the constitution in 1948, following discussions in the constituent assembly. However, section 124A continued to remain in the IPC.
  - However, it was in **1973 when a new code of criminal Procedure was enacted that Section 124A became a cognizable offence. It authorized the police to make arrests without a warrant** under Section 124A.
- **Provisions**
  - **Section 124A of IPC defines sedition** as: "Whoever, by words, either spoken or written, or by signs, or by visible representation, or otherwise, brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards, the Government established by law shall be punished with imprisonment for life, to which fine may be added…"
  - Sedition is a non-bailable offence, punishable with imprisonment from three years up to life, along with a fine.
  - The person charged under this law is also barred from a government job and their passport is seized by the government.
- **Purpose**
  - Sedition Law was initially imposed by the British Colonial government to primarily suppress the writings and speeches of prominent Indian freedom fighters.
  - Since the British did not enjoy popular support, thus sedition law was necessary to curb dissent by Indian colonial subjects against the British rule.
  - After Independence it was retained due to issues faced by the nascent democracy like naxalism, fear of balkanisation on the ground of linguistic or ethnic diversity etc.
- **Use of Sedition Law (Past/present):**
- In colonial India, the British tried leaders like Mahatma Gandhi, Lokmanya Tilak, and Jogendra Chandra Bose under sedition law for their writings against the British rule.
- Since 2010 nearly 11,000 people were charged in 816 seditions.
- Recent trend: As per the 2020 National Crime Records Bureau (NCRB) report,
  - In 2018, 70 sedition cases were filed; however, not a single person was convicted.
  - In 2019, 93 cases were filed, while only two were convicted.
  - In 2020, 73 cases were filed and no one was convicted of sedition.

- Manipur filed the highest number of sedition cases (15) in 2020, followed by Assam (12), Karnataka (9), Uttar Pradesh (7), Haryana (6) and Delhi (5).

Should Sedition law be abolished?

No, sedition law should be retained because:

- A country like India that has some secessionist tendencies (with realities of insurgency, terrorism, etc.) needs to protect itself against those speeches which can fundamentally overthrow the government.
  a) Even today there are 70 LWE affected areas where there is a challenge to the authority of government.
  b) Moreover, there are anti-state elements or terrorists that try to incite people against the lawfully established government, example in J&K and some north east states.
- Continued existence of the Government established by law is an essential condition of the stability of the State.
- Sedition helps maintain national integrity and security.
- It creates a sense of fear among the anti-national groups.
- It also helps in maintaining public order.
- Sedition law balances freedom of expression with the collective national interest.

Yes, sedition law should be abolished because:

- **Trivialisation of sedition:** used from simply holding posters to social media posts to raising slogans and personal communications.
- **Used to curb voice of dissent:** For instance, JNU students protest in 2017 against capital punishment in the country was charged with sedition.
- **Used to curb criticism of the government.** For example, two girls from Mumbai were arrested after posting a Facebook post against the govt decision to shut down the city on death of Bala Thackery.
- **Tramples upon the fundamental rights** example A19(a).
- **Used to suppress people who are protesting for their legitimate rights.**
  a) An entire village in Kundakulam village of Tamil Nadu was charged with sedition for the protest against Nuclear Power Plant.
- Its **definition is very broad and vague.** Thus, it becomes difficult to differentiate between lawful criticism and "attempt to incite disaffection towards the government."

What should be the way forward?

Views of Law Commission:

In 2018, a Law Commission consultation paper on sedition proposed a rethink of Section 124A.

- It acceded that a revision of Section 124A is warranted to only criminalize acts committed with the intention to disrupt public order or to overthrow the government with violence and illegal means.
- If the country is not open to positive criticism, there lies little difference between the pre- and post-independence eras.
- It also said that expression of frustration over the state of affairs cannot be treated as sedition.
- Reducing the rigour of Sec.124A or repealing it would not be beneficial to the nation.
- The Commission had noted that while it is essential to protect national integrity, it should not be misused as a tool to curb free speech.
- The Commission underlined that every irresponsible exercise of the right to free speech and expression cannot be termed seditious.

Views of Supreme Court

- Kedarnath Singh case (1962), the court attempted to restrict the scope for misuse of sedition law.
  - The court held that unless accompanied by an incitement or call for violence, criticism of the government cannot be labelled sedition.
- The common theme reiterated by the apex court is that charges of sedition cannot be brought just for criticizing the government or its policies but any seditious act must have implicit in them the idea of subverting the government by violent or illegal means.
- In 2016, in Arun Jaitley v State of Uttar Pradesh, the Allahabad High Court held that criticism of the judiciary or a court ruling would not amount to sedition.

- Aamoda Broadcasting Company case (2021), the Supreme Court ruled that there is a need to define the limits of sedition under Section 124A of the IPC.
- In May 2022, the Supreme Court directed the Centre and states to keep in abeyance all pending trials, appeals, and proceedings with respect to the charge framed under Section 124A of the Indian Penal Code (IPC), till the central government completes the promised exercise to reconsider and re-examine the provision.

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. In this regard constructive criticism or debates, pointing out the loopholes in the policy of the Government should not be considered as a sedition and it should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the Government with violence and illegal means.

H85- Capital Punishment

What is meant by capital punishment?

Capital punishment or Death penalty is a sentence of death after the conviction in a criminal offence by a court of law. It is granted for the most heinous offences against humankind.

What is the status of death penalty in India?

- Death penalty is given in 'rarest of rare' cases (crimes that shock the collective conscience of society) as per the precedent set in Bachan Singh case 1979.
- Also, mitigating and aggravating circumstances are considered while granting death penalty like socio-economic background of culprit, recidivism (repeat offender), vulnerability of victim etc.
- Various legislations like the Anti-hijacking Act 2016, UAPA 1967 and POCSO Act 2018 provide for the death penalty in India.
- As per the Death Penalty in India Report 2021, number of prisoners on death in India stood at 488, the highest in 17 years.

What is the process of awarding capital punishment in India?

Procedure for awarding capital punishment:

- Under Section 235 of CrPC the court must record the special reason justifying the judgement.
- If a sessions court (sentencing court) awards a capital punishment, then it is to be confirmed by the jurisdictional High Court (confirming court) under the Code of Criminal Procedure.
- Petition for review of the judgement under article 137 of the Constitution can be filed before the Supreme Court within 30 days.

What are the protections against capital punishment under the constitution?

- **Article 21:** Executive cannot take life without procedure established by law, Supreme court since Maneka Gandhi case has incorporated due process of law.
- **Article 72:** President can pardon the death sentence.

Status of the death penalty in Indai?

What has been the view of Indian judiciary on capital punishment?

- Ediga Anamma v. the State of Andhra Pradesh, (1974): The Supreme Court (SC) held that life imprisonment for the offence of murder is the rule and capital punishment is the exception.
- Bachan Singh v. the State of Punjab, (1980): death penalty should be awarded only in 'rarest of rare' cases.
- Mofil Khan vs State of Jharkhand (2021): the court held that the "the State must prove that the reformation and rehabilitation of the accused is not possible".
- Machhi Singh vs State of Punjab (1983): The Court indicated that inadequacy of other punishments could justify the death penalty.

Should India retain or abolish capital punishment?

Arguments in favor of retention:

- Deterrence: a person may restrain himself from committing a heinous crime.
- National Security: India faces issues like terrorism, acts of waging war against the state etc.
- Capital punishment can be a solution for crimes against humanity which are beyond redemption.
- Retributive justice honors the victim, helps console grieving families and guarantees that the perpetrator never has an opportunity to cause future tragedy.
- International examples: Even liberal democracies such as the USA have not abolished it.
- Justice does not have a universal meaning. It is never value-neutral; it is shaped by ideology and retributive justice is also a one ideology.

Arguments against retention (Issues with the capital punishment):

- Mental Stress: The segregated, alienated and stigmatized experiences of being on a death row for a longer time result in mental illness.
- Capital punishment doesn't rehabilitate the prisoner and return them to society.
- Irreversible in Nature: as judiciary is not infallible, if a person is wrongly hanged, then nothing can bring back the person and mitigate the error.
- Against basic human rights: The death sentence is a violation of the right to life - the most fundamental of all human rights.
- Global Precedent: Scandinavian countries like Norway, Sweden and Finland have one of the lowest crime rates in the world without death penalty.
- It is disproportionately used against socio-economically weaker sections. E.g., 74.1% of the prisoners sentenced to death in India are economically vulnerable (Death Penalty in India Report)
- 140 countries have abolished death penalty in law or in practice. That leaves India in a club with the USA, Iran, China, and Saudi Arabia as a country which retains it.
- It reduces the chances of survival of the victim. As fear of the death penalty often leads rapists to eliminate the victim.
- Retribution is immoral, and it is just a sanitized form of vengeance.
- Law Commission of India in 2015 - "The death penalty has not demonstrated utility in deterring crime or incapacitating offenders any more than its alternative: imprisonment for life."
- There is hardly any decline in crime rate: instead, crime rate and heinous crimes are on the rise for example, Hyderabad rape and murder, recent Bhandara rape and murder etc.
- It often leads to increased popularity of the convict and hence creating emotional support for them for example, Yakub Memon, Afzal Guru etc.

If not abolition, which steps are needed to improve the overall system regarding capital punishment?

- Reduce subjectivity: The SC should release updated guidelines on how to balance the aggravating and mitigating factors in cases.
- The focus should be on ensuring certainty of punishment rather than quantum of punishment that will act as a better deterrent for criminals.
- Act swiftly on mercy petitions based on merits.
- Strengthen the doctrine of the rarest of rare: provide clear criteria.

- Requires broader social reforms, sustained governance efforts and strengthening investigative and reporting mechanisms.
- The Justice J.S. Verma Committee, Law commission 262nd report recommended the life sentence with rigorous imprisonment for the most grievous of crimes and limiting death penalty only to terrorism and war crimes.

Thus, the principles laid down in cases like Bachan Singh or Machhi Singh has to be strictly followed so that more focus should be kept on reformative justice and very less and rarest cases attract the death penalty.

"Criminal laws of civilized nations do not and should not have barbaric features."
- Jacques Derrida (French philosopher)

H86- Prison Reforms

Justice V.R. Krishna Iyer had rightly observed: "In our world prisons are still laboratories of torture, warehouses in which human commodities are sadistically kept and where spectrums of inmates range from drift-wood juveniles to heroic dissenters"

What is Prison?

It is a facility in which individuals are forcibly confined and denied a variety of freedoms under the authority of the State as a form of punishment.

What is the status of Prison in India?

- 'Prison' is a State subject under Entry 4 of List II of the Seventh Schedule to the Constitution of India. Administration and management of prisons is the responsibility of respective State Governments. However, the Ministry of Home Affairs provides regular guidance and advice to States and UTs on various issues concerning prisons and prison inmates.
- The occupation rate in all prisons is on average 118.5%. In general, under trials spend three months to five years in jail before getting bail.

Prisoners' Rights:

Constitutional Provisions:

- Right to life and personal liberty, right to a speedy trial, right to health and medical treatment (Article 21).
- Right to free legal aid: is a duty upon a state under A39A.

What are the issues associated with Indian prisons? (Why prison reforms are needed?)

- Human rights issues: torture by police, extra judicial killings under prisons etc.
- Imprisonment and poverty: Imprisonment disproportionately affects individuals and families living in poverty. When an income-generating member of the family is imprisoned the rest of the family must adjust to this loss of income.
- Public health consequences of imprisonment: as prisons are overly congested, with very poor levels of hygiene.
- Detrimental social impact: Imprisonment disrupts relationships and weakens social cohesion.
- The cost of imprisonment: When considering the cost of imprisonment, account needs to be taken not only of the actual funds spent on upkeep of each prisoner, but also indirect costs such as the social, economic, and healthcare related costs.
- The lack of proper legal aid and abuse of authority by the staff who sometimes take unfair advantage of the prisoner's dependency and make unwarranted demand in lieu of fulfilling basic needs of the prisoner.
- Corruption: Corruption by prison staff, and its less aggressive corollary, guard corruption, is common in prisons around the world.
- Staff Shortage and Inadequate Training is another problem facing Indian Prision's.
- Unequal treatments at prison: Special privileges are accorded to the minority of the prisoners who came from the upper and middle classes. (Human Rights Watch)

What are the steps taken by governments to improve the conditions of prisons in India?

Legislations:

- **The Prisons Act, 1894:** It contains various provisions relating to health, employment, duties of jail officers, medical examination of prisoners, prison offences etc.
- **Transfer of Prisoners Act, 1950 –** The Act deals with transfer of prisoner from state to another state.
- **Repatriation of Prisoners Act, 2003:** The act enables the transfer of foreign prisoners to the country of their origin to serve the remaining part of their sentence. It also enables the transfer of prisoners of Indian origin convicted by a foreign court to serve their sentence in India.
- **Model Prison Manual 2016:** It aims at bringing in basic uniformity in laws, rules and regulations governing the administration of prisons and the management of prisoners across all the states and UTs in India
- **Legal service Authority Act, 1987**: According to the law, a person in custody is entitled to free legal aid.

Policy decisions:

- **Education:**
  - For example, prisoners are provided the facility of education in the jail by various states for example, Haryana: IGNOU (Indira Gandhi National Open University) Centres have been set up in Central Jail. Books, newspapers have been provided to the prisoners.
  - Library Facility in Prisons.
- **Health:**
  - Mandatory health screening of all newly admitted prisoners. For example, Bihar. Health and AIDS awareness camps in various states.
  - Yoga and Meditation classes are conducted regularly in various states.
- **Reforms as per Gandhian policy of reformation:**
  - Many initiatives undertaken by the authorities, including Maharashtra Prison Industry, a registered brand with a range of products manufactured in the state's prisons.
  - Conducting the Gandhi Peace Examination in Maharashtra's jails to make criminals believe that they are not inherently bad human beings but good people who have just lost their way.
  - Various states have even introduced concepts of open prisons.

Initiatives by civil society groups:

- Art of Living is carrying out a SMART program in Tihar Jail.
- A Srijan project is aimed at providing social rehabilitation there.

Various Committees are set up by the government:

- **Justice Amitava Roy panel on prison reforms 2018:**
  - **For overcrowding:**
    - Special fast-track courts should be set up to deal with petty offences.
    - Lawyers – prisoners' ratio: there should be at least one lawyer for every 30 prisoners.
  - **For Understaffing:**
    - The Supreme Court should pass directions to start the recruitment process against vacancies.
    - There should be use of video-conferencing for trial.
  - **For Prisoners:**
    - Every new prisoner should be allowed a free phone call a day to his family members to see him through his first week in jail.
    - Alternative punishments should be explored.
- **MHA Committee gave the following recommendations:**
  - Improving professional standards of performance in urban as well as rural police stations,
  - Addressing the problems of recruitment, training, career progression and service conditions of police personnel.
  - Tackling complaints against the police with regard to non-registration of crime, arrests, etc. and
  - Insulating police machinery from extraneous influences.

Judicial approach in Prison Reforms:

The Court has taken a reformative approach in many important judgments giving a boost to the discourse on prison reforms such as:

- Sunil Batra v. Delhi Administration: The Court held that the Prison not denuded of all human rights upon entering the prison premises even as his right to liberty is fundamentally curtailed. However, this must not ipso facto prejudice his other fundamental rights.
- Ghiassudin Case: It was held that prison institutions must serve a therapeutic role to cure social morbidity in the prisoner's guilt.

- State of Gujrat v Hon'ble High Court of Gujrat: It was held that the prisoners are entitled to minimum wages for the work done inside the prison and must enable them to prepare for integration in the society upon release.

Which reforms are needed to improve the conditions of prison?

- Social reintegration initiatives should be started as early as possible within the criminal justice process in order to have maximum effect.
- The role of the National Human Rights Commission should be widened.
- Improvement in budgetary allocations to the prison establishments.
- Inspection at regular intervals by the independent body without interference from the prison authorities.
- Prisoners Welfare Fund & Police reforms.
- Ratifying the UN Convention against Torture.
- The rules relating to the management of prisons are outdated and should be reformed as per the recommendations of various committees.
- Best practices from around the world can also be adopted such as:
  - Prison and Probation Ombudsman (Grievance Redressal): A specialized inspection of prisons takes place every year in the UK. This makes for greater accountability and increased system transparency.
  - Singapore: Yellow Ribbon Project (Community Involvement): The goal of the yellow ribbon project is to reintegrate and rehabilitate prisoners. It involves prisoners voluntarily giving up all gang associations (including having tattoos removed).

In Harijan, Gandhiji wrote, "All criminals should be treated as patients and the jails should be hospitals admitting this class of patients for treatment and cure. No one commits crime for the fun of it. It is a sign of a diseased mind." This spirit should be kept in mind while undertaking any reforms associated with prisons or prisoners.

VALUE ADDITION:

Custodial violence:

Meaning:

- Custodial violence means torturing or inflicting violence on an individual or group of persons while in the custody of the police or judiciary.
- Types of custodial violence:
  - Physical violence: to cause bodily harm and exhaustion to the victim. In some instances, this form of custodial violence can cause the victim to fear immediate death.
  - Psychological violence: This involves depriving the victim of basic needs like food, water, sleep, or toilet thereby causing the victim to lose confidence and morale.
  - Sexual violence: Any sexual or attempt to obtain a sexual act by violence or coercion is called sexual violence. This includes rape, sodomy, etc.

Constitutional safeguards:

- Article 20: Right to protection against the conviction of offenses.
- Article 21: Right to life and liberty.
- Article 22: Right to protection against arrest and detention in certain circumstances:
- Being informed of the grounds of arrest.
- To be defended by a legal practitioner of his choice.
- Production in the nearest magistrate within 24 hours of the arrest.

Status of Custodial Violence in India:

- 151 people died in police custody in the year 2021 as per NHRC.

- 1,569 deaths in judicial custody were recorded in the year 2020 by NHRC.
- Torture of women in custody, custodial rape of women, and gang rape were also reported.

Reasons for Custodial Violence:

- Lack of Legal representation: Lack of effective legal representation at police stations is a huge detriment to arrested or detained persons.
- Lengthy Judicial Process: Lengthy and expensive judicial processes dissuade the poor and the vulnerable from accessing the justice system.
- Digital Divide: The digital divide has not helped the cause of easy access to justice. Rural and remote areas suffer from a lack of connectivity.

Undertrials:

- An undertrial is an unconvicted prisoner who is on trial in a court of law.

Status:

- According to the latest available data compiled by the National Crime Records Bureau (NCRB) for 2020, about 76% of all prison inmates in the country were undertrials, of which about 68% were either illiterate or school dropouts.
- Among the undertrials, about 20% were Muslims, while about 73% were Dalits, tribals or OBCs.
- Delhi and Jammu and Kashmir (J&K) were found to have the highest ratio of undertrials in jails at 91%, followed by Bihar and Punjab at 85%, and Odisha at 83%.

Reasons for high number of Under trials in prison:

- Low capacity of Judicial system: India has 21.03 judges per million population, while the Law commission recommends 50 per million. This along with lack of infrastructure results in large pendency of cases which now has reached over 4 crore cases.
- Poor economic and education levels: A large number of under trials are poor, illiterate, belonging to marginalized communities. This along with lack of financial resources leads to an inability to get legal aid and pay the bail amount.
- Unnecessary arrests and issues of bail system: A Law Commission in its 268th Report observed that over 60% of arrests are unnecessary.
- Delay in investigation: Investigation and trial process is often delayed by police and prosecution functionaries, one of the reasons behind this practice is low 'Police- Population' ratio.

H87- Tribunalization of Justice

What are Tribunals?

- Tribunals are special courts to deal with specific matters or problems of a particular type. These are not courts of normal jurisdiction, but they have very specific and predefined work area.
- In India, Tribunals were institutionalized under Part XIV-A by the 42nd CA Act 1976.
- Article 323-A deals with Administrative Tribunals while Article 323-B deals with Tribunals for other matters.

What is meant by the term 'Tribunalization of Justice'?

- 'Tribunalization of Justice' refers to the phenomenon of transferring of more and more areas of cases from traditional courts to specialized courts like Tribunals.
- This is primarily done to ensure specialization, especially to decide complex cases of a technical nature.
- India has been witnessing tribunalisation of the justice. After 42nd CA Act, tribunals such as the Central Administrative Tribunal as well as several sector specific tribunals were set up between 1980s-2010s.
- For example, India presently has 14 Tribunals, like Income Tax Appellate Tribunal (ITAT) Customs, Excise and Service Tax Appellate Tribunal Appellate Tribunal, Administrative Tribunal, Securities Appellate Tribunal, Debt Recovery Tribunal etc.

Is 'Tribunalization of justice' the panacea for justice delivery? (Does India need tribunals?)

A. Yes: (Advantages of 'Tribunalisation of Justice')

- Tribunals provide speedy, affordable and user-friendly justice delivery. Contrarily, civil courts are based on Indian Evidence Act – thus, are time consuming.
- They are relatively flexible as they are not restrained by rigid rules under the Civil Procedure Code. Rather, tribunals are based on PNJ (Principles of Natural Justice).
- Due to specialization, Tribunals can provide a higher standard of adjudication, especially in cases where the society is evolving under the welfare state.
- They are best suited for cases where large numbers of small claims are filed. E.g., social welfare legislation.
- Tribunals can be a helping hand to over the inadequacies of Judicial System, like pendency of cases, high vacancies etc.
- Tribunals have powers of a civil court, viz., issuing summons and allowing witnesses to give evidence. Also, there decisions are legally binding.

B. No: (Issues with 'Tribunalization of Justice')

- Lack of transparency: Lack of information available on the functioning, websites are routinely non-existent, unresponsive, or not updated.
- Increasing Pendency and duplication of work: According to 272nd Law Commission Report, the average pendency in tribunals is 3.8 years (pendency in high courts is 4.3 years). Also, multiple tribunals perform similar functions.
- Violation of separation of powers: Tribunals operate under parent administrative ministries.
    - They remain at their mercy for facilities, infrastructure, sanctioning leave, appointments and also rule-making.
    - A short tenure of 3 years & provision of re-appointment increases the influence and control of the Executive over the judiciary.
- Delayed awards: for example, Cauvery Interstate water dispute tribunal took 17 years to pronounce its judgment
- Appeal in the High courts: In L. Chandrakumar case, the apex court held that the 1st appeal lies in HCs. This defeated the very purpose of quick dispute resolution mechanism under Tribunals.
- Principles of Natural Justice is a very vague and ambiguous concept vesting very wide discretion => can be abused, lead to unpredictability of the procedure.
- Other issues: Absenteeism (casual approach); Vacancies (240 vacancies as of 2021); lack infrastructure; Low accessibility (located majorly in only one city, unlike HC); Lack technical members (recently objected by SEBI) etc.

Which steps can be taken to improve the functioning of the tribunals?

- **Directions by Supreme Court to secure independence of Tribunals:**
  - Tenure: 5 years for the Chairperson and other members (Maximum age limit of 70 years for the Chairperson and 67 years for other members).
  - Creating the National Tribunal Commission to supervise appointments, as well as functioning and administration of tribunals.
  - Single nodal ministry to administer all tribunals.
  - The government must stop creating new Tribunals and **focus on bringing standardization** in Tribunals.
- Filling up of Vacancies: The Law Commission recommends that the procedure for filling in vacancies start 6 months before the seats fall vacant.
- Consolidation of Tribunals: adopting a methodology of a merger. The Leggatt Report (UK) can also be applicable to the problem faced by Tribunals in India.

What are the recent steps taken by the government?

- In recognition of increasing tribunalisation, the Finance Act, 2017 was passed to consolidate several tribunals.
- In 2021, a Bill was introduced to abolish 9 tribunals and transfer the matters to courts.
- The government recently passed the Tribunals Reforms (Rationalization and Conditions of Service) Act, 2021. Its features include:
  - Search-cum-selection committees: consisting of:
    - Chairperson: CJI (or a Supreme Court Judge nominated by him) - with a second casting vote in case of a tie.
    - Sitting or outgoing Chairperson, or a retired Supreme Court Judge, or a retired Chief Justice of a High Court, and
    - 2 Secretaries (nominated by the central government)
    - Secretary of the Ministry under which the Tribunal is constituted (with no voting right).
  - Term of office: 4 years (subject to an upper age limit of 70 years for Chairperson and 67 years for other members) with provision for re-appointment.
  - A person who has not reached the age of 50 years shall not be eligible for appointment as a Chairperson or Member.

The 'Tribunalization of justice' is driven by the recognition that it would be cost-effective, accessible and give scope for utilizing expertise in the respective fields.

To live up to this expectation and prevent 'Tribunalization of justice' turning into 'Trivialization of justice', certain major reforms (as recommended above) are needed on a priority basis. This will strengthen the hands of the judicial system to ensure last-mile delivery of justice, instead of becoming another layer in the justice system.

H88- Public Interest Litigation (PIL)

"The Court has to innovate new methods and strategies to provide access to justice to large masses of people who are denied basic human rights." - Justice PN Bhagwati

What is 'Public interest Litigation' (PIL)?

- Public interest Litigation (PIL) means litigation filed in a court of law, for the protection of "Public Interest", such as Pollution, Terrorism, Road safety, Constructional hazards etc.
- It is not defined in any statute or in any act. It has been interpreted by judges to consider the intent of the public at large. The SC interpreted and defined PIL in Janata Dal Vs H.S.Choudhary (1993) case.
- It is the power given to the public by courts through judicial activism. However, the person filing the petition must prove to the satisfaction of the court that the petition is being filed for public interest and not just as frivolous litigation. PILs can be filed either in the High Court or in the Supreme Court.
- The expression 'Public Interest Litigation' has been borrowed from American jurisprudence, where it was designed to provide legal representation to previously unrepresented groups like the poor, racial minorities, unorganized consumers, etc.
- It mainly focuses on the following areas: Basic human rights violation of the poor; Conduct of the government policy.

Who can file it?

- Any Indian citizen can file a PIL, provided it is not filed with a private interest, but in larger public interest.
- At times, the courts can take cases suo motu.

How the concept of PIL evolved in India?

- Mumbai Kamagar Sabha vs. Abdul Thai (1976): In this case Justice Krishna Iyer initiated the concept of PIL.
- Hussainara Khatoon vs. State of Bihar (1979): 1st reported case of PIL that focused on the inhuman conditions of prisons and undertrials.
- S.P. Gupta vs. Union of India: A new era of the PIL movement was heralded by Justice P.N. Bhagawati in this case. It was held that "any member of the public or social action group acting bonafide" can invoke the Writ Jurisdiction of the HC (Article 226) or the SC (under Article 32).
- M.C Mehta vs. Union of India: Here, a PIL filed against Ganga water pollution to prevent any further pollution of the river.
- Vishaka v. State of Rajasthan: The Judiciary recognized sexual harassment as a violation of the fundamental rights of Article 14, Article 15 and Article 21.

What is the significance of PIL in India?

- Cheaper fees: Citizens can get a remedy to resolve crucial issues at a very nominal court fee.
- Lager Public Interest: The court can focus on larger public issues such as human rights, environment protection, and welfare of the society. E.g., starting of 'Green Litigation' for Environment under MC Mehta case - 1988.
- It is a tool to uphold Justice for all as - "Injustice anywhere is a threat to justice everywhere" - Martin Luther King Jr.
- Check on executive: Through PILs, the judiciary can haul up the executive when it is not performing its duties properly. It helps in judicial monitoring of state institutions like prisons, asylums, protective homes, etc. E.g., 2G scam was unearthed by PIL
- Support weaker sections: If the petitioner is weak socially and economically and not in a position to provide the necessary evidence to support his case, the court can order appointed commissions to look into and collect information about the case.
    - E.g., Sheela Barse vs State of Maharashtra case - 1983: dealt with the issue of custodial violence against women in prisons. It facilitated separate police lockups for women convicts in order to shield them from further trauma and brutality.
- PIL promotes the right to equality and also ensures the right to life. E.g., Indira Sawhney judgment 1992 responded to a PIL filed against Mandal Commission.
- Maintaining Rule of Law: PIL is an instrument of social change for maintaining the Rule of law and accelerating the balance between law and justice.
- Public participation in judicial review of administrative action can be assured by PILs.

Discuss the issues associated with PIL in India:

- PIL started as a tool for harassment because frivolous cases could be filed without heavy court fees as compared to private litigations.
- Sometime PILs turn into an avenue for judicial overreach, overstepping its jurisdiction.
- Cases of Judicial Overreach by the Judiciary in the process of solving socio-economic or environmental problems can take place through the PILs.
- Delays in the disposal of PIL cases leave certain judgments merely on paper.
- Many times, a PIL is seen as 'Personal Interest Litigation' or 'Private Interest Litigation'

What should be the way forward?

- The court must carefully ensure the Bonafide intentions of the petitioner and s/he is not for personal gain, private profit or political or other oblique considerations.
- Civil society needs to play a proactive role in condemning misuse of PILs.
- The Supreme Courts principles in regard to PIL need to be followed in sincerely, like:
    - If the court is satisfied that there has been a violation of any constitutional right to people belonging to a backward category, it may not allow the state to question the maintainability of the petition.
    - Dispute between two groups in the realm of private law would not be allowed to be agitated as PIL.
    - In allowing PILs and giving judgements the court should take utmost care not to transgress its jurisdiction, see if its judgements cause indirect ill effect on society and economy.
    - The Judiciary needs to protect the rights of every citizen and ensure that all lived with dignity.
    - There is also a need to ensure that remedies are clear and feasible and secure enforcement of its orders through cooperation with the government.

Public interest litigation (PIL) in India has served as a vehicle for creating and enforcing rights and remains critical to the sustenance of democracy. It can serve as a model for other developing nations struggling with legislative inertia and can provide recourse to marginalized and disadvantaged communities.

"There are always two sides to a coin. There will be people who will try and exploit PILs. Whether courts allow themselves to be misused, that is where the wisdom of the courts lies." - Justice RS Sodhi

H88A- Alternative Dispute Resolution

As about 3.3 crore cases are pending in Indian courts (National Judicial Data Grid report), the importance of ADR mechanisms has increased in India as Alternative Dispute Resolution (ADR) possesses potential to aid courts in reducing some burden on them.

What is Alternative Dispute Resolution?

Alternative dispute resolution includes dispute resolution process and techniques that act as a means for disagreeing parties to come to an agreement short of litigation.

What are the various tools through which ADR is ensured?

Various tools which come under the ADR mechanism:

- **Arbitration:** In this method a neutral third party known as the arbitrator will decide the dispute on merit.
  - Arbitration is currently the only legally enforceable and binding option in traditional court proceedings.
- **Mediation:** It is a non-binding procedure in which an impartial third party known as a mediator tries to facilitate the resolution process but he cannot impose the resolution and the parties are free to decide according to their convenience and terms.
- **Conciliation**: Non-binding procedure in which conciliator assists the parties to a dispute to arrive at a mutually satisfactory and agreed settlement of the dispute.
- **Lok Adalats:** It is a forum where disputes/cases pending in the court of law or at pre-litigation stage are settled/ compromised amicably. Lok Adalats have been given statutory status under the Legal Services Authorities Act,1987.
- **Negotiation:** A non-binding procedure in which discussions between the parties are initiated without the intervention of any third party with the object of arriving at a negotiated settlement to the dispute.
- **Ombudsperson:** An informal dispute resolution tool used by organizations. A third party "Ombudsperson" is appointed by the organization to investigate complaints within the institution and prevent disputes or facilitate their resolution. The Ombudsperson may use various ADR mechanisms (e.g., fact-finding, mediation) in the process of resolving disputes.

What are the advantages and achievements of ADR?

Advantages of ADR:

- Speedy disposal of case: by avoiding procedural delays associated with formal court system and reduce workload on the courts.
- Natural Justice: ADR uses the principle of natural justice in consonance with the rule of law to deliver justice.
- Confidentiality: ADR process offers confidentiality between parties. Thus, it helps to preserve important social relationships for disputants, especially in civil matters like divorce.
- Access to justice: Access to justice is improved as cost and time of litigation come down.
- Ease of governance as:
  - ADR processes are less formal and less complex than judicial processes.
- Increase civic engagement and create public processes to facilitate economic restructuring and other social change.
- Help reduce the level of tension and conflict in a community.
- Application of Equity: ADR programs are instruments for the application of equity rather than the rule of law.
- Thus, ADR helps in achieving constitutional goals:
  - Article 39A - to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.
  - Articles 14 and 22(1) also make it obligatory for the State to ensure equality before law and justice on a basis of equal opportunity to all.

Despite having advantages there are some concerns over the ADR:

ADR mechanism is not able to:

- Redress pervasive injustice, discrimination, or human rights problems.

- Resolve disputes between parties who possess greatly different levels of power or authority.
- Resolve cases that require public sanction.
- ADR programs do not set precedents, refine legal norms, or establish broad community or national standards.
- ADR settlements do not have punitive or deterrent effects on the population.
- It is inappropriate to use ADR to resolve multi-party cases in which some of the parties or stakeholders do not participate.
- Both the parties must be well informed of the processes, uninformed parties remain at a disadvantage of succeeding in an ADR.
- Lack of confidence in the process and result: Many of the litigants do not get satisfied and ultimately go to formal courts.

What is the arbitration and conciliation amendment act 2021?

Key features:

- The Arbitration and Conciliation (Amendment) Bill seeks to amend the Arbitration and Conciliation Act, 1996.
- Automatic stay on awards:
  - The 1996 Act allowed a party to file an application to set aside an arbitral award (i.e., the order given in an arbitration proceeding).
  - The amended act specifies that a stay on the arbitral award can be provided (even during the pendency of the setting aside of the application) if the court is satisfied that: (i) the relevant arbitration agreement or contract, or (ii) the making of the award, was induced, or effected by fraud or corruption.
- Qualifications of arbitrators: The Act specified that the arbitrator must be:
  - An advocate under the Advocates Act, 1961 with 10 years of experience, or
  - An officer of the Indian Legal Service, among others.
- The Bill removes the Schedule for arbitrators and states that the qualifications, experience, and norms for accreditation of arbitrations will be specified under the regulations.

Benefits:

- It would bring about parity among all the stakeholders in the arbitration process.
- Parties will get the opportunity to seek an unconditional stay on enforcement of arbitral awards where the agreement or contract is "induced by fraud or corruption".
- Checking misuse of the provisions under Arbitration and Conciliation Act, 1996 would save the taxpayers money by holding those accountable who siphoned off of them unlawfully.

Drawbacks:

- Affects ease of doing business:
  - As the amendments are in retrospective manner, it can lead to increased litigation.
- The Bill can hamper the spirit of Make in India campaign because resolution of commercial disputes could take longer duration from now onwards. As activating automatic stay by accusing an arbitrator as corrupt has become easy now.

What is ODR (Online Dispute resolution)?

Meaning:

- ODR is the use of technology to 'resolve' disputes. The disputes are solved through techniques of Alternate Dispute Resolution (ADR) such as arbitration, conciliation and mediation.

Why does India need ODR?

- The Covid-19 pandemic has affected timely access to justice. The pandemic also led to a deluge of disputes, further burdening the already lengthy court processes.
- Hence, ODR has the potential to help reduce the burden on the court and efficiently resolve several categories of cases.
- To minimize the high time and cost associated with traditional process of dispute redressal.

What are the benefits of ODR?

- It is cost-effective, convenient, efficient, allows for customizable processes to be developed.
- It can limit unconscious bias that results from human interactions.
- In terms of layers of justice, ODR can help in dispute avoidance, dispute containment and dispute resolution.

- Its widespread use can improve the legal health of the society, ensure increased enforcement of contracts and thereby improve the Ease of Doing Business Ranking for India.
- The benefits of ODR and Digital Courts (technology in the public court system) together can transform the legal paradigm as a whole.
- Thus, it ultimately helps in increasing access to justice.

What are the recommendations given by the NITI Aayog report on ODR?

The NITI AAYOG report recommends measures at three levels to tackle challenges in adopting ODR framework in India:

- Structural Level: It suggests actions to increase digital literacy, improve access to digital infrastructure and train professionals as neutrals to deliver ODR services.
- Behaviour Level: It recommends the adoption of ODR to address disputes involving Government departments and ministries.
- Regulatory Level: This involves laying down design and ethical principles to guide ODR service providers to self-regulate while fostering growth and innovations in the ecosystem.

Which steps are required to improve the functioning of the ADR scheme?

For Arbitration:

India can improve the arbitration by implementing the recommendation of B N Srikrishna Committee. The recommendations include:

a) Set up an autonomous body, styled the Arbitration Promotion Council of India (APCI), having representatives from all stakeholders for grading arbitral institutions in India,
b) Creating a special Arbitration Bench to deal with commercial disputes, in the domain of the Courts.
c) National Litigation Policy (NLP) must promote arbitration in government contracts.
d) Designate Legal and Treaties Division of the Ministry of External Affairs to deal with all Bilateral Investment Treaty (BIT) arbitrations.
e) Malimath Committee Report (1980-1990) underlined the need for an Alternative Dispute Resolution mechanism as a viable alternative to conventional court litigation.

For Lok Adalats:

- Legal literacy and legal aid programmes should be provided for the poor and the socially and economically marginalised societies.
- The quality of legal aid provided by lawyers must be improved.
- The jurisdiction of permanent Lok Adalats can be expanded to include areas like business disputes or conflicts.
- The social workers must be provided with free legal training so that they can help the needy from being exploited by the lawyers.
- The courts should encourage mandatory referral to Lok adalats so that parties can overcome their prejudice or lack of understanding of the process.

For Mediation:

- Creation of more ADR centers and mediation centers in all the districts.
- Ensure that the disputes capable of being solved through any of the ADR methods be first taken over by the ADR forum.
- The Arbitration and Meditation Centers/Institutions presently existing in India mostly cater to the commercial disputes. The need is to establish A&M centers for non-commercial disputes (such as family disputes).
- Strengthening of Gram Nyalayas system.

Thus, considering huge benefits of ADR mechanisms like speedy disposal, reducing burden of already overburdened judiciary etc., strengthening ADR mechanisms further is need of the hour to ensure that justice is not reduced to the luxury and common man can avail it without the complexities of traditional courts in at least day to day matters of civil nature.

H89- FEDERALISM -COOPERATIVE FEDERALISM, COMPETITIVE FEDERALISM

"Indian Union is a unitary state with subsidiary federal features rather than a federal state with subsidiary unitary features."
-K.C. Wheare.

In general, issues related to federalism are constantly in the news since the single party majority government came to power at the center in 2014. However, some of the recent issues like – opposition of some states to NEET, extension of jurisdiction of BSF in few states etc., again highlighted the issues federal polity is facing.

What is the concept of federalism?

- Federalism is a system where various constitutional units share power and authority between them. For example, the Union government, state/UT government as well as local bodies.
- Some of the notable federal policies in the world are the United States (US), Canada, Switzerland, Australia, India etc.

Discuss the idea of Federalism in India:

- Article 1 of the Indian Constitution says, India is a 'Union of States'.
  - The choice of words is deliberate: it is the several States that, together, make up the Indian Union.
  - There is no mention of word 'federation' in the Indian constitution.
- Federalism is defined in India as "an indestructible union of destructible states", as India is not a federation like USA where states came together to form a 'coming together federation'. Instead, Indian union is 'Holding together federation' as it divided itself into different states for administrative purposes.
- The Indian Constitution has been variously described as 'federal in form but unitary in spirit', 'quasi-federal' by K C Wheare, 'bargaining federalism' by Morris Jones, 'co-operative federalism' by Granville Austin, 'federation with a centralizing tendency' by Ivor Jennings, sometimes 'pragmatic federalism' so on.
- Similarly, in S.R. Bommai v Union of India, federalism was declared as the Basic Structure of the Constitution.

Is India a federation sui generis? (Quasi-Federal)

India is called Quasi-federal or federation sui generis because it tweaked the established western idea of the federation to suit its requirements. Indian federation has strong tilt towards the centre. Thus, Ivor Jennings described it as 'federation with a centralizing tendency'. This, is evident from unitary features over federal features (Refer Laxmikant). The reasons include:

- Fear of separatist tendencies warranted the establishment of a strong centre.
- On the other hand, the ethnic, linguistic, and cultural diversity of India made the adoption of federalism inevitable.

Discuss the evolution of federalism in India:

A. First Phase: Single party dominance (1952-1967):

- This stage had single party predominance – 'Congress system'
  - Congress government was ruling at the central and state level aside from a communist government in Kerala in 1959.
  - Since the centre and state government were ruled by a single and common party there was not really any issue amongst states and centre.
- However, few examples of centre-state issues were there like first time democratically elected communist government in the world in Kerala was expelled by central government.
- Centre influenced state's policies via Planning commission and National Development Council.

B. Second Phase: 'Expressive' Federalism (1967-1989):

- This phase is called the phase of confrontational federalism.
- This was when the Congress party's dominance was starting to weaken in many states, though it influenced national politics.

- Misuse of Article 356 to topple governments ruled by other parties at the state. E.g., Indira Gandhi government.
- 42nd constitutional amendment act attempted to make centre stronger. Thus, Morris Jones described Indian federalism as "bargaining federalism" in 1971 while others have characterized it as "centralized federalism" in 1977.

C. Third Phase: Multiparty Federalism (1989-2014):

- The rise of a number of regional parties brought a new era of multi-party system in India.
- This gave rise to coalition politics strengthening the voices of the state parties at the centre.
- This era of federalization of national politics also found its manifestations in the three major policy and institutional changes that took place during this period.
    - Financial Autonomy: an era of LPG reforms gave states more autonomy in financial matters => thus, reducing their dependence on the centre.
    - Judicial Safeguard: The Supreme Court in the S.R. Bommai case gave immunity for the state governments against the arbitrary use of Article 356 => thus, deepened the federal design of Indian politics.
    - Institutionalized Local Self-government: The decentralisation of Indian politics by 73rd and 74th Amendments Acts strengthened the functioning of the third tier of Indian federalism at the Municipal and Panchayat level.

D. Fourth Phase: The return of 'Dominant Party' Federalism (2014-present):

- The 2014 general elections challenged the era of coalition politics at the national level.
- This phase marked the beginning of what is called the "re-nationalization of Indian politics" with BJP as the new national political force.
- Single party dominance at the centre also gave rise to centralizing tendencies, misuse of Article 356 (Arunachal Pradesh, Uttarakhand) misuse of central agencies (ED, CBI) etc.
- However, simultaneously there is growth of cooperative and competitive federalism in the form of Niti Aayog, GST Council

What is Cooperative federalism?

- Cooperative federalism is a state of relationship between center and state where they both come together and resolve the common problems through cooperation.
- The term was given by Granville Austin to highlight the fact that with collaborative efforts, different levels of governments contribute towards the growth of the country in an amicable manner.
- Advantages:
    - It is a horizontal relationship between union and states and shows neither is above the other.
    - It is often reflected in the institutionalization of Niti Aayog, GST Council etc.
    - It aids easy resolution of the issues and catapults the growth and development of the country.
    - This model is necessary to absorb diversity of unique proportions that owes much to its historical and political factors.
- **Challenges:**
    - Over-centralization: for example, GST council cannot take any decision without the concurrence of the central government.
    - Ineffective inter-state council as major differences are over politics of power.
    - Under-represented in finance commission: States are under-represented. Recommendations of the Finance Commission are placed before Parliament and States have no role in the debate.
    - Trust deficit: Trust deficit between the Centre and States is widening due to use of central agencies against states ruled by other parties.
- SC Judgments have strengthened the cooperative federalism through:
    - GST Ruling: SC observation on GST stresses on cooperative federalism, strengthens the

cause of states in fiscal management. Indian federalism is a dialogue between cooperative and uncooperative federalism where the federal units are at liberty to use different means of persuasion ranging from collaboration to contestation.

- The 97th Constitution Amendment: It gave boost to federalism as it struck down parts of the 97th Amendment that shrank the exclusive authority of States over its cooperative societies.

What is Competitive federalism and Competitive sub-federalism?

A. Competitive federalism:

- It is a concept where the center and various states compete with each other in their joint efforts to develop India.
- In this competition, a broad range of issues are covered to provide citizens various services in a hassle-free manner.
- E.g., "Vibrant Gujarat", "Resurgent Rajasthan" etc.
- Significance:
  - Improves efficiency of the state governments: as they try to excel and complete with each other in various indicators of social progress, health, education, infrastructure, etc.
  - It is instrumental in attracting investments to boost their respective economies by promoting ease of doing business.
  - It aids reforms at the state level, for example labor reforms undertaken by various states.

B. Competitive sub-federalism:

- It is a broadening of competition between states to encompass the cities. It reflects horizontal relationship between various cities that ensures the overall growth of the states.
- It helps in instilling sense of responsibility in city administrations, ensuring no one is left out. E.g. Swacch Survekshan, Heritage City Development and Augmentation Yojana etc.
- It is a departure from a 'one size fits all' approach to grant states greater authority for urban transformation. E.g. Smart City mission, AMRUT, etc.
- It lays the foundation of 'cooperative sub-federalism' and puts aside the political considerations and influence of state units.
- Significance
  - It ensures inclusive development through bottom-up approach.
  - It instills a spirit of positive competition and helps utilization of successful models of development across many states.E.g, Delhi education model.
  - It ensures progress of every limb (city) of the country. Eg. Aspirational Districts.

Do cooperative and competitive federalism contradict each other?

- As both these concepts, though different, have the same goal – the economic growth and development of the overall Indian economy. Thus, the two ideas tend to coverage towards nation building.
- Competition alone cannot produce the best outcomes; Cooperation is required as 'only Strong states make strong nation'.
- Both the concepts are significant for sustainable balance of power and democracy in India. Cooperative and Competitive are two sides of the same coin. it is competition combined with collaboration that will bring about true change.

Cooperative and competitive federalism are a need of the hour without which it could not be possible to achieve the predetermined goals of the constitution and good governance. Spirit of Team India should be kept in mind by all the constituent units to avoid irritants in the functioning of the federalism which is declared by the apex court as basic structure of the constitution in Bommai case.

H90- Asymmetric Federalism

What is meant by Asymmetric federalism?

Asymmetric federalism is a model wherein different units constituting a federation possess different powers in political, administrative and fiscal arrangements. This is in contrast to symmetric federalism, where no distinction is made between constituent states.

- It is often proposed as a solution to the dissatisfaction that arises when constituent unit (s) has unique needs from the others, as the result of an ethnic, linguistic or cultural difference.
- India's asymmetrical features are evident from the examples of states of Jammu and Kashmir and Mizoram, Nagaland along with other north eastern state.
- It can be divided into two types:
    - De jure asymmetry: resolves differences in legislative powers, representation in central institutions, and rights and obligations that are set in the constitution.
    - De facto asymmetry: type reflects agreements which come out of national policy.

Why is India considered as a case of Asymmetric federalism?

- **Universal asymmetry affecting all units**: States are represented by Rajya Sabha on the basis of their population, not on the basis of formal equality (as in US)
- **Economic asymmetry**: The differential treatment in the financial transfer to states through Finance commission and variety of central sector and centrally sponsored schemes.
- **Union Territories:** also represent a kind of asymmetry. UTs are set up to address specific local, historical and geographical contexts. Some even have legislature, as in case of Delhi and Puducherry.
- **Sixth Schedule (Administration of tribal areas)** contains provisions for the administration of tribal areas in Assam, Meghalaya, Tripura and Mizoram through autonomous districts and autonomous regions.
- **Asymmetry among Centre-State ties:** Just as the Centre and the States do not have matching powers in all matters, there are some differences in the way some States and other constituent units of the Indian Union relate to the Centre.
- **Special provisions for some states:**
    - Till recently, the **special position of Jammu & Kashmir**: under Article 370 of the Constitution.
    - **Northeastern hill states**: based on culture and other traditions. special powers are accorded to northeastern states in Article 371, 371A, 371B, 371C, 371D, 371F, 371G, 371H.

Is there a need to evolve towards symmetry in Federalism?

A. **No:** (Advantages of asymmetry)

- **Guaranteeing rights:** These special provisions in the Constitution has helped in protecting fundamental rights and compensated for initial inequalities in the social system.
- **Conserve ethnicity and culture**: In north-east there is a distinct difference in ethnicity from the rest of India.
- **Recognition of differences:** It facilitates public recognition of cultural differences and allow certain ethnocultural minorities to have self-rule.
- **Social justice:** Allowance for separate laws to govern different religious groups, and provisions for various kinds of affirmative action for extremely disadvantaged groups help in ensuring justice to them.
- **Ensure unity in diversity**: These provisions respect and preserve diversity of the country by protecting vulnerable group through special powers => ensuring 'sabka sath sabka vikas'.
- **Satisfying special needs:** It act as a solution to satisfy different needs of various federal units, as the result of an ethnic, linguistic or cultural difference.
- **Reduced radicalization:** Special powers given to the states serve and satisfy the diverse demands of citizenry which is vulnerable to radicalization.

- **Better representation in democracy:** It has helped in providing representation to minority areas and areas with less population providing them justice => Strengthening social fabric.

B. **Yes:** (Issues with Asymmetry)

- The Court has, on multiple occasions, allowed mechanisms restricting the powers of the President under Article 370 to be limited, by legitimating the substitution of asymmetric federalism mechanisms.
- Discriminatory: Asymmetric provisions are discriminatory. E.g., by placing prescriptions on who can own property in particular regions, or because they privilege certain kinds of 'special' identities over others.
- Secessionist: Critics argue that asymmetric status is presented as contributing to secessionist claims. Hence, the argument that Article 370 turned out to be the 'root cause of terrorism'.
- Anti-egalitarian: They are also presented as anti-egalitarian because they prevent the extension of rights in force elsewhere in a country.
- There has been implied and demonstrated discomfort with the idea of increased autonomy of the State, allowing for wide-ranging powers of the Union.

Symmetric federalism:
It refers to a federal system of government in which each constituent state to the federation possess equal powers. In a symmetric federalism no distinction is made between constituent states.

- The concept of symmetry makes a clear distinction from that of the asymmetry in so far as the sharing of the component units is concerned in the affairs of the federal government.

What reforms are needed?

- There is a need to acknowledge and accommodate distinctiveness as a diverse country like India cannot progress with zone size fits all approach.
- Recognizing and institutionalizing a transparent asymmetric arrangement on the grounds of overall gains to the federation contributing to nation-building.
- The unitary policies for short-term political gains can be inimical to the long-term interests and stability of federalism.
- If need be, a formula can be worked out to legal and politically dilute the existing constitutional asymmetry. But this has to be a gradual and long-term process.

The unequal status between various states gave rise to the need for constitutional recognition of asymmetry. However, only in such a way that it protects diversity without sacrificing unity or imposing uniformity.Asymmetric federalism and special provisions can be a tool for standardizing 'Indianness' and making a 'Ek Bharat, Shreshth Bharat'.

H91- Fiscal Federalism

As an extension of asymmetric federalism in India, centralization in Fiscal domain is being seen only accelerating with political centralization since 2014. Some critics claim that the Union Government has been more extractive than enabling. These trends make the topic crucial from the exam perspective.

What is meant by the Fiscal Federalism?

Fiscal federalism relates to the assignment of functions to different levels of government and of appropriate revenue instruments to carry out these functions based on comparative advantage.

- Like Quasi federal character, India has tweaked its fiscal federal architecture according to the demands of the time.
- As states and localities are not equal in their income, union government can effectively intervene for equitable distribution of resources.
- Union government: has been assigned the nationwide base and redistributive taxes, money supply, and borrowing powers are assigned to the federal government
- Subnational governments: are better placed in local service provisioning as they are closer to the people.

What are the constitutional provisions providing for Fiscal Federalism in India?

Articles 268 to 293 in Part XII of the Constitution deal with Centre–state financial relations.

- **Taxing Powers (Article 268-281)**
  - It deals with the distribution of revenue between the Union and the States.
  - 7th Schedule: Items 82 - 92(a) in the Union List and Items 45 - 63 in the State List refer to sources of taxation.
  - Article 270: The FC is now required to recommend such % of taxes or duties referred to in the Article 270 to be assigned to the States and also the manner of distribution.
- **Grants-in-Aid:**
  - Article 275: empowers the Parliament to make grants to the states which are in need of financial assistance and not to every state.
  - Article 282: The Constitution also allows the Union and State Governments to make grants for any public purpose.
- **Borrowings:**
  - Article 292: empowers the Union Government to borrow, domestically & internationally, upon the security of the Consolidated Fund of India.
  - Article 293: empowers the States to borrow, but not outside India.

Does India truly follow the principle of Fiscal Federalism?

A. Yes:

- Fiscal relations between Union and states is clearly outlined by the Constitution.
- Funds from the central divisible pool are now allocated as per the formula suggested by Finance Commission.
- Taxes under GST are imposed after following due process under GST Council. It deliberates on the taxes to be levies or abolished, increased or reduced.

B. No:

- Allocation of sources of revenue is in the favour of Union government. As such state governments have relatively less revenue generating sources.
- The social and economic sectors, involving large expenditures, are the responsibility of subnational governments.
- Local governments are heavily dependent on state governments for their development needs => can't function as institutions of self-government.
- States lost their capacity to generate revenue by surrendering their rights in the wake of the Goods and Services Tax (GST) regime, while their revenue has been stagnant at 6% of GDP in the past decade.
- States expenditure pattern too can be distorted by the Union's intrusion, particularly through its centrally sponsored schemes.
  - The ability of States to finance current expenditures from their own revenues has declined from 69% in 1955-56 to less than 38% in 2019-20.

- While the expenditure of the States has been shooting up, their revenues did not. They still spend 60% of the expenditure in the country — 85% in education and 82% in health.

Discuss the recent steps undertaken to improve Fiscal federalism in India:

In recent years, fiscal relations between the union and state governments have undergone significant changes. Since 2015-2016, three landmark changes include:

- **Niti Aayog:** The abolition of the Planning Commission in January 2015 and the subsequent creation of the NITI Aayog;
- **101st CA Act**: introduced the Goods and Services Tax and the establishment of the GST Council for the central and state governments to deliberate and jointly take decisions.
- **14th FC:** Fundamental changes in the system of revenue transfers from the centre to the states through the provision of higher tax devolution to the states.
- **15th FC:** is reshaping the distribution pattern based on performance of the states.

What are the issues associated with Fiscal federalism in India?

- **Expansion of Concurrent List**: transgressing its earmarked borders and intervening in the subjects of subnational governments. E.g., 42nd CA Act added subjects like forest and education from the State List to the Concurrent List.
- **Fiscal Incongruity:** The combined outstanding liabilities of states and UTs have been on the rise since 2014. This is mainly due to central policies like the UDAY, Farm Loan Waiver etc.
- **Cess & Surcharges:** are becoming a disproportionate proportion of the overall divisible revenue, with non-tax revenues being kept outside the divisible pool.
- **GST:** somehow encroached the autonomy to decide the tax rates of subjects that fall within the State List to match their development requirements => greater dependence on the centre.
- **Centripetal Bias:** Revenue resources are structured in favor of the center. Similarly, Local bodies merely undertake 'agency" functions and are heavily dependent on states for financing. E.g., cess and surcharges are not shared with the States.
  - The Central's power to borrow virtually unlimited sums while limitations are placed on the States. Also, Centre's can control States' expenditures by expanding the Centrally Sponsored Schemes.
- **Vertical Fiscal Imbalance:** as there is a mismatch in the taxing powers and expenditure responsibilities. E.g, more progressive taxes to the Centre with the major responsibility of providing social and economic services being assigned to the States.
- **Horizontal fiscal imbalances**: It refers to the differences in the capacity to raise revenues and variations in the unit cost of providing public services.
  - E.g., In the NITI Aayog era, there is a surge in horizontal imbalances
  - 15th FC recommended performance-based grants => further accentuate horizontal imbalance.
- Issues with Finance Commission (discussed in Finance Commission Handout)

What reforms are needed to improve Fiscal Federalism in India?

- Adequate revenue powers to sub-national governments: to forge a strong link between revenue and expenditures at the margin.
- Finance Commission: Can be made a permanent body that focuses on the removal of the horizontal imbalance across States i.e. the basic public goods imbalance.
- NITI Aayog can be funded (1-2% of the GDP) to promote accelerated growth in States that suffer from infrastructure deficit (on the lines of Aspirational districts).
- Decentralization, in letter and spirit, has to be the pillar of the new fiscal federal architecture.
  - E.g., creation of an Local Body Consolidated Fund – funded from CGST and SGST
  - The SFCs should be accorded the same status as the Union FC.

- Reshape GST: as it needs further simplification and extended coverage. E.g., single rate GST with suitable surcharges on "sin goods," etc.
- Revive Inter-State Council: as an effective federal decision-making body. It can be accorded with the responsibility to ensure fiscal discipline.

India's fiscal federalism driven by political centralization has deepened socio-economic inequality, belying the dreams of the founding fathers who saw a cure for such inequities in planning. If these suggestions are implemented in letter and spirit, they have the potential to give a new positive turn to India's journey towards becoming fiscally federal in truest sense.

H92- FINANCE COMMISSION

Recently, NITI Aayog meeting highlighted that the states' share of central taxes has been hovering around 30% since FY21, when it should have been 41% in line with the recommendations of the 15th Finance Commission. This has brought the significance of Finance commission back in question.

What is the Finance Commission?

- The Finance Commission is a constitutional body, formed under Article 280.
- Aim: to recommend the distribution of Tax revenues between the Centre and the states as well as among the states.
- All FCs are guided by the stated principle of 3E - equalization, equity and efficiency.
- 1st FC: was established on November 22, 1951 under the chairmanship of K.C. Neogy. Its recommendations were submitted in 1953.

Discuss the evolution of the Finance Commission under British Rule:

- Government of India Act 1919: delegated power to the provinces and to the Union to legislate for the entire nation on any subject.
- Government of India Act, 1935: established a federal system under which the legislative controls were distributed under three list - federal, provincial and concurrent list.
- Constitution of India: adopted the fiscal federal structure and provisioned the Finance Commission (FC) to establish fiscal relations between different units of federation.

What is the criteria followed by FC in determining devolution of funds?

A. Criteria

- **Income distance:** is the distance of a state's income from the state with the highest income.
  - Income of a state has been computed as average per capita GSDP during the three-year period between 2016-17 and 2018-19.
  - A state with lower per capita income will have a higher share to maintain equity among states.
- **Demographic performance**: criterion has been used to reward efforts made by states in controlling their population. States with a lower fertility ratio will be scored higher on this criterion. The Commission used 2011 population data for its recommendations.
- **Forest and ecology:** criterion have been arrived at by calculating the share of the dense forest of each state in the total dense forest of all the states.
- **Tax and fiscal efforts**: This criterion have been used to reward states with higher tax collection efficiency. It is measured as the ratio of the average per capita own tax revenue and the average per capita state GDP over three years.
- **Disaster risk management:** The cost-sharing pattern for disaster management funds between centre and states is:
  - 90:10 for north-eastern and Himalayan states
  - 75:25 for all other states

B. 15th Finance commission criteria:

- Income Distance – 45%
- Population – 15%
- Area – 15%
- Forest & Ecology – 10%
- Demographic Performance – 12.5%
- Tax and Fiscal Efforts – 2.5%

What is the role played by Finance Commission in India in strengthening fiscal federalism?

- FC takes control over sharing and distribution of fiscal power and also addresses issues related to imbalance and disparity.
- Improving quality of public spending and promoting fiscal stability. Its functioning helps in consultation at different levels of government, thus enriching fiscal federalism.
- FC addresses horizontal imbalance generated due to differences in the extent of financial benefits achieved by different states.
  - It reviews the growth and development status of different states and assesses capital requirements.
- FC also handles vertical imbalance arising out of asymmetry in the distribution of taxation power between different levels of government.
- GST was introduced in 2017 as a measure to promote cooperative federalism in India giving states role in overhauled taxation system.

- Along with NITI Aayog, FC addresses the new realities of macroeconomic management.

Discuss the role played by FC during pandemic

- FC observed that pandemic has complicated fiscal management between union and state levels. Thus, it argued that there is need for fiscal stimulus.
- FC recommended that the liquidity problem can be solved by monetary policy. It focused on fiscal stability, equity, and enhancement of fiscal space through higher borrowing.
- It provided alternative fiscal and macroeconomic scenarios for availability of resources between center and state.
- FC focused on sanitation, more funds for ULBs, Ambient air quality, drinking water and solid waste management etc.

What are the issues faced by the FC in India?

- Population criteria: southern states criticized FC for using 2011 population census data to advise tax devolution to states => a disservice to their success in population control.
- The terms of reference of 15th FC were changed after they were first released to look at the possibility of a separate mechanism for funding defense and internal security
- The issue of creating a non-lapsable defense fund.
- State FC's facing constraints like: lack of follow-up from the local bodies, Apathetic attitude of the states; Lack of clarity about the functions of local bodies; dominated by bureaucrats rather than academicians; inferiority status as compared to FCs.
- Union FC does not analyze the report of SFC properly and not taken adequate step to strengthen SFCs and to address the problem of devolution of finances to local bodies.
- No representation of states in FC.
- Not holding union government accountable for its own fiscal prudence and dilutes joint responsibility that the Union and States have.

Give suggestions to improve the functioning of the FC:

- There is a need to have sustainable fiscal management for macro stability and growth.
- Towards cooperative federalism, NITI Aayog should receive significant resources to promote accelerated growth in States that are lagging behind.
- There is also a need for ushering decentralization due to intra-state regional imbalances. Also, states must empower local bodies to recruit personnel to function properly.
- There is a need to have simplification and extended coverage of the GST.
- With respect to functioning, the 2nd ARC has recommended a special problem-solving body to resolve issues of disqualification of elected members.
- Separate grants can be allotted to local bodies for creating public health infrastructure.
- States should implement 15th FC recommendation to appoint SFCs. E.g., states can encourage public-private partnership.
- RBI recommendations for strengthening SFCs:
    - Incentivize the state government to set up a data warehouse for the local bodies.
    - Set up a central pool of fiscal experts from which the state government may select at least one member of SFC.

To make India a sustainable and inclusive country, it is important that the FC reduces inter-state disparity by using horizontal distribution criteria. There is an urgent need to strengthen the SFCs to promote cooperative federalism and strengthen participatory democracy. Only then 'Poorna Fiscal Swaraj' can be a reality.

Value Addition:

Comparison between central and State finance commission

Characteristics	Central Finance Commission	State Finance Commissions
Composition	President of India appoints one Chairperson, other members, and secretary in pursuance of article 280 of the Constitution	Governors of the respective state appoints the Chairperson, other members and secretary in pursuance of article 243 of the constitution of India
Major Areas of Assessment	1. Assess the existing state of distribution between the Union and the States 2. Assess the principle that governs the grant-in-aid. 3. Measures taken to augment the Consolidated Fund and also to supplement the resources of the Panchayats and Municipalities. 4. Review the state of finance of the Union. 5. Review the present arrangements with regard to disaster management with reference to national calamity relief fund. 6. Review of shares between the state and the union on profit from non tax income. 7. Assessment of the debts of the states.	1. Review the financial status of the rural and urban local bodies the state. 2. Assess the distribution of finance between the states and the local bodies. 3. Review the determination of taxes, tolls and fees assigned to the appropriate local bodies. 4. Review the grant-in-aid to the local bodies from the state. 5. Review the existing level of devolution and other resource transfer to the local bodies from the state and central government. 6. Review the status of implementation of the recommendations of the earlier finance commission. 7. Review the system of accountability of the local bodies in terms of resource utilization.
Areas of Recommendations	1. Measures to enhance resources of the Union Government by means of changes in the context of tax revenue and non-tax revenue. 2. Measures to generate surplus and reduce fiscal deficit. 3. Resource allocation between the states and the Union. 4. Measures to maintain a balance between the receipts and payments. 5. Restructuring of Public Finance and balance economic stability and debt reduction.	1. Recommend for improvement of financial position of the local bodies. 2. Recommend for both the state and local bodies to generate surplus to maintain the capital assets. 3. Changes in the system of payments of different kinds. 4. Changes in the classification of local bodies. 5. Devolution of functions and finances to make the local bodies more effective.

Important recommendations of various financial commissions:

FCs	Major Recommendations
3rd FC	• Remove regional disparity. • Special Purpose Grants should be given to backward states.
4th FC	• Constituted in 1964. • A competent body should be established to study in detail the problem of indebtedness of states.
5th FC	• Appointed in 1968 • Balance of the estate duty to be distributed among the states. • Revenue collection from immovable properties should be distributed on the basis of actual location. • A tax on newspaper advertisements should be imposed. • States should not indulge in deficit financing. • Resources mobilization in agricultural sector.
9th FC	• Adopt normative approach and to deal with problem of revenue deficit. • Equalization of the standards of social services provided by the states.
10th FC	• Appointed in 1992(K.C. Pant) • Not binding to adopt normative approach. • Look into inter-regional disparities in the country. • Provide broader definition to the pool of divisible tax revenue covering taxes like income tax, corporation tax, excise duty etc.
12th FC	• Appointed in 2002(Dr.C Rangarajan) • Suggested to increase the share of states in the pool of central taxes. • Principle of equity and fiscal efficiency in assigning criteria for determing the interest rate of states. • Fiscal Reform Facility introduced to improve states finance.
13th FC	• The 13th FC had also acknowledged the need for providing local bodies with a predictable and buoyant source of revenue.
14th FC	• 42% to the states • Increase in quantum of Funds for urban local bodies. • Increased state fiscal autonomy to enrich fiscal federalism

15th Finance Commission - Key Recommendations (Covered in detail in GS 3)

Verticals	Recommendations

Towards Local Government	• Constitution of State Finance Commissions • Timely auditing and online availability of accounts for rural local bodies. • Notifying consistent growth rate for property tax revenue for urban local bodies. • Recommended to grant local bodies basic amenities in line with national programmes such as Swachch Bharat Mission and Jal Jeevan Mission. • Involving Panchayati Raj Institutions as supervising agencies in primary health care institutions. • Establishment of Million-Plus Cities Challenge Fund for cities having million-plus population.
Disaster Risk Management	• Setting up the state and national level Disaster Risk Mitigation Fund (SDRMF) on line with provisions of Disaster Management Act. • It introduced a 10-25 per cent graded cost-sharing by the states for the NDRF and NDMF.
Defence Sector	• setting up of a dedicated non-lapsable fund and the Modernisation Fund for Defence and Internal Security (MFDIS) for 2021-2026. • It will also provide greater predictability to critical defence related to capital expenditure. • Four specific sources from where the funds for defence can be sourced: a) Transfers from the Consolidated Fund of India. b) Disinvestment proceeds of DPSEs. c) Proceeds from the monetization of surplus defence land. d) Proceeds of receipts from defence land, which is likely to be transferred to state governments.
Other recommendations	• Ensure stability and predictability of finances for both union and states. • Adherence to the constitutional mandate and addressing the term of reference. • Grants to important public services with greater flexibility and freedom keeping in balance collaborative federalism. • Performance-based incentives. • Fiscal consolidation.

H93- GST council

47th Goods and Services Tax (GST) Council meeting was held recently in Chandigarh. It was chaired by Union Finance Minister for approved hiking the rates for some goods and services while removing exemptions for several mass consumption items to simplify the rate structure.

The genesis of the introduction of GST in the country was laid down in the historic Budget Speech of 28th February 2006.

- Thereafter, there has been a constant endeavor for the introduction of GST in the country whose culmination has been the implementation of the **101st CA Act** of the Constitution of India.
- The tax came into effect from **1st July 2017.**

What is the GST Council?

- GST Council is an apex member committee to modify, reconcile or to procure any law or regulation the GST (goods and services tax) in India.
- It is the key decision-making body that will take all important decisions regarding the GST.
- It dictates tax rate, tax exemption, the due date of forms, tax laws, and tax deadlines, keeping in mind special rates and provisions for some states.

What is the significance of GST Council?

- **Centre-State financial relations:** The council simplified the fiscal powers between the Centre and the States, which are now better demarcated in the Constitution with almost no overlap between the respective domains.
- **Improving Compliance**: GST Network (GSTN) provides the technological backbone for the indirect tax regime. It has been using artificial intelligence and machine learning to dish out newer data and plug revenue leakages.
- **National market harmonized:** The Council is guided by a harmonized structure of GST and the development of a harmonized national market for goods and services.
- **Cooperative federalism:** It is the first constitutional federal body => helps in establishing the highest standards of the cooperative federation in the functioning of the Council.
- **Determine state compensation:** The Council recommends the compensation to the states for the loss of revenue arising on account of the introduction of GST for a period of five years. Based on the recommendation, the Parliament determines the compensation.

What are the achievements of GST Council?

- **Ease of doing business**: The increased role of technology, and the common GSTN Portal for interaction between the authorities and taxpayers have changed the perspective of indirect taxes.
    - Waiving the mandatory GST registration for supply of goods through e-commerce platform if turnover is below a prescribed threshold limit.
- **Institutional mechanism:** The assignment of concurrent jurisdiction to the Centre and the States for the levy of GST required a unique institutional mechanism. This ensures that the decisions about the structure, design and operation of GST are taken jointly by the two.
- **Acceptance by industry:** with transition to GST seen as a positive move and has appreciated the government's initiative on automating tax compliances.
- **Composition tax**: is being rationalized out and allowed to operate through e-commerce platforms. (tentatively to be implemented from 2023). This, MSMEs can access e-commerce platforms.
- **Preferential location charges (PLC):** Treatment of PLC as part of consideration for land will aid the real estate sector to a certain extent, by way of reduced cost to the consumer.
- **Revenue collection:** has increased and touched a record high Rs 1.68 lakh crore in April 2022. Also, the GST council have witnessed a growth in state revenues.

What are the key issues faced by GST Council?

- **Infrastructure**: The digital framework and technology upgradation of tax system particularly of the states remains a deferred task.

- **Multiple tax rates:** hampers the progress of a single indirect tax for all the goods and services in the country.
- **Inconsistent Collection:** The growth rate of GST collection in real terms is much lower.
- **Ambiguous issues:** With the emergence of new technologies like cryptocurrency and virtual digital assets (VDA), there is lack of clarity.
- **Lack of coverage:** With petrol, diesel, ATF outside GST, a large part of the economy is still not covered by the indirect tax regime.
- **Bogus or no receipts:** Despite coming out with e-way bills and e-invoicing, genuine receipts are not being given in every segment of the economy.
- **National Anti-Profiteering Authority (NAA):** Lack of proper methodology to ascertain profiteering.
- **Pandemic:** The mobility restrictions, vaccination sequencing and even procurement of Vaccines. With less tax revenue on hand, the States we're not able to meet all the needs to tackle the pandemic.

What steps are required to improve functioning of the GST council?

- Bridging trust between Centre and State: The consultative and consensual nature of decision-making that has helped guide the Council's decisions so far must be adhered to.
- Uniformity: The government can consider bringing petroleum and electricity under the GST ambit which will help prevent cascading.
- Technology: clarity is needed on whether cryptocurrency would be classified as the supply of 'goods' or 'services' and what would be tax rate on them.
- Anti-profiteering: There is a need to do away with anti-profiteering provisions freeing businesses to set prices.
- Maintaining check: on system generated GST notices => to avoid any unnecessary harassment of taxpayers.
- Infusing tax predictability: The GST Council can adjust the rates only once a year. Further, the Center can also rationalize the present Cess ecosystem in India to a bare minimum.
- GST Tribunal: The long-awaited requirement of a Tribunal under GST law also needs to setup. This will help taxpayers file appeals in the Tribunal and reduce burden of litigations at various high courts across India.
- Trade facilitation: Refunds under inverted duty structure proposed can be allowed for input services which reduce the accumulation of credit.

GST Council is a positive step towards shifting the Indian economy from the informal to the formal one. While the GST Council has moved forward with great efficiency, there is a need for an extension of revenue guarantee to States, restricting cesses, addressing State government's fiscal problems etc. The Council can, thus, be an avenue to achieve the full potential of GST and make it a true 'good and simple tax'.

H94- Center-States relations

"Federalism is no longer the fault line of Centre-State relations but the definition of a new partnership of Team India." - Narendra Modi.

Despite **clear division of powers under the 7th schedule** of the constitution, **Centre-state relations in India have been complex and dynamic**, varying with the party in power.

Since 1967, with the **decline of 'Congress system' and emergence of regional parties**, the relations between different federal units gained more relevance. Similarly, after 2014, due to rise of single party majority at the center, **center-state relations have witnessed both cooperation and confrontation**.

What are some key issues in the Centre-State relations in India?

A. **Center legislating in State matters**:
- Three broad issues have arisen recently with respect to laws considered by Parliament.
  - Some laws have large **financial implications for state budgets**.
  - Some laws leave **little flexibility for states** to tune the laws according to their needs.
  - Some Bills may directly **infringe upon the rights of states**.
- Recent legislations that were opposed by states:
  - The three **Farm Laws**
  - Draft Blue Economy Policy 2021
  - Draft Electricity (Amendment) Bill 2022
  - Dam Safety Act

B. **Strained Fiscal relations:**
- **Tax collection & Distribution related issues:**
  - **Compensation for shortfall in GST (goods and services tax) revenues.**
  - the **increased use of cess** by the centre, which is not distributed to states
  - **Lack of fund devolution**: The state's share of gross tax revenue of the centre is now 29-30%, much lower than the recommended 42%.
  - Over 60% of capital spending in India is incurred by state governments.
- **Extraordinary demands of the 15th finance commission:** to carve out funds for central subjects such as defense and internal security.

C. **Governor related issues:**
- During the last few years, the office of Governor has **become highly controversial** without necessarily adding to the glory of the office.
- Recent controversies have been around the issues of:
  - **Selecting the CM** (Maharashtra)
  - Determining the timing for **proving legislative majority** (Madhya Pradesh)
  - Demanding **information about day-to-day administration** (West Bengal)
  - Exercising powers of the **governor as the chancellor** of state universities (West Bengal)
  - Others: taking longer time in giving assent to bills or reserving bills for the President; commenting adversely on specific state policies etc.

D. **Use of central agencies:** The deployment of central investigative agencies in the States, much to the displeasure of the States, has also caused trouble for our federal principles.
- **CBI's attempted arrest of Kolkata Commissioner of Police (**Rajeev Kumar) without a warrant in early 2019 led to a series of conflicts.
- **Sushant Singh Rajput's death triggered a round of Mumbai Police - CBI disputes:** Various FIRs were transferred to the CBI by the Bihar government.

E. **AIS Rules:** The **proposed amendments to the IAS Cadre Rules of 1954** have triggered another round of conflict between the Centre and the States.
- The amendments proposed allegedly can **take away the liberty of the States to**

deny consent for handing over civil servants for Central deputation. (**Alapan Bandyopadhyay** case in WB)

- In case of differences, the **Centre's decision should be accepted by the States** within a specified time period.
- States like Tamil Nadu, Kerala, West Bengal, Jharkhand, Rajasthan, Chhattisgarh and Telangana have objected to the amendments.

F. **Covid 19-induced stress on Center-State relations:**
   - **Centralizing Executive powers:**
     - Even though **'public health and sanitation'** is a **state subject**, the Center **invoked Disaster Management Act, 2005** to impose the nationwide lockdown **without consulting the states**
     - The centre usurped key state powers and jurisdictions such as regulating **public transportation; MHA deputed supervisory and monitoring teams to states to**
     - As the word "disaster" is not present in the 7th Schedule, the **Centre used its residuary powers** to invoke the law and to issue various directives to the states.
   - **Centralizing Financial powers:**
     - The Centre took advantage of the pandemic to appropriate certain financial instruments where the states have legitimate claims.
     - The GoI emphasized **conditional loans to the states** rather than unconditional relief grants, which was the need of the hour.

G. **Revocation of Article** 370: Critics argue that **reducing a full-fledged state to a UT without prior consultations** gives the impression of **high handedness by the Center** and federation tilted towards centre.

Yet, given the nature of threats and resource scarcity, **states have little choice but to accept the temporary loss of power and autonomy**, and largely cooperate with the GoI.

What are the Supreme Court judgements in regard to Centre-State relations?

- **B P Singhal Case**:
  - **Change in government at the Centre can't be a ground for removal of Governors** holding office to make way for others favored by the new government.
  - For withdrawal of pleasure in the case of a Governor, loss of confidence or the Governor's views being out of sync with that the Union Government will not be grounds for withdrawal of the pleasure.
- **Rameshwar Oraon Vs State of Bihar (1995):** It is mandatory for state governments to act according to the directions issued by the Central government.
- **Government of NCT of Delhi v. Union of India (2018)**,
  - The idea behind the concept of collaborative federalism is negotiation and coordination to iron out differences.
  - **Union Government and the State governments should endeavour to address the common problems** with the intention to arrive at a solution by **showing statesmanship, combined action and sincere cooperation.**
  - **CM, not LG, is the executive head** of the National Capital Territory (NCT) government. Hence, the **LG is bound by the aid and advice of the Council of Ministers** on all matters where the Delhi Assembly has to the power to make laws.
- Supreme Court in 2022 also held that the **federal system is a means to accommodate the needs of a pluralistic society**.
  - Democracy and federalism are interdependent on each other.
  - The **constituent units of a federal polity check the exercise of powers** of one another to prevent one group from exercising dominant power.

What are the steps required for smooth functioning of Centre-State relations?

A. **Sarkaria Commision:**
- The **Centre should consult the states** before making a law on the subject of the **Concurrent List**.
- The procedure of **consulting the CM** in the **appointment of the Governor** should be prescribed in the Constitution itself.
- The **surcharge on income tax should not be levied by the Centre** except for a specific purpose and for a strictly limited period.

B. **Punchhi Commission:**
- **Greater flexibility to states:** in relation to subjects in the **State List and "transferred items" in the Concurrent List** is the key for better Centre-state relations.
- The Union should be extremely **restrained in asserting Parliamentary supremacy** in matters assigned to the states.
- The Union should **occupy only that many of subjects in concurrent or overlapping jurisdiction which are absolutely necessary to achieve uniformity** of policy in demonstrable national interest.
- **Guidelines for selecting Governors** (in letter and spirit):
  - 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.
  - He should be a person who has **not taken too great a part in politics** generally and particularly in the recent past.
- The Central Government should **review all the existing cesses and surcharges** with a view to bringing down their share of the gross tax revenue.

Centre-state relations is a dialogue between cooperative and un-cooperative federalism where the federal units are at liberty to use different means of persuasion, ranging from collaboration to contestation.

However, all should keep in mind the suggestion given by the **B.R. Ambedkar** that - **"Though the country and the people may be divided into different states for convenience of administration, the country is one integral whole, its people a single people living under a single imperium derived from a single source."**

H94A- 7TH SCHEDULE

Recently, Fifteenth Finance Commission chairman NK Singh has called for a thorough review of the 7th Schedule of the Constitution in the wake of current challenges of climate change and the pandemic.

What is 7th Schedule of the Constitution?

The 7th Schedule specifies the distribution of powers and responsibilities between the states and the centre. It delegates the role and responsibilities into three lists namely, Union List, State List and Concurrent List.

- Origin: It has its origin in Government of India Act 1935. In distributing legislative powers between the Centre and the States, The Union Powers Committee believed that the system of three lists as contained in the 1935 Act was the most satisfactory arrangement.
- Purpose: To secure provincial autonomy, an unprecedented, exhaustive statutory allocation was considered necessary. This would also reduce disputes over the scope of Centre-State jurisdiction.

However, the distribution of legislative powers reflects the dominance of the Parliament over the State Legislatures. This was a reflection of the centralising tendencies adopted by the Constituent Assembly.

Discuss important provisions of 7th schedule:

A. Union list:

- It is a list of 100 subjects that the Union government enjoys supreme jurisdiction over.
- Simply put, it is a list of matters of national importance that the central government has the sole power to take decisions on.
- The Union list consists of subjects of National Importance like defence, foreign affairs, banking, atomic energy, railways, post etc.

B. State list:

- The state list is a list of 61 subjects that state legislatures enjoy jurisdiction over.
- In layman's terms, the state legislature can pass laws and govern the said subjects.
- The state list specifies jurisdiction over subjects like, public order, prisons, public health, production, manufacture, transport, purchase and sale of intoxicating liquors, agricultural education and research, fisheries, state public services etc.

C. Concurrent list:

- The concurrent list is a list of 47 subjects on which both the Union and State legislatures enjoy jurisdiction over.
- The constitution of India specifies subjects like, criminal law, criminal procedure, preventive detention, forests, protection of wild animals and birds, trade unions, industrial and labour disputes, population control and family planning etcetera to the concurrent list.

What are Residuary Powers?

Residuary powers refer to the power of jurisdiction upon subjects that are not mentioned in the state or concurrent list.

- Entry 97 - List I read with Article 248 of the Indian Constitution grant exclusive power to the Parliament to make any law with respect to residuary matter. E.g., cryptocurrency.
- Such power shall also include the power of making any law imposing a tax not mentioned in either of those Lists.
- Significance:
  - Dr. Ambedkar held that the residual loyalty of the citizen in an emergency must be to the Centre and not to the constituent states.
  - Only the Centre that can work for a common end and for the general interests of the country as a whole.
- However, the founders of the Constitution intended that residuary powers be used only as a last resort, not as the first step.

What are the issues with the 7th schedule?

- Lack of initiative by the states: States shirk their responsibilities, even for subjects under the state list.
  - E.g., While law and order is a state subject, states often ask for the help of paramilitary forces in times of crisis.
- Lack of clarity: to deal with emergency situations. E.g, during the pandemic this created a lot of uncertainty, especially in case of vaccination.
- Concurrent vs State List: States have advocated the transfer of some subjects from the Union and concurrent lists to the state list.

- E.g., entry No. 58 of the Union list is on the manufacturing, supply and distribution of salt by Union agencies; etc.
- 42nd CA Act was criticized for transferring some subjects from the state list to the concurrent list. E.g., Forest.

- Impede decentralization: as there are subjects that must be transferred to State so as to further decentralize them to PRI's and ULBs. This list is especially pertinent in the light of rapid urbanization across countries.

What reforms are needed in 7th schedule?

- Functional changes: in the list system to reverse undue centralisation to affect a practical working of the arrangement
  - E.g. Centre misusing inter-linked entries and Concurrent List entries)
- Comprehensive consultation: between the Union and state governments before moving anything from the state list to the concurrent list. (Punchi Commission)
- Residuary powers: be transferred from the Union List to the Concurrent List, except for the residuary power to impose taxes which should be retained in the Union List. (Sarkaria Commission)
- Institutionalizing States consultation: by the Centre before the latter exercises its power over Concurrent List entries. ('Venkatachaliah Commission'),

While it is important to record the reservations expressed by some State Governments and political parties regarding the existing system of division of legislative powers. There is need for restraint by the Central Government when occupying a field in the Concurrent List. However, as suggested by both Puncchi Commission and Sarkaria Commission, Centre must remain strong and there is no need for any major structural overhaul.

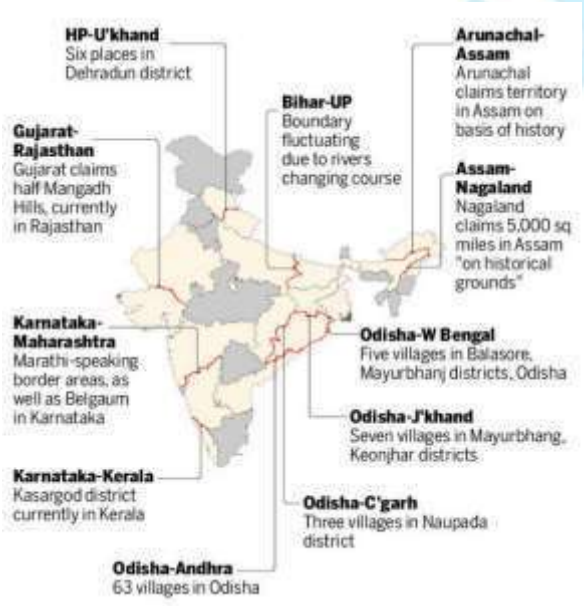
H95- Interstate Border disputes

Recently, the Assam and Mizoram government accused the each other for encroaching into their territory to conduct plantation drive besides constructing makeshift settlements.

Territorial claims in border areas between many Indian states have led to bitter disputes, which at times have sparked violent clashes like the recent incident between Assam and Mizoram.

What are different cases of inter-state border disputes?

- Border disputes between different states especially in Northeast India have been recurring since the 1960's.
- These disputes emerged after states such as Nagaland, Meghalaya, Arunachal Pradesh and Mizoram were carved out of undivided Assam.
- However, almost all these border disputes have their origins in colonial times and reflecting the British policy of creating and recreating boundaries for administrative convenience based on annexation and exploration of territories in the region.



Major Inter-State border disputes:

Disputes	Reasons
Assam–Mizoram Border Dispute:	• Existed since the formation of Mizoram — first as a union territory in 1972, and then as a full-fledged state in 1987. • Besides disputes over boundaries, there are disputes over sharing of water (rivers), migration etc.
Assam–Nagaland Border Dispute:	• The Naga National Council (NNC) has demanded the return of the territories which formed part of Naga Hills District. • This demand was included in the 9 Point Agreement signed between the governor of Assam and NNC in 1947. • To resolve the dispute the Sundaram Committee was constituted in 1971.
Assam-Arunachal Border dispute:	• Arunachal's grievance: re-organisation of North Eastern states unilaterally transferred several forested tracts in the plains that had traditionally belonged to hill tribal chiefs and communities to Assam. • Bordolai Committee was constituted to resolve the border dispute.
Ladakh-Himachal Pradesh	• Himachal and Ladakh lay claim to Sarchu, an area on the route between Leh and Manali.
Maharashtra-Karnataka:	• The Belgaum district has a large Marathi and Kannada-speaking populations. • The area came under Karnataka in 1956 when states were reorganized and till then it was under the Bombay presidency.

Assam–Meghalaya Border	• Started with Assam Reorganisation Act of 1971, which gave Blocks I and II of the Mikir Hills or present-day Karbi Anglong district to Assam. • Meghalaya: both blocks formed part of the erstwhile United Khasi and Jaintia Hills district when it was notified in 1835.
Haryana-Himachal Pradesh	• The Parwanoo region, next to the Panchkula district of Haryana and the state has claimed parts of the land in Himachal Pradesh as its own.

Other border disputes which are at dormant stage now:

- Haryana-Punjab over Chandigarh (being revived fast)
- Karnataka-Kerala over Kasaragod, part of Kerala with many Kannada- speaking people
- Odisha-West Bengal over Kanika Sands Island in the Bay of Bengal
- Gujarat-Rajasthan over Mangadh Hill

What are the causes of inter-state border disputes?

- **Colonial legacy:** British Colonial policy to create and recreate boundaries based on administrative convenience or commercial interests leading to present day claims and counter claims in regions like Northeast.
- **Geographical reasons:** Complexities of terrain or geographical features like forests, rivers etc. makes it difficult to properly identify and mark boundaries.
- **Regionalism:** has deepened the border issues between States. E.g., Nagaland claims all Naga-dominated areas in North Cachar and Nagaon districts due to ethnic regionalism.
- **Lack of institutional mechanism:**
  - The constitution makes no provision for a swift and binding decision of such disputes.
  - Ineffective zonal councils: The meetings of zonal councils are less frequent and mainly revolve around other issues.
- **Apathy of Union Government:** Central Government acts only as a facilitator for amicable settlement of the dispute in the spirit of mutual understanding
- **Lack of resolution of disputes:** States have rejected the resolution recommendations. E.g., Nagaland rejected Lack of constitutional mechanism: The constitution makes no provision for a swift and binding decision of such disputes.
- **Others:**
  - Insurgency: Border disputes is highly politicized with student unions, insurgent groups as well as vested political interests.
  - Scattered Human Habitation: The population density in the border areas of states is so low that it becomes difficult to ascertain the border settlement limits.

Discuss the impacts of inter-state border disputes:

A. Social Impact:

- Violence: Is witnessed as a result of border disputes. E.g., Assam-Mizoram dispute turned into a violent clash with the death of several police personnel and civilians.
- Threat to internal security: The border instability in northeastern states, the fulcrum of India's 'Act East Policy', continue to pose a serious threat to India's security.
- Threat to social harmony: in the disputed regions due to damage to the social fabric of society.

B. Economic Impact:

- Lack of developmental activities and infrastructure
- Poor investment due to fear of conflicts and lack of security => Less job opportunity and growth.
- Rural Development Schemes: Centrally structured schemes are difficult to implement in the border areas because of very high unit cost.

C. Political Impact:

- Affect law and order situation of the region.
- Rise of secessionist tendencies and groups which pose a threat to internal security.

- Trust deficit: other disputed borders or in other inter-state disputes such as river water, migration of people etc. due to trust deficit between states.

What steps can be taken to effectively resolve the issue of inter-state border disputes?

- **Union government:**
  - Set up a boundary commission (including local leaders and civil society members) to demarcate the boundary.
  - Centre can act as a facilitator in dialogue and political sentiments.
- **Judicial settlements:** Disputes can also be settled by the Supreme Courts. For example, Assam approached the court regarding a dispute with Mizoram and sought the status quo.
- **Mediation:** The disputes can be resolved through mediation. E.g., the Supreme Court appointed senior advocates to mediate between Assam and Nagaland.
- **Cooperative federalism:** Creation of conducive environment by Union Government to facilitate the coming together of states, based on the spirit of cooperative federalism.
- **Deployment of force and surveillance technology.** For example, use of technology like UAV and satellite imagery for vigilance.
- **Interstate councils**: can be activated and reformed for resolution of such dispute resolutions.
- **Others:**
  - Local NGOS and political leaders in the region need to shape public opinion about the benefits of settled and peaceful borders
  - There must be a deadline for resolving the conflict under the strict supervision of a bipartisan committee.

The speedy resolution of border disputes will improve the overall connectivity, employment opportunity, livelihood etc. Northeastern States are the doorway to southeast Asia, and enhance the scope of India's 'Act East Policy. However, if the focus remains on maintaining the status quo, the time is not far that these border disputes will turn into major internal security threats for India.

H96- Inter-state water disputes

Recently, the Water Resource Ministry seek Cabinet approval to introduce a change in Inter-State River Water Disputes (Amendment) Bill 2019 regarding the Ravi-Beas water contention adjudication before getting it passed through Parliament.

Although India has 16% of the world's population, the country possesses only 4% of the world's freshwater resources.

- India is water-stressed due to changing weather patterns and repeated droughts.
- As many as 256 of 700 districts in India have reported 'critical' or 'over-exploited' groundwater levels (Central Ground Water Board data).

What are the Constitutional and Legal provisions regarding inter-state water disputes?

A. Constitutional provisions:

- **Entry 17 of the State List:** Water is a state subject and thus states are empowered to enact legislation on water. It deals with water, i.e., water supply, irrigation, canal, drainage, embankments, water storage and water power.
- **Entry 56 of Union List**: Centre can regulate and develop inter-state rivers and river valleys to the extent declared by Parliament to be expedient in the public interest.
- **Article 262:** in case of disputes relating to waters, Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State River or river valley.
- **Article 131:** Supreme court, under its original jurisdiction, can settle the disputes:
  - Between the Centre and one or more states and,
  - Between the states
  - But states can't use article 131 for resolution of interstate water disputes, if parliament has curtailed the jurisdiction of the Supreme Court in this matter.

B. Legal provisions: As per Article 262, the Parliament has enacted the following:

- River Board Act, 1956: This empowered the GOI to establish Boards for Interstate Rivers and river valleys in consultation with State Governments. To date, no river board has been created.
- Inter-State Water Dispute Act, 1956: Provisions of the Act: In case, if a particular state or states approach to Union Government for the constitution of the tribunal.

Discuss the salient features of Inter-state river water disputes Act 1956:

- It provides for the adjudication of disputes relating to waters of Inter-State Rivers and River Valleys.
- The act enables the setting up of tribunals to settle disputes on Inter-State water or river, when negotiation doesn't work.
- Decisions given by the tribunals so constituted will be final and binding and no appeal can lie in Supreme Court. Thus, the jurisdiction of the Supreme Court and other courts is clearly barred in such matters.
- It empowers the Central Government to set up an ad hoc tribunal for the adjudication of a dispute between two or more states regarding inter-state water or river valley.
- It is applicable only to interstate rivers / river valleys. If the action of one state affects the interests of one or more other states, then only water dispute is deemed to have arisen under IRWD Act.
- The action of the state can be of two types:
  - Actions of a downstream state affecting the interest of an upstream state
  - Actions of an upstream state affecting the interest of a downstream state

The Act was Amended in 2002 (to include the major recommendations of the Sarkaria Commission).

- **The act was amended for the following purposes:**
  - If there is any Tribunal award which predates 2002, it cannot be altered by new tribunals
  - If there is any tribunal award which postdates 2002, it can be altered by new tribunals. The

idea is to resolve freshwater disputes which were not addressed by earlier tribunals/ agreements as and when they surface.

- **1-year Time frame:** was mandated to set up the water dispute tribunal and also a 3-year time frame to give a decision.
- The amendment does **not permit altering the prevailing tribunals verdicts** issued before the year 2002.
- This amendment bars the tribunals to give any time period for constituting a new tribunal. This is to keep provisions to resolve fresh water dispute which were not addressed earlier.
- It mandated that the **tribunal report shall also prescribe for the distribution of water among the states** during distress situations arising from a shortage in river water availability.
- **Permanent water dispute tribunal:** with members from sitting and retired judges of SC or HC and technical experts is proposed to resolve the growing number of interstate river water disputes.

So far, the awards of four Inter-State Water Tribunals have been notified:

- Godavari Water Disputes Tribunal (April 1969)
- Krishna Water Disputes Tribunal (April 1969)
- Narmada Water Disputes Tribunal (October 1969)
- Cauvery Water Disputes Tribunal (June 1990)

Why was Inter-State River Water Disputes (Amendment) Bill 2019 introduced?

The Bill was introduced to plus the following loopholes in the 1956 Act:

- **No fix time limit:** for resolving river water disputes.
- **No age limit:** There is no upper age limit for the chairperson or a member of the tribunal.
- **No mechanism:** There is no mechanism for the continuation of work in case of any vacancy or time limit for publishing the report of the tribunal.
- **Delay**: Many times, there have been extraordinary delays in constituting the tribunal. For example, in the case of Godavari water dispute, the request was made in 1962. The tribunal was constituted in 1968.
    - Thus, States continued to invest resources in the construction and modification of dams, thus strengthening their claims.

Inter-State River Water Disputes (Amendment) Bill - key features:

- **Two-tier resolution mechanism**: Once a dispute arises, it would be referred to a Dispute Resolution Committee (DRC) - to be headed by a secretary-level officer of the central government with experts from relevant fields.
- **Appointments:** The tribunal would have a chairman, a vice-chairman and six members - three judicial and three experts. They would be appointed by the central government on the recommendation of a selection committee.
- **Retirement:** The term of office of the chairperson and vice-chairperson would be five years or until the age of 70 years. That of the other members would be co-terminus with adjudication of dispute or until 67 years.
- **Time limit:** The maximum time allowed for the DRC would be 1.5 years, for the tribunal 3 years and for reconsideration another 1.5 years - taking the total to 6 years.
- There would be no requirement of publication of the tribune's report.
- **Basin-wise data:** The Bill also provides for a transparent data collection system at the national level for each river basin, the lack of which has been felt for a long time.

However, there are still some issues left:

- Though Award is final and beyond the jurisdiction of Courts, either
    - States approach Supreme Court under Article 136 (Special Leave Petition) or
    - Private persons approach Supreme Court under Article 32 linking issue with the violation of Article 21 (Right to Life).
- The composition of the tribunal is not multidisciplinary and it consists of persons only from the judiciary. Thus, there is not much difference in tribunal and Supreme Court Bench.

- Tribunals work gets delayed due to the lack of availability of the data.

Suggest measures to overcome the challenges

- Tribunal: The government's proposal to set up an agency alongside the tribunal, that will collect and process data on river waters can be the right step in this direction.
- Cooperative federalism: An institutional trust must be fostered and pathways identified for the positive politicization of such disputes, for facilitating a public discourse focused on dispute resolution.
- Permanent platform: There is a need to create a permanent platform for sustained deliberation over interstate rivers by the basin states for cooperative and coordinated action.

Besides these it is important that such disputes are resolved by dialogue whilst avoiding any sort of political opportunism must be avoided. Also, a reformed and revitalized Inter-State Council can be really beneficial in resolving these disputes and prepare the nation for any climate emergency.

H97- Inner Line Permit (ILP)

Recently, the Supreme Court asked the Union and the Manipur governments to respond to a plea challenging the Inner Line Permit (ILP) system in the State. Manipur is the fourth State after Arunachal Pradesh, Nagaland and Mizoram where the ILP regime is applicable.

What is Inner Line Permit (ILP)?

- Inner Line Permit (ILP) is an official document, issued by the government of India, required by Indian citizens, residing outside, to enter certain protected areas.
- Aim: To regulate movement to certain areas located near the international border of India.
- ILP provides unrestrained power to the state to restrict entry and exit of non-indigenous people or those who are not permanent residents. It is required for entering the protected areas through any of the check gates across the inter-State borders.
- ILP is for domestic tourists while for the foreign tourist it is called the Protected Area Permit.
    - According to the Foreigners (Protected Areas) Order 1958, all the land that comes within the inner line of a particular state, especially the North-East state, is declared a protected area and requires a Protected Area Permit to enter.

Which states which require ILP?

It is required for: Arunachal Pradesh, Nagaland and Mizoram => Manipur was added lately:

- **Arunachal Pradesh**: Entire state is under IPL regime. A permit-on-arrival system is being planned.
- **Mizoram:** Typically, a "Temporary ILP" is issued to visitors.
- **Nagaland:** Entire under IPL regime except Dinapur.
- **Manipur:** CAB will apply pending 'alternative arrangements.

Evolution of Inner Liner Permit (IPL):

- ILP is an offshoot of the Bengal Eastern Frontier Regulations, 1873, which protected Crown's interest in the tea, oil and elephant trade by prohibiting "British subjects" from entering into these "Protected Areas".
- Despite the fact that the ILP was originally created by the British to safeguard their commercial interests, it continues to be used in India, officially to protect tribal cultures in northeastern India.
- The word "British subjects" was replaced by Citizen of India in 1950.
- There are different kinds of ILP's, one for tourists and others for people who intend to stay for long-term periods, often for employment purposes.

What is the need for an Inner Line Permit?

- It preserves indigenous culture and tradition.
- Check illegal migration and encroachment.
- Safeguards the demographic dividend of the tribal population in the North-Eastern region.
- It works as a savior for tribal people from encroachment for commercial purposes.
- It provides for Labor force employment of the indigenous people and guards the supply of cheap labor by the illegal migrants.

Discuss the issues associated with Inner Line Permit:

- Restrictions on the entry of 'outsiders' into these states might hit the tourism industry and the cost is borne by those living in rural areas. It will affect the livelihood of poor and middle-class people.

- Fear of losing tribal's identity due to potential influx of illegal migrants' population driven by The Citizenship Amendment Act.
- It poses a hurdle for central government for inter-state functioning of trade and communication.
- IPL is mostly utilized for political gains by political parties which hinders the benefit of economic growth to reach poor people.
- It will pose a threat on cooperative federation where interaction and coordination is must between union and states.
- ILP is seen as an encroachment on the fundamental rights of Free movement guaranteed by constitution of India. It also contradicts the fundamental right under article 19(1) of the Constitution.

Way ahead:

- Online application system: can be introduced to ensure the security of the people while keeping things easy for the tourists.
- Standard guidelines for implementation of IPL without hampering poor people's interest. Better integration would be achieved if free movement with rational regulation is followed.
- Focusing on socioeconomic development of the protected areas.
- Quick actions are required for settling the debate about he desirability of ILP - so that the states, as well as migrants, feel protected.

Thus, there is need that government should follow balance approach in securing local interest and development. ILP can be instrumental in the effort for the conservation of land and also for the culture of the tribes.

H98- One Nation One Language

Recently, A controversy erupted after Union Home Minister commented that Hindi should be accepted as an alternative language to English but not to local languages. A debate arose if it is the right time to go for 'One Nation One Language' (ONOL).

What is 'One nation one language'?

ONOL is a state where all the citizens of a country should know and communicate in one common language. Generally, it is based on the principle that 'monolingualism' is important for social harmony and national unity. In this scenario, the place of other regional languages is secondary. E.g., German and French for their respective country.

Eighth Schedule

The Constitutional provisions relating to the Eighth Schedule occur in articles 344(1) and 351. It consists of the following 22 languages and is a reflection of Multilingualism.

Article 344(1): provides for the constitution of a Commission by the President to make recommendations for the progressive use of Hindi for official purposes of the Union.

Article 351: It shall be the duty of the Union to promote the spread of the Hindi language to develop it so that it may serve as a medium of expression for all the elements of the 'composite culture' of India.

- Also, Hindi should be enriched by assimilating the forms, style and expressions used in Hindustani and in the other languages specified in the Eighth Schedule,
- Thus, the Eighth Schedule in a way promotes the progressive use, enrichment and promotion of Hindi.

Should Hindi be chosen as the national language?

A. Yes:

- Article 351: (discussed above)
- Hindi is already an official language along with 22 other languages and English for the functioning of the several states and the Union Government.
- It is spoken by >50% population, even by those whose mother tongue is other regional language.
- Ease and consistency: Presence of variety of regional languages also hinders communication. This is a problem particularly for those who migrate from one place to another for livelihood.
- Multilingualism may impede national integration as language is an identity of the people. Thus, Hindi can lay foundation for promoting a common consciousness for national identity.

B. NO:

- Linguistic pluralism: As per the 1961 Census, there were a total of 1,652 'mother tongues' in India, wherein only 184 'mother tongues' had > 10,000 speakers. India is a multilingual society at the core of it.
- Hindi is not spoken by >30% population. Therefore, it is neither a lingua franca nor a dominant language for all of India.
- Power dynamics & identity issues: may lead to language-based discrimination. E.g., Kashmiri language suffers in its land of birth by the dominance of Urdu (the state language).
- The imposition of one language is based on the misinterpretation of the political map as cultural map and vice versa.
- Romanticization of notion of ONOL: leading to imposition of One language over a large geographic zone of multi-lingual landmass.
- Hatred against the imposed language: E.g., Sri Lanka declared Sinhalese as the sole official language with the exclusion of Tamil => demand for a separate Tamil nation.
  - The Eastern Pakistan (later Bangladesh) partitioned from Western Pakistan because the latter was imposing Urdu on the Bengali speaking population.
- linguistic diversity led prosperity: E.g., Singapore, multi-ethnic population, opted for English as the official language => became a global business hub.
  - South Africa's national anthem is a five-language lyrical composition => an accommodative linguistic policy

National Language	Official Language
• Language spoken by a large part of the population of a country. • It may or may not be designated an official language	• A language that has legal status in a particular legally constituted political entity like State. • It serves as a language of administration.

Three Language Formula:

- National Policy on Education, 1968 said that, "At the secondary stage, State governments should adopt and vigorously implement the three-language formula, which includes the study of a modern Indian language, preferably one of the southern languages, apart from Hindi and English in the Hindi-speaking States."
- In the 'non-Hindi speaking States', Hindi should be studied along with the regional language and English.

Instead of focusing on how many languages or which language should be adopted, we must focus on structural and systematic study of the linguistics in a multilingual landscape, like South Asia. Imposing ONOL, based on one-size-fits-all approach, can be catastrophic and can initiate the phonocide of other Indian languages.

Instead, taking caution from the disastrous linguistic chauvinism of Pakistan or Sri Lanka, India should emulate the successful multi-linguistic accommodative policy of Singapore and South Africa.

H99- Interstate Council & Zonal Councils

Interstate Council

India, being a federal republic need coordination between the center and states in many political, administrative, and governance affairs. This, there is a need for a body that facilitates coordination between center and state. Thus, Inter-State Council was provided for better policy coordination.

What is Interstate Council?

- The Inter-State Council (ISC) is a constitutional body, under Article 263, set up on recommendation of the Sarkaria Commission.
- Aim: to investigate and discuss subjects in which some or all of the states or the Central government have a common interest.

What is its present relevance?

- **Tackle regionalism:** The ISC plays an important role in redefining the role of center-state relations. It gives a pan India character to overcome the parochial approach of regionalism.
- **Inter-state coordination:** It is a mechanism that was constituted "to support Centre-State and Inter-State coordination and cooperation in India". E.g., resolution of inter-state disparities.
- **Bridge trust deficit:** The council helps bridge the trust deficit between the center and the states. If not always a problem solver, it at least acted as a safety valve. E.g. Debating the misuse of governor's powers.
- **Cooperative federalism:** is promoted by ISC as it - acts as a tool for cooperation, coordination and the evolution of public policy; enquires into and discusses matters of common interest to one or more States.

What are the issues in ISC?

- **Underutilization**: of the ISC is one of the major problems. It has held only 10 meetings in the last 22 years of its existence and made tardy progress in addressing inter-State disputes.
- **Advisory in nature**: It is merely an advisory body with no bindings on either the center or the state. Thus, often its recommendations are ignored by the governments.
- **Lack of expertise:** It lacks technical and management experts along with the autonomy that is required for effective functioning.
- **Not participatory:** There is no presence/engagement of civil society in the council which makes it less participatory and cooperative.
- **Not permanent body**: President can establish it at any time if it appears to him that the public interests would be served by the establishment of such a council.

What steps are needed to improve the functioning of ISC?

- **Regular meeting:** within a fixed time, frame to effectively address the problems pertinent to the prevalent times. Punchhi commission had recommended activating the ISC by meeting at least thrice a year.
- **More authority:** Suitable amendments must be made to Article 263 so as to give more power and authority to the council rather than merely being an advisory body.
- **Adequate manpower:** The council must be staffed by technical and management experts so as to carry out its functions more effectively.
- **Civil society engagement:** The council should also engage the civil society in its functioning so as to become truly participative.
- **Making it permanent:** ISC must be made a permanent body as recommended by Sarkaria Commission.
- **Innovative structuring**: like The GST council has an innovative voting structure (Union government: having a third of the vote; states share: rest). This can empower the Inter-State Council.

The Inter-state council mandate was inter-State coordination on issues such as river water disputes, problems pertaining to the location, funding and execution of mega projects, ecosystems management, development of tourism etc. The ISC has not been able to achieve much progress on these fronts. Thus, effective measures, like above, are needed to strengthen ISC in order to make it able to fulfill its mandate.

Zonal Councils

Recently, the Minister of Home Affairs chaired the 25th meeting of the Western Zonal Council at Diu.

What are Zonal Councils?

- Zonal Councils are statutory body created under State Reorganization Act, 1956
- The idea of creation of Zonal Councils was mooted by the first PM J.L. Nehru in 1956 during the debate on States Reorganization.
- He suggested that the State may be grouped into zones with an Advisory Council 'to develop the habit of cooperative working" among these States.

What is the significance of zonal councils?

- To bring out national integration and arrest the growth of acute State regionalism, linguism and particularistic tendencies.
- Exchange of ideas & Open discussions: To enable the Centre and the States to co-operate and exchange ideas and experiences
- Developmental projects: They are helpful in developing a climate of cooperation amongst States for successful execution of development projects.
- Cooperative endeavor: They are regional fora of cooperative endeavor for the states linked with each other economically, politically and culturally.
- National perspective: Being compact high-level bodies, specially meant for looking after the interests of respective zones, they are capable of focusing attention on specific issues taking into account regional factors, while keeping the national perspective in view.
- Deal with matters arising out of the re-organization of State such as border problems, linguistic minorities, inter-state transport etc. Also, it helps in moving the after-effect of separation.
- It evolves common policies in regard to education, technical, medical and other professions, trade and commerce, labour and industry, and agricultural prices.

What are the issues associated with the zonal councils?

- Role Complexity: due to having the multi-dimensional responsibilities to maintain peace along with better coordination among all states of India.
- Diverging policy: of different two states, specifically in cases like different political parties in power. Also, there are communication gaps leading to misunderstanding.
- Violence: It is sometimes also observed that two states are also engaged in violence due to not mentioned line of area of both states. E.g., Assam-Mizoram border clashes.

What steps are needed to improve the functioning of the zonal councils?

- There is a need for states to resolve the issues amicably and through discussion.
- The solutions ought to be found in a time-bound solution.
- All stakeholders should come together to establish a strong cooperative mechanism for development, for which purpose the regional council was created.
- There is need that states and union territories to conduct awareness campaigns on different cultures to make Ek Bharat Shresth Bharat.
- Development of a local contingency plan by states, as well as encourage deeper engagements between States.

The Zonal Councils are powerful instruments of 4C - consultation, conciliation, cooperation and consensus to resolve many issues. Therefore, there is a need to strengthen the role of zonal councils for cooperative federalism.

H100- Provisions of The Panchayats (Extension to the Scheduled Areas) Act 1996.

In August 2022, in the run up to Gujrat state elections political parties like Aam Aadmi Party (AAP) declared a six-point "guarantee" for tribals in Gujarat, including the "strict implementation" of The Panchayats (Extension to the Scheduled Areas) Act 1996 (PESA Act).

What is PESA?

- This law was enacted to extend some of the provisions of Part IX of the constitution relating to the Panchayats to the Fifth Schedule areas taking into consideration of tribal sensitivities. (Other than Panchayats, Part IX, comprising Articles 243-243ZT of the Constitution, contains provisions relating to Municipalities and Cooperative Societies.)
- Under the PESA Act, Scheduled Areas are those referred to in Article 244(1), which says that the provisions of the Fifth Schedule shall apply to the Scheduled Areas and Scheduled Tribes in states other than Assam, Meghalaya, Tripura, and Mizoram.

What is the significance/need of PESA?

- **Restoration of self-governance:** To restore the right of autonomy of tribals which were lost to the exterior legislatures during colonial government.
- **Safeguarding Culture and Traditions**: As they are the most vulnerable for example, seven decades after independence, many tribal languages in India face extinction threat as per report in the magazine Down to Earth.
- **Prior consultations for land acquisition:** The act's utmost important feature was to mandate the prior discussion with the people residing in the scheduled areas before acquiring their land.
    - This is of utmost importance as forest land, being rich in various metals and other precious minerals is being increasingly exploited leading to environmental degradation.
- **Increased avenues of livelihood:** The Act empowered the tribal people with the ownership of "minor land produce", and managing their rural and traditional markets.
- **To reduce alienation in tribal areas** by allowing them to have better control over utilization of forest resources, local decisions etc.
- **Local dispute resolution**: this restricts states interference in their customs and traditions.
- **Poor socio-economic status**, such as 47.4% living below poverty line, 41% illiteracy etc. Thus, this law is needed to empower tribals by giving them power in decision making at lower levels.
- **To stop state governments from acting against the policy of Tribal Panchsheel** given by Jawaharlal Nehru:
    - For instance, in the Korba district of Chhattisgarh, the local community is protesting the government decision to acquire land using the Coal Bearing Act of 1957 – something that experts argue is illegal and against the spirit of PESA.

Has PESA been a success?

Yes, as PESA act could achieve:

- In 2013, referring to the PESA, the Supreme Court of India, in a landmark case, had asked the Odisha government to go to the gram sabha to get permission for bauxite mining in Kalahandi and Rayagada district of Odisha. Ultimately leading to the cancellation of a huge project.
- When, in 2016, the Jharkhand state government tried to amend the Chota Nagpur Tenancy Act of 1908 and the Santhal Pargana Tenancy Act of 1949, the local Adivasi community mobilized and resisted using PESA.
- Pathalgadi movement began on the basis of PESA: Using the pro.6
- visions of PESA, Adivasi villages were declaring self-rule (rule of gram sabha),

Despite the above achievements, experts argue that, law, has failed to achieve its potential and has not created any significant impact on the ground, as per the study of Indian Insititute of Public Administration (IIPA)-

- 40% of the states under its purview have not been able to frame their rules for its implementation even after 25 years of its existence.
- A total of four states which have huge tribal population – Chhattisgarh, Jharkhand, Madhya Pradesh and Odisha have not even framed the rules yet – while Gujarat used the rules of the Panchayati Raj Act to manage the fifth scheduled areas.
- But even in the states where the rules were formulated, the situation is not different as they performed quite poorly in ensuring their implementation.
- The government is acquiring land without the consent of gram sabhas.

Issues with the act? Or What are the reasons behind failure of the act?

- PESA does not specify rule-making powers or provide a time period by which the States have to frame rules.
- Lack of Political will as despite PESA requiring states to align their PRI acts to PESA hardly any state has adhered to it.
- Lower level of awareness and education: among the tribals comes in the way of raising assertive voices.
- Lack of adequate administrative and fiscal decentralization of powers: Major power still remains with the State Governments.
- Recommendations of State Finance Commissions have been either accepted partially or implemented selectively.
- Extensive collusion, between politicians, bureaucrats and the private companies, which has displaced scores of tribals from their land.
- Circumvention of provisions by State government: For example, PESA is for rural areas, states upgrade rural panchayats in scheduled areas to urban panchayats to bypass PESA and give clearance to mining and industries in tribal areas.
- Enactment of other legislations: After enacting PESA, the Union government brought several other legislations and included many provisions of PESA into these laws.
    - For instance, the Land Acquisition Act, 2013 empowered gram sabhas immensely. Similarly, the Forest Right Act, 2006 has provisions of PESA and now when people need to protect their rights and resources, they look up to these laws.

What steps are needed to improve the effectiveness of PESA?

- As per the recommendation of different Working Groups engaged by the Central Government, the following measures may be taken by all concerned:
    - A detailed state specific guideline considering existing conflicting laws should be in place incorporating the suggestions from already engaged expert agencies.
    - It should also be guided by a definite time frame.
    - Government of India should issue specific directions in accordance with proviso 3 of part A of the Fifth Schedule if any State fails to implement PESA in letter and spirit.
    - A High-Power Committee at the central level may be formed to oversee the progress of the concerned states regarding implementation of PESA.

- The Governor should proactively seek reports of scheduled areas: The report should be made available to the public by uploading it onto the website in a time-bound manner.
- Traditional tribal councils are dominated by male by and large in all respective states. Appropriate measure should be taken to ensure at least one third participation of women in all meetings at the Gram Sabha level.
- There is also an urgent need to amend the Indian Forest Act, Land Acquisition Act, and other related Acts so that the ownership on minor forest produce, water bodies and land resources are explicitly handed over to the Gram Sabhas of the PESA areas.

- Civil society has to work more vibrantly on a right based approach to protect the rights of the tribal population of the country.

The Provisions of PESA appeared to come as a saviour that is designed to erase the historical injustice done to the Adivasi community. PESA was perceived as restoration of tribal dignity and tradition of self-governance, symbolised by 'Mava Nate Mava Raj' (Our Village Our Rule). However, any legislation needs to be implemented in letter and spirit.

H101- Performance of PRIs

India is poor because villages of India are poor, India will be rich if the villages of India are rich. Panchayats should be given greater powers, for we want villagers to have greater measure of swaraj in their own villages. - Jawaharlal Nehru.

The National Workshop on Localization of Sustainable Development Goals (LSDGs) in Panchayats on Village with Self-Sufficient Infrastructure will be inaugurated at Chandigarh during 22nd – 23rd August, 2022.

What is Panchayati Raj?

- Panchayati Raj is a system of governance in which gram panchayats are the basic units of administration.
- It is the oldest system of local government in the Indian sub- continent. It is also found backing in Indian Constitution with the 73rd Amendment Act in 1992 to accommodate the idea.
- Currently Panchayati Raj System exists in all the states except Nagaland, Meghalaya and Mizoram and the all-Union Territories except Delhi.
- Constitutional Provisions regarding Panchayati Raj of the Constitution provides for setting up three tiers of Panchayats:
  - Gram Panchayat at village level
  - District Panchayat at District level
  - Intermediate Panchayats at sub-district level in between Gram Panchayats and District Panchayats.

Do you think PRI's have been successful?

Yes, the significance of PRIs is given below

- **Decentralization**: In India, Panchayati Raj System helped in decentralization which helped democracy become truly representative and responsive.
- **Basic amenities:** PRIs are successful in providing basic infrastructure facilities, empowering weaker sections, and development at grassroot levels.
- **Fiscal federalism:** through the landmark 73rd & 74th Amendment Act of the Constitution State Finance commissions have been established which require states to devolve funds to local bodies.
- **People's participation:** PRIs enabled people's participation in the process of planning, decision making and implementation and delivery system in rural areas.
  - There are currently over 3 million elected representatives (of which more than 1 million are women) for panchayats at all levels.
- **Women empowerment:**
  - Women in larger number than before are participating in Panchayati Raj institutions.
  - Participation of women in PRIs, rather than being symbolic, is substantive and developmental.
- **Government schemes:** PRIs are successful in the sense that all centrally sponsored schemes (CSSs) programmes are directly implemented through Panchayati Raj Institutions (PRIs). For example, MNERGA.
- **Economic Development:** PRIs are successful in achieving economic development and strengthening social justice.

No, PRIs are failures in the following sense (Issues/Challenges)

- Corruption: Manishankar Iyer committee held that instead of decentralization of powers what is happening is decentralization of corruption.
- Manishankar Aiyer committee also highlighted the fact that instead of empowerment of women, concept of Panchayat Pati is emerging.
- Participation of SCs and STs is only procedural and not substantive: As their voice is hardly heard, they are not even called for debates on important issues as their point of view is not considered of any value.
- After a quarter century of decentralization, local expenditure as a percentage of GDP is only 2 per cent compared with the OECD (14 per cent), China (11 per cent), and Brazil (7 per cent).
- PRIs can hardly be called 3rd unit of the democratic governance as it hardly enjoys any autonomy as long as funds, functions and functionaries are concerned.cy

What are the reasons behind such a failure?

- Administrative challenges: PRIs are facing administrative problems such as lack of

coordination, poor incentives, promotion opportunities, lack of transparency etc.

- Local politician's vs Bureaucrats: The issues arising out of the interface between the politicians and bureaucrats has also added to poor performance of PRIs.
- Government Indifferences: A lot of communication gaps, lack of clarity regarding responsibilities, expectations have contributed to its slow pace.
- Low Literacy: Given the low literacy levels in rural India, particularly among women, SCs, and STs, building competence is a challenge.
- Fiscal decentralization: The state government has failed to give up their control on matters of local administration and finance.
- Limited power: PRIs failed because they had limited power in respect of imposing cess and taxes.
- Lack of cordial relations between officials and people.
- Caste factionalism: The performance of PRIS have also hindered by political cum caste factionalism.

What steps are needed to overcome the challenges?

1. Towards Decentralization:

- Transfer of the three Fs - functions, funds and functionaries.
- Empower the gram sabhas, which are the foundation of the Panchayati raj system.
- Give greater attention to training and capacity building of the gram sabha members.
- Notify the division of functional responsibilities between the three tiers of the Panchayati raj system on the basis of activity mapping.

2. Institutional and Administrative Reforms include:

- Ensure openness and transparency in the functioning of government.
- Ensure accountability of public servants for their actions

3. Financial Devolution:

- Local governments should be allowed to raise their own funds through collection of tax.
- The connection between tax payment and higher accountability is well established.

4. Other reforms needed:

- ePanchyat needs to be implemented efficiently with other e-Governance interventions like e-District, State Date Centre, State Service Delivery Gateway etc.
- Political will and wisdom of the politicians are required to take necessary measures to protect the interest of weaker sections and enrich PRIs smooth functioning.
- 15th Finance Commission step to increase the grants in its interim report for year 2020-21 for rural and urban bodies is a step in good direction.
- The States should also endow Gram Sabha with necessary powers as required under Article 243A of the Constitution.

Recommendation of 2nd Administrative Reform Commission report:

- There should be a clear-cut demarcation of functions of each tier of the government.
- Governments should encourage local bodies to outsource specific functions to public or private agencies, as may be appropriate, through enabling guidelines and support.

Gram Sabha:

- Grama Sabha is regarded as the fourth tier of the Constitution, the other tiers being Central Government, State Governments and PRIs.
- Gram Sabha, a body of the voters of the village is regarded as a mini-Assembly or Parliament at that level.
- It has the power to plan, approve, and monitor various development programmes for its village. It has a constitutional mandate, and the elected PRIs are accountable to the Gram Sabha."

Significance:

- Promoting gram sabhas can enable greater political participation of women.
- As a powerful institutional mechanism, it can keep a close vigilance on the implementation of development programs.

- Eliminate inefficiencies and misuse of development funds.
- Mobilize each and every member to participate, suggest, debate on their common problems, understand the needs and aspirations of the village community.

Issues of Concerns:

- Gram Sabhas are not being held if held it is ritualistic.
- Decisions in Gram Sabhas are not being followed, leading to frustration.
- Lack of information. Awareness among the people in general and Gram Panchayat members (Sarpanch/Pradhan) in particular.
- Government legislation on various topics is not supportive to Gram Sabhas.

Reasons for the non-functioning of Gram Sabha:

- People are not aware of the significance of Gram Sabha. Sarpanches are not taking sincere initiative to organise Gram Sabha
- Though in many places young Sarpanches are interested in Gram Sabha, their secretaries normally discourage them from doing so.
- Panchayat officials are satisfied with paperwork.
- Sarpanches generally avoid meeting people in a village meeting because they do not want to share information and seek people's participation in discussion and decision making.
- People are not adequately informed.

What are the best practices being followed in different states regarding PRIs?

Some of the best practices followed in different states are given below:

1. Haryana:

- An innovative training initiative was undertaken in Mahendergarh district of Haryana.
- Launch of Backward Regions Grant Fund (BRGF) scheme.

2. Kerala:

- Kerala is one among the states where the implementation of the Panchayati Raj Act has been successfully done and all 29 subjects, including health, mentioned in the Eleventh Schedule of the Constitution have been transferred to the PRIs and their functions are clearly demarcated among the three tiers.
- Decentralization of the health care sector in the State of Kerala has resulted in dual control over the staff, duality of monitoring and responsibilities.
- It has made a positive impact on the rural health scenario of Kerala.

3. Case Study: Ibrahimpur, Telangana

- Ibrahimpur village is a great example of a participatory governance model. The village conducted Gram Sabha meetings regularly where citizens discuss their needs and ways to address challenges.
- Based on their participatory planning, they provide,
  a. Excellent delivery of services like safe drinking water with minimum charges,
  b. 100% sanitation facility,
  c. Effective water conservation,
  d. Provision of Organic manure,
  e. Mosquito-free village, 6. Solar lights for village households,
  f. Banned the single-use of plastics,
  g. Installed an 'Any Time Water Machine', which allows locals to fill up 20-litre cans at least two to three times a day.

Empowered PRIs is a major intervention to facilitate good governance. Therefore, the government should make adequate efforts to enrich these institutions by devolving funds, functions, and functionaries so that they can effectively play an important role in socio-economic development of India.

Panchayats act as a bedrock of democracy as highlighted by Gandhiji "When the panchayat raj is established public opinion can do what the violence can never do".

H102- Local Self Government -Direct Election

"When the Panchayat Raj is established, public opinion will do what violence can never do".
— Mahatma Gandhi.

On 22 august 2022, Maharashtra State assembly passed bills proposing direct elections of municipal council president and gram panchayat sarpanch.

How the elections at local self-governance are held in India?

- Holding elections to local bodies like panchayats and municipalities is the responsibility of the State Governments and the State Election Commissions.
- The Constitution mandates that where Part IX of the Constitution applies, Panchayat elections be conducted every five years, under the overall superintendence, direction and control of the State Election Commission.
- Electoral roll is same as that of Lok Sabha and State assembly elections.
- Members of PRIs, ULBs are directly elected by voters and the chairpersons of these institutions such as Mayor as a head of Municipality, Sarpanch as a head of gram panchayat are in turn elected by elected members among themselves. This is an indirect method of election.

What is the direct election of the heads of institutions in LSG?

- In case of direct election, the various heads of LSGs (Mayor, Sarpanch) are directly elected by voters and not by the earlier indirect method.
- Like in general elections as people elect MPs or MLAs here people elect the mayor or chairperson of the gram panchayat.

Should there be a process of direct election at local level?

Yes, As direct elections of mayors/gram panchayat sarpanch will have the following advantages:

- Efficiency in governance: as directly elected mayors and sarpanches can monitor work of officials and push for deadlines to be adhered to.
- Accountability: Direct mandate from residents adds to the legitimacy and accountability of the mayor's and sarpanch's office.
- It would resolve the power tussles between mayors and commissioners and Sarpanch and government officials.
- Greater continuity: Fixed tenure offers greater continuity as opposed to state-appointed bureaucrats who can be abruptly transferred.
- Citizens' participation will increase as their leader is popularly elected.
- Stability – As an indirectly elected mayor or sarpanch will survive as long as they have the support of councilors, this might resort to horse-trading.
- It introduces democracy at grassroots, by substituting the government nominated commissioner-ship.
- It is in sync with international practice with cities like London.
- Citizen-centric administration: It leads to political accountability and citizen centric administration as compared to recent municipal commissioner.

No, as direct election of mayor/sarpanch can cause following issues:

- Deadlock in administration: Instead of enabling efficiency it might result in a deadlock in administration, especially when the mayor/sarpanch and the majority of elected members of the city council/village council are from different political parties.
- Centralization of power: It centralizes powers in the hands of the mayor/sarpanch and his nominees and creates political executive which neither enjoys the support of the elected council nor needs its acquiescence for taking decisions.
- Autocratic: giving sole autonomy to Mayor/sarpanch will lead to autocratic behaviour.
- Administrative cost – it might increase the cost of elections.
- Lack of Consensus – he might not have the majority support among the elected councilors as was the case when indirectly elected. Since the councilors elected him amongst them, he used to have their support & goodwill.

- Rich candidates may prevail over the poor.
- It may also deny Scheduled Caste and Scheduled Tribe candidates the chance to become the head.

The election process of local self-government can be enriched through the following measures:

- There should be an alternative model in which simultaneous elections should be held for both mayors and councilors.
- To improve the functioning of the State Election Commission, second ARC recommendations should be implemented.
- As per the recommendations of the Law Commission, the central government can provide an independent and permanent secretariat for the SECs and Election Commission.
- For responsive local governance, there is a need for a powerful political executive in the city/villages with more autonomy, whether directly or indirectly elected.
- An empowered executive at the city can also be achieved through an indirectly elected "Mayor-in-council" system in which the mayor has to maintain the support of the majority of the Council. A similar system can be adopted at gram panchayat level.

Vesting the executive powers of the municipality with the mayor and of gram panchayat with Sarpanch's would be a very positive move instead of the current Commissionerate system where the mayor has a largely ceremonial role. However, direct elections won't be a panacea as other reforms associated with funds, functions and functionaries are required to strengthen the hands of the directly elected head.

H103- Performance of ULBs

"I am quite convinced that we need to increase the resources that go to municipalities if we want the municipalities to do the things the Constitution and the law say they must do. It can't be avoided."
- Thabo Mbeki

In April 2022, the Indian parliament passed the Delhi Municipal Corporation (Amendment) Act to merge the North, South, and East Delhi municipal agencies into a single unified body, the Municipal Corporation of Delhi (MCD).

What is the need for ULBs in present times?

- Increasing disasters, for example, urban floods in Mumbai, Chennai etc., require coordinated approach for which urban local bodies are pre-requisite.
- According to the United Nations Population Fund Report (UNPFR) the world population is turning urban. About 3.3 billion people live in urban areas and, by 2030, more than half of the world's population will shift to urban areas.
- Increasing communicable diseases, for example, during covid urban local bodies played crucial role in enforcing social distancing, identifying contacts, providing aid etc.
- The local self-bodies are related with the daily life of the people to perform functions related to education, sanitation, public health, etc.
- The local bodies provide the right solution to the local problems due to the participation of local people, where the central and state governments are unable to pick up the exact nature of the problem.
- They lessen the workload of the central and state government because they could not spare time to look into the local matters.
- The local bodies help in awakening political consciousness.
- It creates decentralization of powers, and provides a platform for people to interact in policy formulation.

What issues plague the ULBs?

1. ULBs across the country lack autonomy in city management and several city-level functions are managed by parastatals (managed by and accountable to the state) which undermines the need of ULBs.
   - For example, in Bengaluru, the Bengaluru Development Authority is responsible for land regulation and the Karnataka Slum Clearance Board is responsible for slum rehabilitation.
   - This leads to a functional overlap, ambiguity, and wastage of resources.
2. Several taxation powers have also not been devolved to these bodies, leading to stressed municipal finances.
3. Limited fiscal autonomy, due to limited effective devolution of revenue by state government and limited capacity of municipalities to raise resources through their own sources of revenue such as property tax.
   - Municipal revenue in India accounts for only one percent of the GDP (2017-18).
4. Lack of powers with elected representative I.e., mayors instead municipal commissioner appointed by the state government wields real powers. This affects fixing of accountability.
5. Issues related to personnel, these include overstaffing of untrained manpower, shortage of qualified technical staff and managerial supervisors, and unwillingness to innovate in methods for service delivery.
6. Lack of political will, since cities generate huge resources, the political class is unwilling to give power to them.

What steps have been taken by the governments in recent times?

- **AMRUT Scheme:**
  - Energy efficient LED street lights in cities.
  - Energy audit of water pumps followed by replacement of inefficient pumps.
  - Conducting credit ratings and issuance of Municipal Bonds.
  - Reuse of treated waste water.
  - Single Window Clearance System for Construction Permits.
  - Capacity building.
- Smart Cities Mission, the objective is to promote cities that provide core infrastructure and give a

decent quality of life to their citizens, a clean and sustainable environment and application of 'Smart' Solutions.

- The central government developed guidelines for moving to a double entry accrual-based accounting system through the introduction of a National Municipal Accounts Manual.
- UNDP-Government of India, initiative for Capacity Building for Decentralized Urban Governance: it is aimed to handhold the ULBs in the areas of Accounting Reforms, Property Tax Reforms and City Development Plan.

Suggestion/measures to overcome the issues of ULBs.

- An Expert Committee on Urban Infrastructure (2011) had recommended that activity mapping and clearly demarcate the exclusive domain of municipalities and those which need to be shared with the state and the central government.
- If any parastatal exercises a civic function, it should be accountable to the municipality.
- Appointment of commissioner: The Expert Committee on Urban Infrastructure (2011) has recommended that the Commissioner should act as a city manager and should be recruited through a transparent search-cum-selection process led by the Mayor.
- Greater fiscal powers, greater powers of taxation to the ULBs by the state government, reforms in land and property-based taxes, and issuing of municipal bonds.
    - The State should put in place a system of periodic increases in floor rates of property tax/ user charges in line with price increases.
- A Model Municipal law, released by the Urban Development Ministry in 2003, provided that the executive power should be exercised by an Empowered Standing Committee consisting of the Mayor, Deputy Mayor, and seven elected councilors.
- Separate cadre: Municipalities should appoint their personnel to ensure accountability, adequate recruitment, and proper management of staff.

Participatory democracy, transparency and accountability are the key pillars for new urban governance where formal participation procedures should be complemented by collaborative partnerships, recognizing ward committees and area sabhas as active "partners."

Cities act as an engine and drivers of economic growth and development, they are magnets of human resource and investment, thus considering their potential in nation's development, urban governance needs to be strengthened for which above suggested reforms can be a good start.

H104- Municipal Bonds

Vadodara Municipal Corporation in March 2022 successfully raised Rs 100 crore through its maiden Municipal Bond issued on a Private Placement Basis on the Bombay Stock Exchange.

What are Municipal Bonds?

- Municipal bonds are debt securities issued by state and local governments.
- These can be thought of as loans that investors make to local governments, and are used to fund public works such as parks, libraries, bridges and roads, and other infrastructure.
- Interest paid on municipal bonds is often tax free, making them an attractive investment option for individuals in high tax brackets.
- Such bonds come with a maturity of 3 years.

Examples,

- Municipal bonds exist in India since the year 1997.
- Bangalore Municipal Corporation is the first urban local body to issue municipal bonds in India.
- Ahmedabad followed Bangalore in the succeeding years.
- Since 2015 SEBI guidelines several other municipalities have issued Municipal bonds.

What is the need for Municipal Bonds?

- The ULBs are mandated with too many responsibilities with too little finance.
- The financial position of ULBs is weak and they heavily rely on the state government for funds.
- The city's heavy reliance on tax-based revenue model is not sustainable for funding projects in the age of the New Urban Agenda.
    a. Property tax is the only major source of revenue for the municipalities. With growing demands for different kinds of infrastructure from the urban population the property tax is proving to be insufficient for finance large commercial projects.
- Infrastructure projects are often characterized by high capital intensive with long gestation periods, which often lead to financial instability. Therefore, strengthening the bond market and public investment is an effective and necessary solution.
- To tackle ever rising demand for services: It is very likely that one in every two citizens of India will be residing in urban areas in the near future, where the demand side pull for the basic services will increase.

What are the challenges faced by Municipal Bonds?

- Credit worthiness: Most municipalities in India do not have credible credit rating for them to easily access bond market.
- Commercially viable projects: Municipalities lack expertise to design commercially viable projects and attract the interest of investors.
- Lack of investor confidence: If urban local bodies receive predictable and untied fiscal transfers in the form of Finance Commission grants, their financial health would improve. Private investors would start gaining confidence to invest in municipal borrowings including bonds.
- No authentic financial data available: Investors have doubts over local bodies as there is no authentic financial data available.
- Lack of Autonomy: Low accountability and autonomy of city agencies followed by lack of an enabling environment.

Suggestion/ measures to enhance the effectiveness of MB:

- Incentives: To increase the attractiveness of municipal bonds.
    - This can be done through making the municipal bonds income tax free for both retail and institutional investors.
- Include MBs in the priority sector–lending framework so that smaller urban local bodies with lesser capacity can avail themselves of its benefits along with the existing pooled investment scheme.
- Improvements in accounting practices, for it, the establishment of an independent urban financing authority is necessary. Also, to monitor and regulate accounting standards, prospects of urban project financing, and assist urban local bodies with smaller capacities to raise their creditworthiness and credit rating.

- Permit all urban local bodies to create special-purpose vehicles (SPVs) to undertake the process smoothly.
- To keep investors engaged local bodies should declare at the start of the year all the projects which they are willing to take in the upcoming year.

The current structure of municipal bonds has several deficiencies which can be bridged if an umbrella urban financing law is introduced that makes it mandatory for urban local bodies to meet their urban financing needs through the issuance of municipal bonds.
This will not only help in improving urban governance and solve the problems seen in Indian cities presently, but also enable a more reliable urban financing tool.

H105- Scheduled and Tribal Areas- analysis.

In July 2022, the government of India is reported to be considering granting "tribal" status to the Trans-Giri region of Himachal Pradesh's Sirmaur district. The demand to declare Trans Giri as a tribal area under 6th schedule is quite old but keeps on emerging during an election season. Further, the National Commission for Scheduled Tribes (NCST) in 2019 recommended declaration of Ladakh as a tribal area.

Tribes in India, numbering around 104.3 million people belonging to various tribes (705) as per 2011 census, constitute about 9% of the total population of India. These communities are one of the most vulnerable, marginalized and isolated/excluded social groups in the development process. They suffer from poor socio-economic status, such as 47.4% living below poverty line, 41% illiteracy etc., The tribes or 'Adivasis' of the central India are caught in the civil war what is popularly known as 'Naxalism' or 'left – wing Extremism'.

What are Scheduled areas and Tribal areas?

The Constitution provides for two types of areas: "Scheduled Areas" in terms of the Fifth Schedule of the Constitution, and "Tribal Areas" in terms of Sixth Schedule.

Scheduled areas:

- The Fifth Schedule under Article 244(1) of Constitution defines "Scheduled Areas" as such areas as the President may by order declare to be Scheduled Areas after consultation with the Governor of that State. There is provision of Tribal Advisory Councils (TACs) for issues related to tribes in these states.
- At present, 10 States namely Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Rajasthan and Telangana have Fifth Schedule Areas.

Tribal areas:

- The Sixth Schedule under Article 244 (2) of the Constitution relates to those areas in the States of Assam, Meghalaya, Tripura and Mizoram which are declared as "tribal areas" and provides for District or Regional Autonomous Councils for such areas. These councils have wide ranging legislative, judicial and executive powers.

What are the criteria for declaring any area as Scheduled area?

Criteria for declaring any area as a "Scheduled Area under the Fifth Schedule are:

- Preponderance of tribal population,
- Compactness and reasonable size of the area,
- A viable administrative entity such as a district, block or taluk, and
- Economic backwardness of the area as compared to the neighboring areas.

What are the issues and challenges faced by the 5th schedule areas?

- Lack of political will: Rarely do Governors invoke their power leading to a situation where all legislations, irrespective of their suitability in Scheduled Areas, are operational without any amendment or alteration.
- Missing Coverage Area: There are several tribal-populated and tribal-dominant areas across the country which are not Scheduled Areas and therefore, are not covered by the protections offered under the Fifth Schedule.
    - E.g., Tribal habitations in the states of Kerala, Tamil Nadu, Karnataka, West Bengal, Uttar Pradesh and Jammu & Kashmir have not been brought under the Fifth or Sixth Schedule.
- Flawed Governor's reports: experts have pointed out that the Governor's reports tend to borrow heavily from reports of the tribal welfare department, merely listing out the schemes and programmes for tribal development without even examining their implementation and efficacy on the ground.
- In all these years of its functioning, the Tribal Advisory Councils (TACs) have rarely made any significant policy proposals or recommendations on tribal and developmental issues.
- Issue of women's representation: Both the Fifth and Sixth Schedules have been silent on the issue of women's representation and gender justice.
- Participation of the tribal population: In the decision-making apparatus remains very low.
    - E.g., As seen in Pathalgadi Movement while tweaking the laws.

- Issues with PESA: The 1996 PESA to provide greater autonomy within the Fifth Schedule has not had the desired results.

How are the 6th schedule areas different from 5th schedule areas?

Provisions under the 6th schedule are considered better from 5th schedule because:

- It provides greater autonomy.
- The council in 5th schedule is creation of state legislature while in 6th schedule it is the product of constitution.
- The council in 6th schedule has financial power to prepare budget for themselves unlike council in 5th scheduled areas.
- Power to make legislation on numerous subjects is available with Autonomous tribal councils under the 6th schedule. In the fifth schedule, tribal advisory council have only advisory powers to the state government and that too only on the matters referred to the council by governor. In cases related to transfer of land, it could exercise power on its own.
- ADCs also receive funds from consolidated fund of India to finance schemes for development, health, education, roads.

What are the reasons behind various demands for inclusion in the 6th schedule?

- **Demand of Arunachal Pradesh for inclusion in Sixth Schedule:**
  - There is a feeling that Arunachal Pradesh was living under the wrong expression of being protected by the Inner Line Permit (ILP).
  - Currently, the state has no laws to protect tribal rights or customary laws. It is the only state left out without any protective provisions for its tribal communities under the Indian constitution.
- **Demand of Ladakh for inclusion under 6th schedule:**
  - To safeguard land, employment, and cultural identity of the local population, to prevent change in demography etc.
  - In effect, by allowing Autonomous District Councils under the Sixth Schedule, their leaders can legislate to restrict land acquisitions and jobs to locals. Ladakh had enjoyed analogous autonomy as part of the erstwhile state of Jammu and Kashmir through Article 35A of the Indian Constitution till it was repealed in August last year.
- **Demand of Mising/ Miri people in Assam:**
  - To protect culture and identity from outsiders.

What is Constitution (125th Amendment) Bill, 2019?

This bill was introduced to increase the financial and executive powers of the 10 Autonomous Councils in the Sixth Schedule areas.

Features and their significance:

- It provides for Village and Municipal Councils in addition to the District and Regional Councils.
- The bill provides for elected village and municipal councils which will be empowered to prepare plans for economic development and social justice.
  - Need: to harmonize ADCs with the traditional village body.
- The bill proposes that the Finance Commission will now recommend the financial devolution to the council.
  - Need: The councils are dependent on their respective state governments for funds and States are often reluctant to allocate funds.
- The bill increases the number of members in some council considering demands for the same.
  - Need: Non-Representation of some Tribes.
- The bill reserves at least one-third of the seats for women in the village and municipal councils.
  - Need: There is very less participation of women in tribal administration.
- The Bill adds that the Governor may make rules for the disqualification of such members on the grounds of defection.

What should be the way forward?

Reforms needed with respect to 5th schedule areas:

- There is an urgent need for extending the pattern of the Sixth Schedule in the form of Autonomous Councils in the Fifth Schedule areas.
- Increase Coverage Area: Bhuria Commission recommended that the notification of Scheduled Areas should include villages as well as towns and cities in the blocks, tehsils and districts, including all forest and revenue lands.
- Increase scope of TACs: The scope and responsibilities of TAC should be widened to transform it into the Tribes Advisory, Protective and Developmental Council.
- Governors be made more accountable: National Commission for Scheduled Tribes advocated that Governors be made more accountable with regard to their roles vis-à-vis Scheduled Areas, namely ensuring the implementation of constitutional provision protecting tribal rights.

Reforms needed with respect to 6th schedule areas:

- Passing of 125th constitutional amendment bill as soon as possible.
- Timely Election: The ADC should be reconstituted within six months of its dissolution.

Thus, to bring any meaningful change in the lives of tribes there is a need to extend hands of humility and follow the path shown by Pandit Nehru in the form of policy of Tribal Panchsheel. For that to happen, the above suggested reforms need to be a high priority and any failure or delay may lead to a country acquiring the notorious tag – a country that has endangered the original inhabitants of the land.

H106- Election Commission of India

If India is considered as a temple of democracy, then the Election Commission of India (ECI)has been the gatekeeper, guiding people on the sacred path called democracy.

In 2021, the Election Commission of India held a discussion in the light of the many questions and doubts being raised regarding the Model Code of Conduct (MCC) and powers of ECI under Article 324.

What are the challenges faced by the Election commission of India?

- Issues in controlling Campaign finance:
  - Anonymous nature of Electoral bonds.
  - As per ADR analysis, as much as 67% of donations to national parties in 2018-19 came from "unknown sources, it leads to discrimination against smaller parties and independents even women candidates.
  - No limit on funding by political parties.
- **Issues in controlling Media coverage:**
  - Government sponsored advertisements where expenditure is incurred from public exchequer in favor of ruling party will be unfair.
  - Prime Minister's announcement of India's first anti-satellite (ASAT) test is described as a "serious breach of propriety [which] amounts to giving unfair publicity to the party in power"
- **Challenges due to the rise of social media:**
  - Issue of upholding MCC in the era of social media.
  - Hate speech and fake news.
- Allegation of Partisan role: Various actions of ECI raised concern over its impartiality. - E.g., No action against PM for MCC violations by appealing for votes under name of the army,etc.
- Lack of power:
  - ECI doesn't have power in matters like enforcing inner-party democracy and regulation of party finances.
  - On April 15 2019, a Supreme Court Bench headed by the Chief Justice of India pulled up the EC for not acting against hate speeches and statements on religious lines. It was reported that the EC told the apex court, "We are toothless, we are powerless, we issue notices, then advisory and on repeated violation, we file complaint".
- **Allegations about EVM:** like malfunctioning, hacking, not registering votes, EVMs being found in the cars of ruling party members etc. erodes the trust of people in ECI.
- Inability of ECI to tackle increased use of money and muscle power in politics.
- **Issues related to composition and appointment:**
  - No bar on post-retirement employment on election commissioners becomes obstacles in the independent functioning of the commission.
  - Non-transparency: in the selection of CEC and two commissioners and is totally based on the choice of the then government.
  - Dependency on government for finances.
  - No security of tenure for election commissioners as the Constitution has not specified the term of the members of the Election Commission.

Which steps are required to tackle the above issues?

- Transparency in the election:
  - At least 10% of the EVMs results should be matched with VVPAT.
  - Regular invitation for demonstration about hackproof nature of EVMs.
- Providing legal powers to ECI on various issues like power to deregister political parties.
- Goswami Committee, 1990, 255th Law commission report recommended a collegium, consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India for the appointment of the Election Commissioners.
- Give constitutional protection for all three-election commissioners as opposed to just one at present.
- Institutionalize the convention where the senior most EC should be automatically elevated as CEC in order to instill a feeling of security in the minds of the ECs and that they are insulated from

executive interference in the same manner as CEC.

- Reducing the ECI's dependence on government: The ECI should have an independent secretariat for itself and frame its own recruitment rules and shortlist and appoint officers on its own.
- Its expenditures must be charged upon the Consolidated Fund of India similar to other constitutional bodies such as the UPSC.
- Reforms with respect to the removal of Election Commissioners:
    - At present, only the CEC is protected from being removed (except through impeachment).
    - This must now be extended to other Commissioners, who were added in 1993, as they collectively represent the EC.

- **ECI proposed reforms in 2018:**
    - Use of common rolls prepared by the ECI for elections to the local bodies to save unnecessary expenditure,
    - Making any false statement or declaration before the authorities in connection with any electoral matter should be an electoral offence.
    - Filing false affidavit: The Commission has proposed that the punishment for it should be increased to 2 years' imprisonment without the alternative clause of fine and this offence should be included in section 8 offences for automatic disqualification.
    - Section 13CC of the Representation of the People Act, 1950 and Section 28A of the Representation of the People Act, 1951 should be amended to provide a ban on the transfer of officers referred to in these sections during a period of 6 months before the expiry of the term of the House.
    - Totalizer machines for counting votes.
    - Amendment to ensure that a person cannot contest from more than one constituency at a time for conduct and better management of elections.
    - To tackle criminalisation of politics: Persons charged with cognizable offences shall be de-barred from contesting in the elections, at the stage when the charges are framed by the competent court provided the offence is punishable by imprisonment of at least 5 years, and the case is filed at least 6 months prior to the election.

BR Ambedkar called the ECI as one of the bulwarks of Indian democracy. Elections are the bedrock of democracy and the ECI credibility is central to democratic legitimacy. Hence, the guardian of elections itself needs urgent institutional safeguards to protect its autonomy.

H107- Electoral reforms

Electoral reforms have been engaging the attention of the Parliament, the Government, Judiciary, Media and the ECI for a long time. Some measures have been implemented in the past to remove glaring lacunae. Further steps need to be taken to the introduction of the best practices in ensuring better democracy, clean politics, free & fair elections, true representation etc.

Recently, the Election Laws (Amendment) Bill, 2021 seeks to allow electoral registration officers to seek the Aadhaar number to register as voters for the purpose of establishing identity. This has yet again underlined the need for electoral reforms.

Why there is a need of electoral reforms in India?

- **Issues faced by the ECI:**
  - Inequality in removal: The Chief Election Commissioner and the two Election Commissioners enjoy the same decision-making powers, yet the ECs can be removed merely on the recommendation of the CEC.
  - Financial dependence: Unlike all the other key bodies like CAG, UPSC expenditure of ECI is voted => leading to increased dependency of ECI on government.
  - Lack of administrative independence: The officers at the higher level are appointed on deputation from the civil services.
- **Issues with electoral rolls:**
  - Duplicity of tasks: Both ECI and SECs prepare separate electoral rolls, along with non-uniformity of practice amongst States => causing duplication of task.
  - Inclusion and Exclusion errors: It creates confusion amongst the voters, since they may find their names present in one roll, but absent in another.
- **Election management issues:**
  - Money & Muscle power: there is increased use of money & muscle power in elections.
  - Totaling of votes: in the EVMs is done polling station wise (Conduct of Elections Rules, 1961) => expose the voting behaviors => resulting in victimization, discrimination and intimidation of particular localities.
  - Candidates contesting from 2 seats: vacating of one seat and consequent bye election leads to unavoidable financial burden on the public exchequer.
- **Criminalization of politics:**
  - Disqualification only after conviction: under Section 8 of the RPA 1951. Thus, candidates with even serious charges get elected => use influence to delaying cases.
  - Bribery: in cash or form is detected in all elections. Currently, bribery is a bailable offence attracting only minimal punishment.
- **Issues related to political parties:**
  - Currently, ECI can't de-register political parties. Many political parties are registered only to reap tax benefits, but never contest elections.
  - Form 24A (political donations) does not incorporate the contributions amounting to a sum below Rs. 20,000/-. (Section 29C RPA 1951)
  - Anonymous Donations: There is no constitutional or statutory prohibition on receipt of anonymous donations by political parties in India.
  - Campaign Expenditure: There is no limit on the campaign expenditure by political parties. This leads to lack of level-playing field for all political parties and leads to the menace of unaccounted money in elections.
- **Issue of Paid News:** Paid news is masquerading as news and publishes advertisements in the garb of news items, totally misleading the electors.

What were the various reforms taken by the ECI, GOI and Judiciary in the past?

A. Reforms by Government of India:

- To increase voter participation: The voting age has been lowered from 21 years to 18 years; (61st CA Act)
- To curb non-serious candidates: the amount of security deposit was increased to Rs.10,000 (from Rs.500) for general constituencies and to Rs.5,000 (from Rs.250) for reserved constituencies;

- Electoral bonds were introduced to curb the menace of black money in elections.
- The three reforms - common electoral rolls for Vidhan Sabha and panchayat elections, extending the qualifying date for registration of young new voters, and linking of Aadhaar with electoral rolls are being under Government's consideration.

B. Reforms by Election Commission:

- Political Parties Registration Tracking Management System (PPRTMS): To allow an applicant to track the progress of his/her application.
- Systematic Voters' Education and Electoral Participation Programme (SVEEP): ECI organizes voter awareness campaigns in order to educate the voters.
- Electronic Voting Machine (EVMs): It was the efforts of ECI that led to widespread adoption of EVMs throughout the country.
- Prohibition on sale/distribution of liquor: or other intoxicants at any shop, eating place, or any other place, whether private or public, within a polling area during the period of 48 hours.
- Model Code of Conduct: In the Lok Sabha elections in 1962, the ECI circulated the code to all recognised political parties and State governments and it was wholeheartedly followed. Since 1991 it has been enforced more strictly.

C. Reforms by Judiciary:

- Association of Democratic Reforms (ADR) case (2002): Every candidate has to declare their criminal records, financial records and educational qualifications along with their nomination paper.
- Ramesh Dalal vs. Union of India (2005): A sitting MP or MLA shall also be subject to disqualification from contesting elections if he is convicted and sentenced to >2 years of imprisonment by a court of law.
- Lily Thomas v. Union of India (2013): The Court held Section 8(4) of RPA 1951 unconstitutional which allowed convicted MPs and MLAs to continue in office till an appeal against such conviction is disposed of.
- NOTA (2013): the Supreme Court recognized a voter's "right to reject" and said the right to vote included the "right not to vote", underlining equal opportunity for all.
- Jan Chaukidari v Union of India (2004): Patna High court held that all those in lawful police or judicial custody, other than those held in preventive detention, will forfeit their right to stand for election.
- Subramanian Swamy vs ECI (2013): the Supreme Court held that VVPAT (Vote Verifiable Paper Audit Trial) is "indispensable for free and fair elections". (Yet to be implemented)
- Krishnamoorthy v. Sivakumar & Ors. (2015), the Supreme Court declared that "disclosure of criminal antecedents of a candidate is a categorical imperative.
    - Concealment of this nature deprives the voters of making an informed and advised choice => thus, leading to direct or indirect interference with the free and fair elections.

Which electoral reforms are needed to deal with various issues grappling electoral system of India?

- **To strengthen ECI:**
    - Bring the removal procedures of Election Commissioners on par with the CEC to provide them with the "same protection and safeguard[s]" as CECs.
    - The expenditure of the Commission should be charged on the Consolidated Fund of India.
    - An Independent secretariat needs to be established with powers to ECI to formulate rules and appoint its own cadre.
- Electoral rolls reforms: the Commission (in 1999 and 2004) proposed use of same roll the one prepared by ECI by states for local body election. This will simplify the procedure of preparation and avoid unnecessary expenditure.
- Election management related reforms:

- To curb money power: There is a need to empower ECI to take appropriate action including countermanding of election in the event of incidents of bribery of electors in a constituency.
- Totalizer machines: Provisions for counting of votes of a group of EVMs taken together using Totalizer should be made in The Conduct of Elections Rules, 1961.
- Contesting only from single seat: The law must be amended to provide that a person cannot contest from more than one constituency at a time for conduct and better management of elections.

- **De-criminalization of politics:**
  - Amend Section 8: to disqualify persons from contesting election who are accused of an offence punishable by an imprisonment of 5 years or more even when trial is pending. (Provided the Court has framed charges).
  - To curb bribery: make bribery as a cognisable offence with a minimum of 2 years of Imprisonment by amending CrPC.
- **Reforms related to political parties:**
  - Empower ECI to de-register a political party.
  - Amend Form 24A: to include a column mentioning the total contributions received in amounts < Rs. 20,000 to induce transparency.
  - Anonymous contributions above Rs. 2000 should be prohibited.
  - Capping political party expenditure: Party expenditure should not be more than the expenditure ceiling limit provided for the candidate multiplied by the number of candidates of the party contesting the election.
- **Paid news:** may be made a corrupt practice with exemplary punishment of a minimum of two years imprisonment. (As recommended by Press Council of India)

Reform is not a single time effort but a continuous process. Also, as Electoral reforms are said to be the mother of all reforms, it would be appropriate if an all-party meeting is convened along with ECI to discuss the various reforms (ECI suggested in 2018).

Free and fair election is a basic feature of the constitution (PUCL vs UOI 2003) as it is the foundation on which any democracy stands. Thus, in this regard all the requisite reforms mentioned above need to be fast tracked to tackle multiple issues faced by the Indian electoral system.

H108- Electoral Bonds

In recent months, the Supreme Court flagged concerns over the misuse of electoral bonds and agreed to hear PIL against them. Electoral bonds, though introduced to bring transparency in electoral funding, have been embroiled in controversy due to their anonymous nature. According to SBI data, donations to political parties through electoral bonds (EBs) have crossed the Rs 10,000-crore mark.

What are the Electoral Bonds and scheme associated?

- The Electoral Bonds are the non-interest-bearing 'financial instruments' aimed to ensure transparency in the funding of political parties.
- These Electoral bonds allow eligible donors to pay to eligible political parties using banks as an intermediary.
- **Eligibility criteria for receiving and donating funds:**
  - Eligibility of Political Parties: Only registered political parties (under Section 29A, RPA 1951) which received >1% votes in the last elections to LS or State Legislative Assembly can receive funds through electoral bonds.
  - Eligibility of Donors: Any citizen of India (singly or jointly) or entities incorporated / established in India can purchase these Electoral Bonds.
- **Functioning of the Electoral Bond Scheme:**
  - The SBI issues electoral bonds in January, April, July and October.
  - These bonds are available in denominations from Rs 1,000 to Rs 1 crore.
  - Donors can buy and transfer them into the accounts of the political parties as a donation. The name of the donor is kept confidential.
  - Political parties have to create a specific account to receive funds through electoral bonds. After verification of account by the ECI, the political parties can encash these electoral bonds.
  - The bonds will remain valid for 15 days, within which the political parties have to encash.

What are the advantages of Electoral bonds?

- To curb black money: Use of digital transactions, cheque, or demand draft for buying bonds, mandatory KYC norms combined with only 15 days validity can help to curb black money.
  - E.g., nearly 70% of the Rs.11,300 crore in political funding came from unknown sources.
- Reducing the cash: The scheme acts as a check against traditional under-the-table donations as it insists on cheques and digital transactions.
- Prevent fraudulent political parties: as Eligibility of 1% vote in last general or assembly election ensures that parties are not formed just for tax evasion.
- Donor is protected: non-disclosure of the identity of the donor ensures that he/she is not victimized.
- They encourage political donations of clean money as the amount is transferred through the bank. Moreover, the identity of the donor can be captured by the issuing authority.

What are the issues with the Electoral bonds?

- **Anonymity:** as donor name is not revealed. This violates the freedom of political information, which is integral to Article 19(1) (a) of the Constitution.
- **Reduced transparency**: As per the amendments made to RPA 1951, political parties need not disclose to ECI the donations received through electoral bonds. This hamper public scrutiny in democracy.
- **Advantage to the ruling party**: Since the electoral bonds are issued by the SBI (a Public Sector Bank), the ruling party may trace the donors of the opposition party.
- **Unequal treatment:** RTI revealed that 94% of total donations were received by the ruling party.
- **Increased crony capitalism:** As part of the introduction of the electoral bonds, the government had removed the cap on how much money a company could donate.

What steps are required to improve transparency in electoral funding? ()

- National Electoral Fund: can be created, as an alternative to electoral bonds, for all donors can

contribute. The funds can be allocated to political parties in proportion to the votes they get. This will protect the identity of donors and curb black money.

- Complete ban on cash donations by individuals or companies to political parties to induce transparency in political funding (At present Political parties can receive cash donations below Rs.2000)
- State funding of political parties: The Indrajit Gupta Committee supported partial state funding of recognized political parties.
- Declaration to ECI: As directed by the supreme court, political parties must declare their donations through Electoral bonds to the ECI.

For ECI, the scheme is one step forward compared to the old system of cash funding, which was unaccountable. Hence, instead of complete abolition the supreme court and ECI should look for ways to address anonymity issues so that benefits of the electoral bonds scheme are maximized while minimizing its issues.

H109- Simultaneous Elections

Recently, the issue of holding 'Simultaneous Elections' has been referred to the Law Commission so that a practicable roadmap and framework can be worked out. The idea of 'Simultaneous Elections' was resurfaced in the lead up to the 2014 elections. Henceforth, NITI Aayog and Law Commission released a working paper on the subject in 2017 and 2018.

What is meant by 'Simultaneous Elections'?

The term "Simultaneous Elections" is a 'One Nation One Election' system, wherein the Indian election cycle is restructured in a manner that elections to Lok Sabha and State Assemblies are synchronized together.

- In such a scenario, a voter would normally cast his/her vote to elect members of Lok Sabha and State Assembly on a single day and at the same time.
- This doesn't mean that voting across the country for Lok Sabha and State Assemblies needs to happen on a single day. This can be conducted in a phase-wise manner as per the existing practice.

What has been the practice of simultaneous elections since independence?

The concept of simultaneous elections is not new to the country.

- Post adoption of the Constitution, the elections to Lok Sabha and all State Legislative Assemblies were held simultaneously between 1951 till 1967.
- However, due to the premature dissolution of some Legislative Assemblies in 1968-69, the cycle got disrupted for the first time. In 1970, Fourth Lok Sabha was dissolved prematurely and fresh elections were held in 1971.
- The idea of reverting to simultaneous polls was mooted in the annual report of the Election Commission in 1983 and also in the Law Commission report, 1999.

Why is there a demand for simultaneous elections in India? (Arguments For)

- Issues with frequent elections: Each year there are frequent elections in one or more states and also the elections to the local bodies. It diverts precious time, energy and resources of the nation.
- Slowdown of development: The frequent imposition of Model Code of Conduct (MCC) puts on hold the entire development programme and activities. If simultaneous elections are held, it will give a clear four years to focus on good governance.
- Economical: Simultaneous elections require lesser amounts to be spent on elections. Thus, saving the country's resources.
- Continuity in economy: Simultaneous elections can enhance the ease of normal public life. E.g., disruption of essential services like education (teacher on election duty), rallies led traffic problems etc. => Thus, increasing the productivity of citizens.
- Reduced need of manpower:
  - Simultaneous election would reduce the manpower and resource deployment necessary for the conduct of elections.
  - It is felt that crucial manpower is often deployed on election duties for a prolonged period of time. If simultaneous elections are held, then this manpower would be made available for other important tasks.
- Peace in society: During frequent elections there is an increase in communalism, casteism, corruption and crony capitalism. Simultaneous elections will reduce such incidents and will ensure sustained peace in society maintaining social fabric.

What are the issues with simultaneous elections? (Arguments Against)

- National issues may overshadow local issues: Assembly elections are fought on local issues and on work done in the state. However, Simultaneous elections could lead to dominance of national issues over regional issues => weakening the democratic credentials.
- Against multi-party democracy: According to a study, there is a 77% chance that the Indian voter will vote for the same party for both the state and center, when elections are held simultaneously.

- Even evidence from Brazil, Argentina, Canada, Germany, the US and Europe supports this.
- The voters are better placed to express their voting choices in case of multiple elections.

- Constitutional amendments: are needed in the form of amending articles like Article 85 (Parliamentary sessions within 6 months); Article 172, 83 (Life of LS & State Assemblies) etc.
- Confused voter: Not all voters are highly educated to know who to vote for. They may get confused and may not know whether they are voting for candidates contesting assembly or parliament elections.
- Lack of manpower & machinery (EVMs & VVPATs): There is a dearth of enough security and administrative officials to conduct simultaneous free and fair elections throughout the country in one go. Also, it will require more manpower on a single day to ensure free and fair elections.
- No Consensus: among political parties as it requires reduction or expansion of terms of various assemblies. Thus, many remain skeptical about the idea.
- Reduces accountability: Frequent elections keep politicians in touch with voters and the political class can, this adopt necessary course correction.
- Others:
  - Grass-root economy: Many jobs get created during the election which gives a boost to the grassroots level economy.
  - MCC is not a hurdle: as it stops only new schemes. Even new schemes with urgent public importance can be launched with EC approval.

What is the way forward?

- **Special cycles of elections:** The standing committee recommended a special cycle of elections, wherein
  - Elections to some legislative assemblies whose term end within 6 months – 1 year before or after the election date could be held along with the general elections.
  - For the rest of the state, elections could be held during the midterm of Lok Sabha.
- **Law commission recommendations**:
  - Amendment to constitution and RPA, 1951: New Lok Sabha and assembly, constituted after mid-term elections, shall be only for the remainder of the term.
  - The no-confidence motion may be replaced with a constructive vote of no-confidence suggesting alternatives. (E.g., Germany)
  - There may be a need to dilute provisions related to Anti-defection law.
- **Other reforms**: like a cap on party expenditure, state funding of elections, and raising of more battalions for security can be more feasible and effective.

Simultaneous elections have many advantages and prospects of holding simultaneous elections must be analysed deeply. However, the simultaneous election may not be the solution of all election issues. It needs to be supplemented with comprehensive reform in the electoral process. However, before taking any decision all the issues need to be studied, consulted and debated in detail.

H110- Election Petition

Last year, West Bengal CM filed an election petition in the Calcutta High Court, challenging the Assembly election result of Nandigram constituency, where she had contested and lost.

What is meant by election petition?

An Election petition is a procedure for inquiring into the validity of the election results of Parliamentary, state or local government elections.

- **Constitutional Provisions:**
  - **Article 329(b):** States that No election to the Parliament or State Legislature shall be called in question except by an election petition presented to such authority and in such manner as may be provided for by or under any law made by the appropriate Legislature.
  - **Article 323B:** Empowers the Parliament/state legislature to establish a tribunal for the adjudication of election disputes. So far, no such tribunal has been formed.
- **Legal Provisions (Section 80, RPA 1951):**
  - No election shall be called in to question except by way of filing of an election petition.
  - Election petitions shall be filed in the High Court of the particular state in which the election was conducted. Therefore, only the High Courts have the original jurisdiction on deciding on election petitions.
  - It can be filed by any candidate, or an elector relating to the election personally, to the authorized officer of the High Court.
  - It shall be filed within 45 days from the date of declaration of results.
- **Duties of the High Court**:
  - The trial of all election petition shall be concluded within 6 months from the date on which the it was presented to the HC.
  - Post-trial, HC shall intimate the decision to the ECI (along with an authenticated copy) and the Presiding officer of the House or State Legislature as the case may be.
- **Appeal:** can be filed in the Supreme Court within 30 days from the date of the order of High Court. (Period can be relaxed by the Supreme Court if sufficient causes are shown).
- **Examples:**
  - An election petition had been filed against Indira Gandhi for corrupt electoral practices and she was disqualified from contesting elections for 6 years.
  - ECI had disqualified Umlesh Yadav (a MLA from UP) for filing an incorrect amount of expenses incurred by her during the elections.

What are the grounds for filing an election petition or declaring an election void?

As per Section 100 of the RPA 1951, an election can be declared void under the following grounds:

- The candidate was not qualified as per the Constitution or under the Act on the date of election.
- Any corrupt practice has been committed by the returning candidate or by his election agent or by any person with the consent of returning candidate or his agent.
- The result of the election, as far as it concerns to the returning candidate, has been affected:
  - By improper acceptance of any nomination.
  - By any 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 RPA or any rules or orders made under this act.

What can be the consequences if allegations under election petitions are found to be true by competent court?

This depends on relief that is claimed by the petitioner in his/her election petition.

- Under Section 84 of the RPA, the petitioner may ask that the results of all or the winning candidates may be declared void.
- In addition to that, the petitioner may also ask the court to declare his/her (in case the petition is filed by a candidate) or any other candidate as the winner or duly elected.
- If the verdict on an election petition is found in favour of the petitioner, it may result in a fresh election or the court announcing a new winner.

Elections are the foundations of any democracy and thus, their free and fairness need to be intact for a thriving democracy. In this regard, election petitions need to be dealt with due care and time so that trust in democracy of India remains unshaken.

H111- Political parties under RTI

A Public Interest Litigation (PIL) filed in 2019 sought political parties to be declared as 'public authority' under the RTI (Right to Information Act) 2005. Being the major constituents in sharing power and managing the resources of the nation, it is advocated that Political Parties must be brought under the RTI act for greater transparency and accountability.

What is the present status of Political parties under RTI Act?

- In 2013, the Central Information Commission (CIC) ruled that political parties come within the ambit of the Right to Information Act.
- However, no party has complied with the order of CIC and hence presently, political parties are out of the purview of the RTI Act.

Should political parties be brought under RTI?

A. Yes: (Arguments For)

- Vital organ of the State: Political parties perform functions like government bodies and command monopoly over selection of candidates, who ultimately form the government.
- Foreign contributions: have been accepted by various poltical parties. Still, non-disclosures may lead to foreign companies/governments exercising undue influence in the national policy making.
- To enforce citizens' Fundamental right to be informed under article 19 of the constitution. Also, the discloser of the information is in larger public interest.
- Financial transparency: Presently, 75% of funds received by political parties are from anonymous sources. It helps to check corporate-politician nexus and role of black money in election.
    - E.g., Electoral Bond Scheme, launched to make elections fair and transparent, is not promoting transparency in political funding due to anonymous nature of donors.
- Curb 'Criminalization of politics': to some extent as the political parties would be answerable for selecting candidates with a criminal background.
- Adequate safeguards exist: If political parties come under the ambit of RTI Act, then exemptions under Section 8(1) will safeguard them from disclosing all types of information.
- Political parties are important institutions of political assimilation & articulation and must play a critical role in heralding transparency in public life.

B. No: (Arguments Against)

- May lead to vendetta politics: It can not only hamper their smooth functioning but also help political rivals to file pleas with malicious intention to seek information.
- Not originally envisaged: When the RTI Act was enacted, it was never visualized that political parties would be brought within the ambit of the transparency law.
- Apprehensions of Political Parties: Disclosure of information under RTI act may give advantage to their competitors by exposing their internal working as well as their decision-making systems.
- Existing provisions: in the Income Tax Act 1961 and RPA 1951 are enough to ensure necessary transparency regarding financial aspects of political parties.
    - E.g., under the IT Act 1961 political parties have to submit ITR to the IT department and their contributions report to the ECI.
- Information about a political body is already in the public domain on the website of the Election Commission. Besides, a Suo motu disclosure culture can be promoted.

Political parties continuously perform public functions which define parameters of governance and socio-economic development in the country. In India people are sovereign and hence 'we, the people of India' have the right to know every detail about the functioning of the political parties. Thus, gradual efforts must be made to bring political parties under the RTI complemented with other electoral reforms.

H112- Anti-defection law

In August 2022, Maharashtra Chief Minister Eknath Shinde and other supporting MLAs told the Supreme Court that anti-defection law cannot be used as a weapon for leaders of a political party to lock up its members after losing the majority.

Anti-defection law is often in the news over the defections in various states for example, Goa in 2019 to 2021, Karnataka in 2019 etc.

What is anti-defection law?

- Anti-defection law is a law that prohibits switching of political parties by members of Parliament/State Legislatures by voluntarily giving up party membership or voting against the directions of party in the House.
- It is a law under the Tenth Schedule of the constitution inserted by the 52nd amendment to the constitution.
- The main purpose was to preserve the stability of governments.

What are the major provisions of the Act?

- **Disqualification:**
  - A member of a house belonging to a political party becomes disqualification from being a member:
    - If he voluntarily gives up the membership of his political party, or
    - Votes, does not vote in the house, contrary to the direction of his political party.
  - **Independent member:** An independent member of the house becomes disqualified if he joins a political party after the elections.
  - **Nominated members:** A nominated member of the house becomes disqualified if he joins any political party six months after his nomination for the house.
- **Exceptions:**
  - **Merger:** A merger of a political party with another takes place when two-thirds of the members of the party have agreed to such a merger. Such a merger is allowed.
  - **Presiding officer**: A member can give up the membership of a political party after being elected as the Presiding officer of the House.
- **Deciding Authority:** The presiding officer of the house (Speaker in the Lok Sabha), Chairman in Rajya Sabha is the deciding authority in matters related to disqualification due to defections.
- **Rule Making:** The Presiding officer of the house has the power to make rules to give effect to the Tenth Schedule.

What are the merits and demerits of the Act?

Merits:

- It ensures political stability by preventing an abrupt fall of the government due to switching of sides.
- Anti-defection law also enables unity, discipline and decisive leadership within political parties. This also leads to swift decision making in the proceedings of the House and increases its productivity.
- **Reduces corruption in politics** by reducing the scope for inducements and coercion for cross-voting or horse-trading.
- **Improves governance:** It frees government from challenge of defection and instability. Thus, the government can fully concentrate on governance and administration.
- **Reduces expenditure:** The anti-defection law reduces the scope of irregular defections by curbing political defections. Thus, it prevents the non-essential expenditure on frequent elections.
- **Strengthens political parties:** Political parties play an important role in parliamentary democracy.

Demerits:

However, some political analysts consider anti-defection law a cure worse than the disease because:

- It **suppresses dissent** within the political party and **freedom of expression of individual lawmakers** in the House.
- **Interests of specific constituencies get neglected** as members cannot raise their individual voices effectively. This may go against the interests of diverse sections of the population. **For example**: interests of North-Eastern States in the passage of the Citizenship Amendment Act.
- **Discretionary decision and absence of a time limit for speaker's decision** on matters

of disqualification is often misused for partisan interests as speaker belongs to the ruling party.

- The **exception provided for splits/mergers** (threshold of 2/3 of party membership) is often **misused** by carrying out **bulk defections.**
- **Lowers the quality of debate and discussion** in the House. It also **reduces the scope for bipartisanship** in the proceedings of the House
- **Increases centralization and high-command culture** in politics of the country, which goes against the interests of democracy and federalism
- **Weakened Oversight:** The law weakens the legislator's oversight on executive action as they are bound by party whip.

What are the ambiguities associated with the Act?

- The law doesn't touch on the **time period for the speaker to decide on disqualification**.
- **Doubts regarding "voluntarily" resigning from a party** as it can be interpreted in many ways.
- **Challenging the decision of the presiding officer in the courts:**
  - It is held that there may not be any judicial intervention until the presiding officer gives his order. However, till the final decision is taken by the speaker damage may be done.
- **Judicial Review:**
  - Initially, the law made the decision of the Presiding officer binding and not subject to judicial review. This condition was struck down by the SC in Kihoto **Hollohan Vs Zachihu** case 1993.
  - The SC said that the speaker while adjudicating under the Tenth Schedule functions as a tribunal. Therefore, it is subject to judicial review.
  - However, the SC **allowed partial judicial review** (That is judicial intervention could take place only after the presiding officers has passed its final order).
- **Speakers review of their own decision:**
  - Whether the speaker can review his own decision to disqualify a member under the Tenth Schedule.
  - The SC in **Dr.Kashinath G Jhalmi Vs Speaker, Goa Legislative Assembly, 1993** ruled that the law does not provide for such power.
- **Obeying party whip:**
  - In **G Visawanathan Versus Honorable Speaker. Tamil Nadu State Assembly, 1996** the SC ruled that an expelled member was bound by the party's whip even after expulsion. His failure to adhere to it would result in his/her disqualification from the House.

What is the global scenario with respect to the anti-defection Act?

Bangladesh	• It has a law on defection. • Article 70 of the Constitution says that a member has to vacate his seat if he resigns from the party or votes against the direction of party. The dispute is referred by the Speaker to the Election Commission.
South Africa	• It has a law on defection. • Section 47 of the Constitution provides that a member has to vacate his seat if he ceases to be a member of the party that nominated him.
United Kingdom	• There is no law on defection, in particular. • However, MPs can lose membership of the party on disobeying the party whip. But they can keep their House seats as Independents.
Australia, Germany	• They have no laws on defection

What steps are required to improve the functioning of the Act?

To make anti-defection law more effective following suggestions can be implemented:

- **Second Administrative Reform Commission** recommendation which suggested decision on disqualification to be taken by the President on the advice of Election Commission of India.
- Even **Law Commission of India** has recommended whips under anti-defection law to
- be issued only on crucial matters where the survival of the government is at stake.
- A tribunal needs to be created for dealing with cases of defection.

Committee recommendations on Anti Defection law: -

Committee	Recommendations
Dinesh Goswami Committee (1990):	• Disqualification should be limited to cases where ○ a member voluntarily gives up the membership of his political party, ○ member abstains from voting, or votes contrary to the party whip in a motion of vote of confidence or motion of no-confidence.
Law Commission (170th Report, 1999)	• Pre-poll electoral fronts should be treated as political parties under anti-defection law. • Exceptions to the law such as in the case of mergers should be deleted. • Political parties should issue limited number of whips for important situations.
Halim Committee (1998)	• It is recommended to clearly define the following phrases in the law: ○ Voluntarily giving up membership of political party. ○ Political party. • It prescribed to place certain restrictions such as prohibition on joining another party, prohibition on holding offices in the government for the defecting members.
Election Commission	• The President /Governor should decide on the disqualification under the Tenth Schedule on the advice of the Election Commission.
Constitutional Review Commission (2002)	• Prohibition of defectors from holding public office for the duration of the remaining term. • The vote cast by a defector to remove a government should be considered invalid.

Disqualified members **shouldn't be barred from contesting an election, let people's reasoned will bring a change in the political culture** rather than just the implementation of the anti-defection law to regulate legislator behavior.

As held by **Winston Churchill "for Legislatures, first came the nation, then the constituents, and then the party".** Legislators in India are in dire need of such a wisdom.

H113- Poll Prediction

Exit polls and opinion polls are two types of poll prediction methods used world over including in India. Recently, in June 2022, ECI sought powers to ban opinion polls and exit polls ahead of elections.

What are 'Opinion poll' and 'Exit poll'?

- **Opinion poll:** is a kind of opinion-based survey, conducted before the start of the elections, to determine how people intend to vote. Based on these surveys, a likely winner is predicted - a contestant or a political party.
- **Exit poll**: is a survey based on interviews with voters after they cast their votes. Survey agencies visit various constituencies asking voters about their polls, based on which a possible outcome of the election is predicted.

What is the difference between exit poll and opinion poll?

- **Timing:** Exit polls are conducted after an election while Opinion polls are conducted before elections.
- **Kind of questions asked:** opinion polls can ask a much broader range of questions than exit polls to gauge the mood of the electorate.

What are the issues associated with opinion polls in India? (Arguments Against)

- Opinion polls may be sponsored, motivated and biased. Also, they are allegedly non-transparent, providing little information on the methodology, sample size etc.
- Undue influence: The trends in Opinion Polls may result in 'undue influence' on the outcome of the election.
    - This is an "electoral offence" under IPC Section 171 (C) and a "corrupt practice" under section 123 (2) of the RP Act.
    - E.g., in early 2014, as many as 11 polling companies were caught red-handed fraudulently manipulating surveys.
- Small sample size: Opinion polls reflect the opinions of only a limited number of voters. This can influence the voting behaviour of others.
- Disinformation: Opinion Polls may amount to disinformation and vulnerable voters may tend to vote on this disinformation.
- 'Bandwagon' effect: It is quite likely that undecided voters tend to vote for the predicted winner of the opinion polls.
- Thus, opinion polls disturb the free and fair election.

Why is there opposition to banning opinion polls? (Arguments For)

- Freedom of speech and expression (Article 19): Banning opinion polls will violate the freedom of press, that is implicit under article 19.
- Making informed decisions is a basic right of the citizens: some argue that opinion polls suggest potential voters what others in the region are thinking and hence help in taking informed decisions.
- Influences the manifesto: of the political parties => leading to deepening of democracy.

What is the current status regarding exit polls and opinion polls?

- 1998: ECI issued guidelines to ban on opinion polls => It was challenged in the SC => ECI had to withdraw the guidelines in the absence of law.
- 2008: Exit polls were banned during elections by introduction of Section 126(A) in the RPA, making both the conduct of the polls and their dissemination illegal.
    - However, the ECI order allows the dissemination of the exit poll results half an hour after the end of polling on the last poll day.
- While exit polls are banned during the course of multi-phase elections, opinion polls are banned during the 48-hour silence period before voting under Section 126(1)(b) of the RP Act, 1951.
    - Case: The editor of Dainik Jagran (A Hindi newspaper) was arrested in 2017 for publishing exit poll results while elections were still on.
- However, ECI is strongly arguing for further restriction on publication of opinion polls, most probably when the model code of conduct is in force.

What are international practices related to exit polls and opinion polls?

- US: Media coverage of opinion polls is regarded as an integral part of free speech in elections and publication is allowed at any time.
- UK: There are no restrictions on publishing results of opinion polls. However, results of exit polls can't be published until the voting is over.
- France: No publication of exit and opinion polls till 24 hours ahead of voting day.

What should be the way forward?

- Any decision should be taken only with broad consensus. If there is Right to freedom of speech and expression, it is not absolute and there exist reasonable restrictions on its exercise.
- Till the decision is taken, ECI should increase awareness of people regarding issues with opinion polls and not to take them for granted and instead form their opinion based on all other factors associated with governance.

The Supreme court, in Union of India vs ADR 2003, held that Democracy cannot survive without free and fair elections. Thus, every effort to rationalize the poll predictions, must ensure that the 'Principle of free and fair election' is not disturbed as it is the basic feature of the constitution (PUCL vs Union of India 2003; NOTA judgment 2013).

H114- Criminalisation of Politics

People that elect corrupt, imposters, thieves, murderers and traitors are not victims but accomplices - George Orwell.

In February 2022, Amicus Curiae informed the Supreme Court that 4,984 criminal cases involving legislators were pending in various courts across the country as of December 1, 2021.

According to the Association for Democratic Reforms (ADR) 24% of Rajya Sabha members and 46% of Lok Sabha members of 17th Lok Sabha face criminal cases. (2019)

What is criminalisation of politics?

- Participation of criminal elements of the society in the elections and further getting elected as Member of Parliament and Member of State Legislature Assembly is termed as Criminalization of Politics.

Year	2004	2009	2014	2019
Criminalization (MPs in Lok Sabha)	128	162	187	233

What are the reasons behind rising criminalisation of politics in India?

- To gain vote bank: The chances of winning for a candidate with criminal cases in the elections are 13% whereas for a candidate with a clean record it is 5%. (ADR data 2014 election)
- Money Power: Criminal activities provide for huge election expenditures.
- Very little deterrence: Thousands and thousands of cases are pending in District Courts, High Courts and Supreme Court against these criminals cum politicians.
- There is a lack of comprehensive legislation to regulate party activities.
- The audited accounts of political parties are not available for open inspection, this hides the nexus between criminals and politicians.
- There is an absence of inner party democracy - regular party elections, recruitment of party cadres, socialization, development and training, thinking and policy planning activities of the party.
- Politics of caste and kinship: leads voters to elect candidates despite their dubious credentials and for their ability to work on a patronage system.
- The notion of any accused is innocent until proven guilty: gives excuse for political parties to go ahead with the criminals.

What has been the consequences of increasing criminalisation of the politics in India?

- Undermining the sanctity of the Parliament: as the law-breakers get elected as law-makers.
- Undermining of rule of law and subversion of justice system: These people with political influence take advantage of their power by delaying hearings, obtaining repeated adjournments, etc. to stall any meaningful progress against their cases.
- Affects the efficiency of the parliament: People with such tainted backgrounds have been seen to disrupt the functioning of the Parliament, affecting its efficiency in the long run.
- Leads to further criminal activities: Such members get involved in unholy nexus leading to crony capitalism, sidelining the public welfare by underutilizing/misuse of MPLADs funding etc hence further perpetuating corruption.
- Affects the chances of an honest to enter politics.
- It also inhibits participation of women in politics as most often women are the victims of most criminal activities.

What are the steps taken by the Judiciary and ECI in tackling criminalisation of politics?

A. Steps taken by judiciary:

- It removed the statutory protection to convicted legislators from immediate disqualification in 2013, and in 2014, directed the completion of trials involving elected representatives within a year. (Lily Thomas case)
- In 2017, it asked the Centre to frame a scheme to appoint special courts to exclusively try cases against politicians, and

- Asked political parties to publicize pending criminal cases faced by their candidates in 2018.

- In 2020, the Supreme Court has once again come down heavily on the "alarming rise in the criminalization of politics". The court has directed political parties to list on their websites the reasons for nominating candidates with a criminal background within 48 hours of such a nomination being made.

B. Steps taken by election commission:

- Revision of the timeline for publicity of criminal antecedents: As per the revised guidelines, the candidates as well as the political parties will publish the details of criminal antecedents, if any, in newspapers and on television three times.
- In 1997, EC directed all the Returning Officers (ROs) to reject the nomination papers of any candidate who stands convicted on the day of filing the nomination papers even if his sentence is suspended.
- A system of flying squads has been introduced to seize black money during elections.
- It carried out a much more intense voter awareness campaign and even initiated a campaign using celebrities exhorting voters not to sell their vote.

Which steps are required further to tackle the issue of criminalisation of politics?

- Dinesh Goswami's committee recommendations:
  - State funding of elections is essential to level the field in terms of money and muscle power.
  - Strengthen the implementation of the Model Code of Conduct (MCC) and provide statutory status to it.
  - Enhance voter awareness on issues like money, gifts, and other inducements.
- Introduce Right to recall: It confers the power on the registered voters in a constituency to recall their elected representatives from the house on the grounds of non-performance.
- The Election Commission and Law Commission have made the following recommendations:
  - Proposed Amendments to RPA, 1951:
    - Include conviction under section 125A as a ground of disqualification under section 8(1).
    - Introduce enhanced sentence for filing of false affidavits of a minimum of two years under section 125A.
    - Include the offence of filing a false affidavit as a corrupt practice under section 123.
    - Set up an independent method of verification of winners' affidavits to check the incidence of false disclosures in a speedy fashion.
    - Barring persons charged with cognizable offence from contesting in the elections, at the stage when the charges are framed by the competent court provided the offence is punishable by imprisonment of at least 5 years, and the case is led at least 6 months prior to the election in question.
- Expediting trials and to conduct the trial on a day-to-day basis with an outer limit of completing the trial in one year.

- The Election Commission need to do something concrete, for example, create a phone app to display the detailed criminal history of any contesting candidate. This should be accompanied by a separate cell in the ECI to monitor the compliance of all the political parties.
- Political parties' finances should be brought under the Right to information (RTI) act.

Criminalisation of politics is the root cause of many ills prevailing in India whose effect is not only limited to the polity but also have entrenched in socio-economic development of India. Gandhiji said, "Politics without ethics is a sin" and hence it needs to be avoided not only by politicians but also by all the citizens only then we can ensure considerable decriminalization of not only polity but also of society.

H115- Comptroller and Auditor General of India (CAG)

"I am of the opinion that this dignitary or officer is probably the most important officer in the Constitution of India. He is the one man who is going to see that the expenses voted by Parliament are not exceeded, or varied from what has been laid down by Parliament in the Appropriation Act."
—Dr. B.R Ambedkar on CAG

In 2022, the Comptroller and Auditor General of India has criticized the state-run PSU steel majors, SAIL and RINL, for various operational inconsistencies and inefficiencies leading to losses running into crores of rupees.

Also, in August 2022, CAG unearthed land scam in Haryana worth ₹182.56 crore; as prime forest area sold to private developers.

Constitution of India (Article 148) provides for an independent office of the Comptroller and Auditor General of India (CAG). In the Indian context, CAG is the Supreme audit institution of the country which acts as a watchdog on government finances and functioning.

What challenges are being faced by the institution of CAG in India?

- **Appointment:** no criterion or procedure was prescribed either in the Constitution or the Act for CAG's appointment, which has given the sole power to the executive to appoint a person of their choice as the CAG.
- **Delayed access to records/documents**: The CAG has the authority to inspect any Government office, to call for any accounts, books, papers etc. However, in practice, the supply of records/files/documents is often delayed and more often than not, crucial documents are supplied to the auditors at the end of the audit programme with the sole objective of obstructing meaningful audit of those crucial documents/records.
- **Shorter tenure of the Indian CAG:** Though the Indian Constitution provides for a six-year term to the CAG, the cap of 65 years of age has been reducing the actual terms.
    - Shorter tenure works as an impediment to the independent and proper functioning of the institution due to lack of continuity of the leadership and loss of expertise.
- **No statutory powers to Indian Audit and Accounts Department:** despite the actual work of audit done by the officers and staff of the IA&AD, there is no statutory recognition has been given to the work of IA&AD in India.
- **Lack of decentralization of duties:** centralizing the entire financial audit system of the government to one individual, overburdens the duties of the office, making the auditory system less efficient and audits hardly being presented on time.
- **Lack of Expertise:** The continued appointment of 'outsiders' and generalists (IAS) as CAG, ignoring the claims of the audit department's own top management, has a demoralising impact on the entire department and lowers its efficiency.
- **Post facto audit:** Its report is post facto.
- **Promoting risk averse attitude**: auditors may not take into consideration the practical problems in the administration. Thus, when CAG looks into 'wisdom, faithfulness, economy' of policy, administrators may not will to take risk.
- **Accused of majorly two criticisms**, which are activism and favoritism this has negative effects on administrative decision making.

What are the international practices with respect to the office of CAG?

- **Appointment:**
    - **UK:** the CAG is appointed by Her Majesty on the recommendations of the Prime Minister with the concurrence of the Chairperson of the Public Accounts Committee (PAC), who is generally a senior member from the opposition party.
    - **US:** the CAG is appointed by the President, with advice and consent of the Senate. Congress establishes a commission to recommend individuals to the President.
- **Tenure:**
    - UK: has a 10-year tenure under the National Audit Act 2011.
    - The US: has 15 years of tenure.

- Australian Auditor General has 10 years of term.
- South Africa has seven years of term.

Which steps are required for the effective functioning of the CAG?

- Transparent Appointment: collegium consisting of the Prime minister, the leader of the opposition of Lok Sabha, Finance Minister, CJI and any respected Chartered Accountant outside the government should appoint CAG.
- Tenure: Long tenure is a basic prerequisite for continuity and proper functioning of the CAG, so at least the cap of 65 years can be removed to enable each CAG to have a tenure of six years, which will also bring the CAG on par with the best international practices.
- IA&AD as Statutory body: The recognition of the IA&AD as a statutory body with delegation of powers to lower functionaries on the pattern of IT Act will improve the quality of audit and give credibility to the work done by the officers and staff of the IA&AD.
- Decentralization of duties of the CAG: There should be a separate state auditor for each and every state and also specialized agencies which would maintain their accounts.
- Auditors should be provided with access to records on a priority basis within a limited time. In case of failure to do so, heads of departments should be required to explanation for delay.
- The CAG must also ensure its accessibility to the common man. A grievance redressal mechanism needs to be set up related to functioning and reports of the CAG.

Should CAG be made a multi member body?

Yes, as it has the following advantages:

- To avoid hasty and biased decisions: If a person with strong political views becomes a CAG, then he/she may favor the ruling party. With a multi-party CAG, such chances are eliminated. Further, such mistakes, as valuation of 2G licenses, will be avoided.
- Precedence of other key bodies: Constitutional bodies like Election Commission, RBI governing body, Chief Justice Bench there are many examples of constitutional bodies can be effective with multi people system. Thus, making CAG a multi-member body would improve its functioning.
- Checks and balances: to avoid any arbitrariness in decision making.
- To deconcentrate authority so that there is an inbuilt mechanism against abuse of power and misuse of authority.
- To increase credibility: as decentralized power and deliberations increase chances of holistic view of issues.

For above reasons, in the past this idea had been mooted by LK Advani, former Deputy PM and supported by Deva Gowda former Prime Minister.

Disadvantages:

- May increase politicization: If CAG becomes a multi-member body, an audit report driven by dissent is bound to prove counter-productive with readers being at a loss as to who to believe, and what to believe.
- The current process also ensures holistic consultations: CAG has an elaborate auditing bureaucracy reporting to him. His views are the culmination of the process of consultation he has with deputy CAG, assistant CAG, and so on.
- An institution must speak with one voice lest it lose credibility and ends up confusing people.
- Creating a multi-member body would lead to differentiated loyalties in the organization which would be counterproductive.

As CAG is the watchdog of government purse, strengthening CAG becomes sine quo non to ensure transparency, efficiency and accountability - three principles on which good governance rests. Thus, CAG needs to be provided adequate institutional support to discharge this vital, constitutionally enshrined role.

H116- National Green Tribunal

"Environment is no one's property to destroy; it's everyone's responsibility to protect "

India, in 2010, became the **1st developing country in the world**, and 3rd country after Australia and New Zealand, to set up a specialized environmental tribunal in the form of National Green Tribunal (NGT). Recently, in August 2022, NGT held that the violation of environmental laws involves offenses under Money Laundering Act and ED director may look into the case.

What is NGT?

- The National Green Tribunal is a **quasi-judicial body** that has been established in 2010 under the National Green Tribunal Act 2010.
- **Place of Sitting**: New Delhi is the Principal Place of Sitting of NGT. Bhopal, Pune, Kolkata and Chennai are the other four places to sit.
- **Objective:**
  - Effective and expeditious disposal of cases relating to **environmental protection and conservation of forests and other natural resources.**
  - **Enforcement of any legal right relating to the environment** and giving relief and compensation for damages to persons and property.
  - The Tribunal's dedicated jurisdiction in environmental matters **shall provide speedy environmental justice** and help reduce the burden of litigation in the higher courts.

What is the composition of NGT?

- NGT is comprised of:
  - **Chairperson:** S/he is a retired judge of the Supreme Court appointed by the Central Government in consultation with the CJI.
  - **Judicial Members:** are mostly the retired judges of the High Courts appointed on recommendation by the Selection Committee.
  - **Expert Member:** is a person with professional qualification and at least 15 years of experience in the field of environmental or forest related subjects. S/he is also appointed on recommendation by the Selection Committee.
- Every NGT bench will consist of a judicial member and an expert
- **Term of office:** 5 years (Not eligible for reappointment)

What is the mandate of the NGT?

- The Tribunal is mandated to finally **dispose applications or appeals within 6** months of filing of the same.
- NGT has the **power to hear all civil cases relating to the environment that are linked to the implementation of:**
  - The Water (Prevention and Control of Pollution) Act, 1974;
  - The Water (Prevention and Control of Pollution) Cess Act, 1977;
  - The Forest (Conservation) Act, 1980;
  - The Air (Prevention and Control of Pollution) Act, 1981;
  - The Environment (Protection) Act, 1986;
  - The Public Liability Insurance Act, 1991;
  - The Biological Diversity Act, 2002.
- NGT has not been given the powers to hear any cases relating to the
  - Wildlife (Protection) Act, 1972,
  - The Indian Forest Act, 1927 and
  - Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006
- It has **jurisdiction to decide all the cases which involve substantial questions regarding the environment and its protection** and any legal rights in connection with it.
- It not only exercises **original jurisdiction** on filing an application but also has **appellate jurisdiction** through which it hears appeals as a Court.
- The tribunal is **not bound by the Code of Civil Procedure Code.** It applies the Principles of Natural Justice while deciding any matter.
- All the principles such as **sustainable development, polluter pays and**

precautionary principles, are considered by the tribunal before deciding any case.

- NGT, by order, can provide:
  - **Compensation and relief** to the victims of pollution and environmental damage (including accidents while handling hazardous substances).
  - **Restitution of damaged property**
  - **Restitution of the environment** for areas which the tribunal may think fit.
- **Appeal against NGT order:** can be made before the High courts and Supreme Court within 90 days from the date of communication of the order.

What are the achievements of the NGT?

- The green court has taken on **more than 10,000 cases since its inception**, weighing in on air pollution, trash collection, mining, toxic dumps and dam projects.
- From 2010 to 2021, **out of 35,963 litigations were filed, 33,619 litigations were disposed of, and only 2,344 litigations were pending.**
- It has **helped in reducing burdens on higher courts** as it specifically deals with environmental cases that were decided by the civil courts earlier.
- With the formation of the NGT, **environmental regulatory authorities**, especially the pollution control boards, have **become more active.**
  - E.g., Recently, NGT directed Haryana State Pollution Control Board (HSPCB) to strengthen its capacity, both in terms of human resource and setting up of modern laboratories.
- It **ensures that the EIA process is strictly observed**. The **industrial groups have also been very cautious** in the preparation and submission of EIA reports.
- Environmental petitioners and lawyers have found the green tribunal **more approachable and less expensive** in addressing various environmental questions.

Some landmark cases:

- **Almitra H. Patel & Ors. vs. Union of India**: NGT ordered complete **prohibition on open burning of waste on lands.**
- **Srinagar Bandh Aapda Sangharsh Samiti & Anr. v. Alaknanda hydro Power Co. Ltd. & Ors.**, the NGT has directly relied on the 'Polluter Pays Principle' and made a private entity liable to pay compensation, making them subject to a code of environmental jurisprudence.
- **Save Mon Region Federation and Ors. vs. Union of India and Ors.**, the Tribunal proactively suspended the Environmental Clearance granted to the Project.

What are the issues associated with the functioning of the NGT?

- **No powers with respect to crucial legislation**: (as mentioned above) hampers the functioning of the NGT as forest and wildlife are directly connected to the environment.
- Any decision given by the tribunal can be challenged in various High courts thus no **actual effect on reduction of burden of higher judiciary.**
- **Procedural issues**: the arbitrary dismissal of appeals, limited benches, delay in the hearing, adjournment of hearings, non-availability of judges and experts etc.
- **Issue of accessibility:** NGT has only 5 benches which makes it difficult to access the tribunal from hinterlands. E.g., North East region.
- **Lack of enforcement powers:** for example, landmark judgements like, bans on firecrackers, RO-water purifiers etc. have had minimal impact in the absence of political support.
- **Increasing vacancies:** NGT is mandated to have 10-20 judicial and expert members each, NGT presently has only 7 judicial and 6 expert members.
- **Lack of expertise:** in the domain of environment as majority of members hail from Judicial background with little knowledge of environmental right.
- **Ambiguous time limitation clause:** for filing complaint within 6 months. It fails to envisage the possibilities of long-term effects of environmental

damage. Eg., harmful effects of the use of radioactive substances.

Which steps are required for effective functioning of the NGT?

- **Enhancing Jurisdiction**: The important legislations like Wild Life (Protection) Act etc., must be brought under the NGTs jurisdiction.
- **Prompt filling up of vacancies** to avoid increasing backlogs and hasty disposals.
- **Mechanism to ensure enforceability:** so that orders of the tribunal are obeyed and implemented in order to maintain its accountability.
- **Time limitation clause needs to be done away with.**
- As suggested by The Law Commission, one such **Environment Court must be established in every state.**

These reforms are an avenue to **expedite environmental justice,** which will help in upholding the spirit of **Article 48A of the DPSP and truly enforce fundamental right to clean environment under Article 21**. Also, this would be in consonance with the recent **UNHRC's recognition to a clean, healthy and sustainable environment.**

H117- National Commission for Women

"The best thermometer to the progress of a nation is its treatment of its women." - Vivekananda

National Commission for Women (NCW) was set up in India as an institutionalized structure to uphold, implement and secure women's rights. Recently, in March 2022, the NCW, in collaboration with Delhi State Legal Services Authority (DSLSA), launched a Legal Aid Clinic to make legal aid more accessible for women.

What is NCW?

- NCW is a statutory organization set up in 1992 under the **National Commission for Women Act 1990.**
- It was established to **review the constitutional and legal safeguards** for women.
- It **recommends remedial legislative measures**, facilitates redressal of grievances and advises the government on all policy matters affecting women.
- **Objectives:**
  - **Improving the condition** of underprivileged women.
  - **Economic empowerment** of the females of India.
  - **Stopping the offensive depiction** of women.
  - Checking the incidents of **discrimination and violence** against women.
  - Ensuring **equal participation of women in all spheres** by securing their entitlements through suitable policy formulation.

What is the composition of NCW?

- **Chairperson**: committed to the cause of women; nominated by Government of India
- **5 Members**: to be nominated by Government of India (with at least 1 Member each shall belong to the SCs and STs respectively).
- **Member-Secretary**: nominated by Government of India. S/he shall be: -
  - an expert in the field of management, organizational structure or sociological movement, or
  - an officer who is a member of a civil service of the Union or of an all-India service or holds a civil post under the Union with appropriate experience

What is the mandate of the NCW?

- **Complaints / Suo motu action**: NCW works on complaints referred to it and can also act Suo-moto in several cases to provide speedy justice.
- **Fund litigation** involving issues affecting a large body of women. Inspect or cause to an inspected place of custody where women are kept as prisoners.
- **Investigation and Examination** of all the matters related to safeguard of women under the Constitution and laws.
- **Presentation of Report to the central government** every year upon the working of those safeguards.
- **Cases of violation:** It takes up the cases of infringement of the provisions of the Constitution related to women.
- **Power of civil court:** The commission has all the powers of a civil court in matters:
  - summoning and enforcing the attendance of any person from any part of India and examining him on oath
  - requiring the discovery and production of any document,
  - receiving evidence on affidavits,
  - requisitioning any public record or copy thereof from any court or office,
  - issuing commissions for the examination of witnesses and documents, and
  - any other matter which may be prescribed.
- **Others:**
  - It conducts special studies or investigation on the concerning issues.
  - It also undertakes promotional and educational research for ensuring due representation of the women in all fields.

What are the achievements of the NCW?

- NCW, in 2009, was nominated as the National Coordinating Agency by the Government of India for coordinating efforts to deal with issues pertaining to NRI marriages.

- Innovative initiatives: It initiated a pilot project "Mahila Jan Sunwai" in collaboration with District Legal Service Authority and Police Authorities.
- Contribution in law making:
  - Passage of the Domestic Violence Act 2005.
  - Amendment to Medical Termination of Pregnancy Act, 1971 (Also, allows unmarried women to terminate a pregnancy) and
  - Amendment to Maternity Benefit Act 1963 (increasing paid maternal leave from 12 to 26 weeks)
- Helping & empowering women: survivors of violence (in both public and private life); monitor and pay compensation in cases of Acid Attack.
- Capacity building of women:
  - Elected women representatives of PRIs (In collaboration with NIRD&PR).
  - women police officers (In collaboration with BPR&D)
  - Digital Literacy Programme for college/university girl students.
- Gender Sensitization Programmes: have been conducted by NCW for police, administration and judicial officers across the country.
- Participation of Women for Promoting Home Tourism: NCW is creating livelihood opportunities for women in the northeast region (partnering with Airbnb)

What are the issues faced by NCW?

- **Toothless body:** as the NCW is only recommendatory and has no power to enforce its decisions.
- It **has no power to take legal actions against the Internal Complaint Committees** at workplaces, that prevent grievance redressal of women facing harassment.
- **Lack of financial independence:** NCW depends on the grant offered by the central government which is very little to cater to its needs.
- **Ineffectiveness:** NCW has been often criticized for its inability to effectively strategize and tackle the problems faced by women in both public and private spheres.
- **Political interference:** A recent study (sponsored by UGC) claimed institutional collapse of NCW, as the body has become a tool for distributing patronage.
- **Lack of proactiveness:** Often it takes action only if the issues are brought to light. Unreported cases of oppression and suppression of women are not attended to.
- **2 Power centers:** Chairperson and Member Secretary; and the Chairperson has no power to appoint own staff.

Which steps are needed to improve the functioning of the NCW?

- **Staff selection:** Commission must be granted the power of selecting its own members having fair knowledge of law, society and human behavior.
- **Funding:** NCW should have an independent budget and must not be dependent on the Women and Child Development Ministry for funds.
- **Reports of NCW:** should be mandatorily discussed in the Parliament within a time limit.
- **Awareness generation among rural** women about the existence and role of NCW. There is a need to employ a person at district level to reduce atrocities.
- Government must **involve NCW in all the initiatives related to women** – policy making or law making.

As the NCW plays crucial role in **ensuring women empowerment**, above-mentioned shortcomings need to be addressed so that commission lives up to the expectations of women in India and helps in the nation building.

H118- National Commission for protection of Children Rights

"Our children are our greatest treasure. They are our future. Those who abuse them tear at the fabric of our society and weaken our nation." - Nelson Mandela

Besides other violation of child rights, India reported **over 24 lakh instances of online child sexual abuse from 2017 to 2020,** according to Interpol. In June 2022, the National Commission for the Protection of Child Rights (NCPCR) launched a **"CiSS application"** under the **Baal Swaraj Portal** to help in rehabilitation of Children in Street Situations (CiSS).

What is NCPCR?

- It is a **statutory body** established under **the Commission for Protection of Child Rights (CPCR) Act, 2005.**
- The Commission gives equal importance to children **up to the age of 18** and its policies define priority actions for the most vulnerable children.
- **Objectives:**
  - Protect, promote and **defend child rights** in the country.
  - Better **integration into communities** and households to reach every child.
  - Envision a **rights-based approach** to national policies and programs.

What is the composition of NCPCR?

- **Chairperson**: who is usually a person of eminence, who has an exemplary record of work in child welfare.
- **6 members**, out of which at least 2 are women, from amongst person of eminence, ability, integrity, standing and experience in,
  - Education
  - Child health care, welfare or child development
  - Juvenile justice or care of neglected or marginalised children or children with disabilities
  - Elimination of child labour or children in distress
  - Child psychology or sociology
  - Laws relating to children.

What is the mandate of the NCPCR?

- **Examine and review the safeguards** provided to children under any law. **Inquire into violation of child rights** and recommend initiation of proceedings.
  - Look into the matters relating to children in need of **special care and protection**.
- Examine all **factors that inhibit the enjoyment of rights of children.** These may include terrorism, communal violence, natural disaster, trafficking, torture, pornography etc.
- **Powers of a civil** court have been given to NCPCR in matters:
  - Summoning and enforcing the attendance of any person and examining him on oath.
  - Discovery and production of any document.
  - Receiving evidence on affidavits.
  - Requisitioning any public record or copy thereof from any court or office; and
  - Issuing commissions for the examination of witnesses or documents.
- **Study treaties and other international instruments** and undertake periodical review of existing policies on child rights.
- **Spread child rights literacy** among various sections of society.
- **Functions Assigned under RTE, 2009**
  - examine and review the safeguards under the Act and recommend measures.
  - Inquire into complaints relating to 'Free and compulsory education' and take necessary steps, thereon.
- **Functions Assigned under POCSO Act, 2012**
  - Monitor the implementation of the Act and the designation of **Special Courts** by state governments;
  - Monitor the appointment of Public Prosecutors and formulation of the guidelines described in the Act by the state governments etc.
- **Note:** NCPCR shall **not inquire into any matter pending before a State or other Commission** duly constituted under any law.

What are the achievements of the NCPCR?

- **E-BaalNidan**: The online complaint management system was developed by NCPCR for filing grievances, relating to violation of child rights.
- **NCPCR's recommendation were accommodated in amendment to Juvenile Justice (Care and Protection of Children) Act**, which strengthened provisions for both 'Children in Need of Care and Protection' and 'Children in Conflict with Law'.
- **Managing complaints:**
  - **Personal complaints:** can be made in person at the NCPCR's office, by phone, by letter, or by email.
  - Using the e-box under POCSO Act: to confidentially report sexual assault.
- **Draft guidelines to protect child artistes**: in the entertainment industry, were launched by the NCPCR. E.g., no minor should work for more than 27 consecutive days etc.
- **Conducts rescue operations**: Recently, NCPCR conducted rescue operations to save children from child labour during the Elimination of Child labor week.
- **Conducts study & Research:** to understand the implementation of various rights, like **the Right to free and compulsory education under the RTE Act.**

What are the issues faced by NCPCR?

- **Inactivity by NCPCR during the pandemic** exacerbated existing issues of child malnutrition, child labour, child abuse, child marriage etc.
- Role is limited to **just recommendatory** and lacks any power to enforce their recommendations.
- **Lack of adequate funds** to ensure protection of child rights in letter and spirit.
- **No time frame for the completion of the investigations** and enquiries.
- Inadequacy of current system to organize **adoption and foster care.**
- **Procedural lapses** in investigation, evidence tampering, inconsistency in police statements, police concealing.
- **Ignorance of issues related to education:** like unavailability of learning material in the mother tongue, untrained teachers and absence of specially developed bridge courses.

What steps are needed to improve the functioning of the NCPCR?

- **Public hearing of all complaints:** can be an important tool for conducting open and transparent enquiry.
- NCPCR should **hold special meetings with the Ministries** to discuss thematic considerations on the status of children.
- NCPCR should review the **National child policy 2013** and recommend necessary changes for the modern times.
- The commission should **proactively support child care institutions and CARA framework.**
- **Special Learning Support Material** should be provided in the mother tongue of the child.
- The commission shall work to create a favorable child-friendly environment in court and police stations.
- NCPCR needs to **join hands with the civil societies** to take developmental steps keeping children in the center.

"Children are a gift from the Lord; they are a reward from him" - Bible. But with the increasing instances of child rights abuse, the above saying is reduced to absurdity.

Healthy **development of children is crucial to the future well-being of any society.** Thus, in this regard all the efforts strengthening child rights and their enforcement should be supported to safeguard the future of our nation.

H119- Commissioner for Persons with Disability

"Olympics is where heroes are made. The Paralympics is where heroes come." - Joey Reiman

According to the 2011 population census, the population of PwDs in India is around 26.8 million, constituting 2.21% of India's total population. Recently, in August 2022, the Court of Chief Commissioner of Disabilities (CCCD) issued a notice to the directors of film 'Laal Singh Chaddha' on the use of word "langade/langadi" that translates to "crippled" in English.

What is the mandate of Commissioner for Persons with Disabilities?

The Office of the Chief Commissioner for Persons with Disabilities was set up under the erstwhile 'Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act 1995'. It continues to function under Section 74 of the 'Right of Persons with Disabilities (RPwD) Act 2016'. The mandate of the Office:

- Take steps to safeguard the rights and facilities made available to PwD; Co-ordinate the work of the State Commissioners for PwD; Monitor utilization of funds disbursed by the Central Government
- Look into complaints (on his own motion or on the application of any aggrieved persons or otherwise) relating to deprivation of rights of PwD or non-implementation of rules, regulations, orders, etc. and take up the matter with the authorities concerned.
- Powers of a Civil Court have been assigned for matters, like:
  - Summoning and enforcing the attendance of witnesses;
  - Discovery and production of any documents;
  - Calling any public record or copy thereof from any court or office;
  - Receiving evidence on affidavits; and
  - Issuing commissions for the examination of witnesses or documents.
- Monitoring of Implementation of the RPwD Act, 2016; Submit an Annual Report to the Central Government
- Study national and International Treaties: on the rights of PwD and make recommendations for their effective implementation.
- Undertake and promote research on the rights of PwD and Promote Awareness about rights and protection available for PwD;

What are the achievements of the office of Commissioner for PwD?

- Online hearing of the grievances of PwD (Divyangjan): During Covid-19, up to January 2022, 2191 cases were disposed of by the CCPD.
- Formulation of 'Equal Opportunity Policy':
  - Every establishment shall notify "Equal Opportunity Policy" detailing measures proposed to be taken in pursuance of the provisions of the RPwD Act, 2016.
  - Equal Opportunity Policy from 107 organizations have been received. A committee of experts is being proposed for scrutiny of these policies.
- Consultation on 'Accessibility Standards': Under the RPwD Act 2016, 'Harmonized Guidelines on Accessibility' by 15 Ministries / Departments / Organizations have been received in the CCPD for consultation.
- High rates of disposal of grievances: According to the Office, from 1998 to 2020, nearly 36000 cases have been disposed from a total of over 37,000 cases registered.

What are the issues faced by the office of Commissioner for PwD?

- **Lack of uniform and standardized administrative structure** for office of State Commissioner of all States in the country.
- **Lack of proactive role** by State & central commissioner **in implementation of 'Accessible India Campaign'.**
- **Poor oversight and enforcement**: Many states are yet to notify rules under RPwD Act 2016. For example, Maharashtra.

Which steps are required to improve the functioning of the office?

Certain recommendations were made in the national review meeting. These include:

- Standardized common protocol: must be developed, under RPwD Act 2016, to make the functioning of the 'Office of the State Commissioners' uniform throughout the country.
- Due process: must be followed related to taking up complaints/grievances of PwD and the manner of their disposal.
- Proactive role in 'Accessible India Campaign': in association with the concerned Department of State Government.
- Sensitization workshops: must be conducted by the Central and State Offices about the rights and entitlements of PwDs and protection available under RPwD Act, 2016.
- Popularize the schemes and programmes of both the Central and State Governments for the empowerment of PwDs and also the Early Intervention Centres being set up at seven National Institutes.

As disabilities are associated with other socio-economic issues like poverty, malnutrition, social stigma etc., there is need to take proactive steps by the Commissioner for PwD. This would ensure that their grievances are proper readressed and various governments' schemes and programmes for PwDs are implemented in letter and spirit.

H120- NITI Aayog

Reflecting the **spirit and the changed dynamics of the New India**, the Government, in 2015, replaced the erstwhile Planning Commission with a new body called NITI Aayog. In the recent Governing **Council meeting of NITI Aayog, in August 2022,** several issues, like farmers' plight, GST revenue etc., were raised by many States.

What is NITI Aayog?

NITI Aayog (National Institution for Transforming India) is a **think tank or an advisory body** to evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States.

What are the differences between Planning Commission and NITI Aayog? (Refer table below)

What are the achievements of the NITI Aayog?

- **Vision Document, Strategy & Action Agenda (beyond 12th Five Year Plan):**
  - **15-year vision document:** was prepared to replace the 5-Year Plans beyond 31st March, 2017.
  - **7-year strategy document (2017-18 to 2023-24):** to convert the longer-term vision into implementable policy and action as a part of a "National Development Agenda".
  - **3-year Action Agenda (2017-18 to 2019-20):** aligned to the predictability of financial resources during the 14th Finance Commission Award period.
- **Reforms in Agriculture:**
  - **Model Agricultural Land Leasing Act, 2016:** was formulated by NITI Aayog to recognize the rights of the tenant and safeguard interest of landowners.
  - **Dedicated cell for land reforms**: was also set up in NITI.
  - **Reforms of the APMC Act** (Agricultural Produce Marketing Committee): NITI Aayog consulted with the States in 2016 on three critical reforms:
    a) Agricultural marketing reforms.
    b) Felling and transit laws for tree produce grown at private land.
    c) Agricultural land leasing.
    d) Subsequently, Model APMC Act version 2 prepared.
  - **Agricultural Marketing and Farmer Friendly Reforms Index**: was developed by NITI Aayog to sensitise states about the need to undertake reforms in:
    a) Agriculture Market Reforms,
    b) Land Lease Reforms
    c) Forestry on Private Land (Felling and Transit of Trees).

Planning Commission	NITI Aayog
The Planning Commission had the **power to impose policies** and projects on States.	NITI Aayog is a **think tank or an advisory body** which does not have authority to impose policies on States.
It had the **power to allocate funds** to the States and various Union Ministries for various programmes and projects.	NITI Aayog does not have the power to allocate funds. Now, it is **solely done by the Finance Ministry.**
The State Government's role was confined to the **National Development Council** (NDC).	Here, States play a **more proactive role** and are regularly invited to the Governing Council meetings.
It had to report to the NDC, which had Lieutenant Governors and State CMs.	The **Governing Council** of NITI Aayog has Lieutenant Governors of UTs and State CMs.
Top-down approach: It first formulated policies and then State Governments were consulted regarding the allocation of funds for the programmes or projects.	**Bottom-up approach**: Here, the final policy would bear fruit after due consultations with State Governments in the policy formulation stage.
There was no such provision	Niti Ayog has the provision of Regional council to address local / regional development issues.

- **Reforming Medical Education:** A committee chaired by Vice Chairman, NITI Aayog recommended scrapping of the Medical Council of India and suggested a new body for regulating medical education.
- **Digital Payments Movement:**
  - **Committee of CMs**: was constituted by NITI Aayog on Digital Payments in 2016 to promote transparency, financial inclusion and a healthy financial ecosystem nationwide. An interim report was submitted to Hon'ble PM in 2017.
  - **'Lucky Grahak Yojana'** & **'Digi Dhan Vyapar** Yojana': were launched by Niti Aayog to promote digital payments.
  - **Digi Dhan Melas**: were organized by Niti Aayog for 100 days in 100 cities.
- **Atal Innovation Mission:** was set up in NITI Aayog to strengthen the country's innovation and entrepreneurship ecosystem.
  - It aims to create institutions and programs that **spur innovation in schools, colleges, and entrepreneurs** in general.
  - In 2016-17, **Atal Tinkering Labs (ATLs) & Atal Incubation Centers (AICs)** were rolled out:
- **Promoting Cooperative and Competitive Federalism:** NITI Aayog launched **indices measuring States' Performance in Health, Education and Water Management** to nudge the states into competition for better outcomes, sharing best practices & innovations to help each other.

What are the issues associated with the NITI Aayog?

- **Only recommendary in nature:** NITI Aayog has been transformed into a 'glorified recommendatory body' which lacks the requisite power to bring positive change in the government's actions.
- **Centralization of ideas:** The organization has become a symbol of 'centralization of ideas', shifting the theatre of activity from ministries to the Aayog.
  - **It is harder to get ministries on board now** because the NITI Aayog, unlike its predecessor, has no say in budget allocation.
- **Slow Economic transformation:** NITI Aayog has not been able to transform an unequal society into a fair & modern economy which can ensure the welfare of all its citizens, regardless of their caste, creed or economic identity.
- **Uncritical praise for government policies and programmes:** Besides generation of new ideas, it maintains a respectable intellectual distance from the government's policies => observing only uncritical praise.
  - It only performs the function of **retrospectively justifying policy decisions** already made by the top hierarchy in the government.
- **'Non-Cooperative Federalism':** It has not succeeded in strengthening the states' relationship with the central government.
- **Quality of reports:** While the Aayog may be prolific in terms of producing a large number of reports, they are not of highly researched and refined quality.
  - Also, the reports are **too ambitious,** and bother little with the limitations of the government.

What steps are required to make the functioning of the NITI Aayog more effective?

- **NITI Aayog 2.0 - reforms recommended by Vijay Kelkar:**
  - It must possess all the **power to allocate development and transformational capital** or revenue grants for the states.
  - Having a **permanent invitee of the CCEA** would enable it to contribute to the highest levels of policymaking.
- NITI Aayog should be given **statutory backing.**
- NITI AYOG should be **made legally accountable** for its inability to meet the targets.
- Ensure the planning body remains a **non-partisan institution.**
- NITI Aayog must bring in the talent required and launch a process of broad-based consultation (with states, Civil society etc.) to secure a **broad**

national consensus on a long-term growth strategy.

Through its commitment to a cooperative federalism, promotion of citizen engagement, participative & adaptive governance and increasing use of developing technology, the **NITI Aayog is providing a critical directional and strategic input into the governance process.**

There is, however, a need to ensure that **sufficient changes are brought** in by the think tank to ensure **it becomes an avenue for socio-economic transformation of the nation.**

H121- NATIONAL HUMAN RIGHTS COMMISSION(NHRC)

"To deny people their human rights is to challenge their very humanity."- Nelson Mandela.

In August 2022, the National Human Rights Commission (NHRC) has expressed concern over the retention of a large number of cured patients at Ranchi Institute of Neuro Psychiatry and Allied Sciences (RINPAS) and Central Institute of Psychiatry saying it is violation of human rights.

What are the achievements of NHRC?

- **Bonded labour:** The NHRC is continuously drawing attention to the issue of bonded labour. Children working as bonded labourers, rescued in Delhi in 1994 by the Bandhua Mukti Morcha.
- **Preventing violation of human rights under the garb of terror acts:** The NHRC has also been vocal in its opinion against laws such as the Terrorist and Disruptive Activities (Prevention) Act (TADA) and Prevention of Terrorism Act, 2002 (POTA).
- **Increasing reach among people**: According to the Commission's estimate, from 169 complaints received in 1993-94, the NHRC went on to receive 68,713 complaints in 2002-2003. The number crossed one lakh in 2007-2008 and was 1,17,808 in 2015-16.
- **Chakma community:** The NHRC's intervention had gone a long way in protecting the rights of the Chakma's in the north-east.
- **Enlarging its ambit:** The Commission has also gone beyond the physical violation of human rights to **protect the economic, social and cultural rights of people**.
  - For example, NHRC special rapporteur, was assigned to look into the extreme poverty, starvation and malnutrition in Kalahandi, Bolangir and Koraput regions of Odisha.
- **Suo motu cognisance of human rights violations:**
  - **Consistent watch the Commission on incidences of 'encounter killings and deaths in custody.**
    - It has issued guidelines wherein every death in police action has to be reported to the NHRC within 48 hours of the incident.
  - Its **Suo moto cognizance in the case of Gujarat riots** and filed a special leave petition before the Supreme Court.
  - Active interventions in cases of atrocities **against Dalits.**
  - **Planned deportation:** In August 2017, the NHRC issued a notice to the Union Ministry of Home Affairs over the planned deportation of about 40,000 Rohingya immigrants, and asked the ministry to submit a detailed report within four weeks.

What are the issues associated with the NHRC?

- **Powerless:** NHRC is attributed as a **"toothless tiger"** due to lack of enforcement powers and **non-binding reports.**
- **Ineffective guidelines:** Ineffectiveness of NHRC guidelines is reflected in an increased number of **cases of custodial deaths from 444 to 5,496.**
- **Organisational weaknesses:**
  - They **need to intimate authorities before visiting prisons**, and **with respect to the Army, they can only request Central Government.** Central Government will inform NHRC on action taken within 3 months.
  - **No power to penalize authorities and is largely understaffed.** Thus, NHRC is deluged with too many complaints. For ex Commission officials have admitted in Supreme Court that with its current staff capacity, it cannot investigate more than 100 cases a year.
  - **Scarcity of resources** is another big problem **as 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 programmes.
    - Despite a 1,455 per cent increase in complaints (1995-2015), staff strength

decreased by 16.94 per cent due to unfilled vacancies.
    - Moreover, the **Act does not categorically empower the NHRC to act when human rights violations through private parties** take place.
    - **Cannot inquire into any matter after expiry of one year** from the date of occurrence.
    - **Conflict of interests: Often, the officers on deputation** in certain forces are also the **investigators** against those forces.
- **Weaknesses in composition:**
    - NHRC has **over representation from judiciary,** they primarily draw their staff from government departments – either on deputation or re-employment after retirement – hence, the internal atmosphere is usually just like any other government office due to lack of involvement of persons from NGOs, and professional fields.
- **Custodial Torture** still exist and NHRC has failed to raise voice against such crime.
- **Manual Scavenging** is a menace still existing. NHRC is unable to raise voice against such a violation of rights.

Which steps are needed to improve the functioning of the NHRC?

- **More powers:** For increasing its efficacy, its decision should be made enforceable by the government.
    - There is a need to make the commission able to summon witnesses and documents.
- **Armed forces:** The definition should be restricted to only army, navy, and air forces. Even in these cases the **commission should be allowed to independently investigate cases of violation of rights.**
- **Commission's membership:** Members of NHRCs should include civil society, human rights activists etc.
- **Independent Staff:** NHRC should have its independent Investigation staff recruited by itself rather than present practice of deputation.

What are the key changes introduced in the act via amendment act of 2019?

The Protection of Human Rights Act, 1993 was **amended** through the **Protection of Human Rights (Amendment) Act, 2019** which brought following changes in the original act.

	The Protection of Human Rights Act, 1993.	**Protection of Human Rights (Amendment) Act, 2019.**
Composition of NHRC	• Chairman: A person who has been chief justice of SC. • Members: Two person having knowledge of human rights to be appointed as members of NHRC.	• Chairman: Person who has been chief justice of the SC, or judge of the SC. • Members: Allowed three members to be appointed, of which at least one will be a woman.
Chairperson of SHRC	• Person who has been a chief justice of a HC	• A person who has been chief justice or judge of a HC.
Term of Office	• The chairperson and members of NHRC and SHRC will hold office for five years or till the age of 70 years, whichever is earlier. • The act allows for the reappointment of members of NHRC and SHRCs for a period of five years.	• It reduced the term of office to three years or till the age of 70 years, whichever is earlier. • It removes the five-year limit for reappointment.

Defacto members	• Originally chairman of NCSC, ST and NCW were defacto members of NHRC.	• However, the amended act provides for inclusion of the chairpersons of the National Commission for Backward Classes, the National Commission for the Protection of Child Rights, and the Chief Commissioner for Persons with Disabilities as members of the NHRC.

What is the significance of these changes?

- **Independence: Non-renewal of Chairperson's term** would ensure independence from the government.
- **Diversity:** Inclusion of a **woman** member and of Chairpersons of other constitutional and statutory bodies ensures greater diversity.
- **Accessibility:** The complaints can be **filed in any state,** and not only in New Delhi, thus making NHRC more accessible.
- **Filling vacancies:** The amendments, by **inclusion of more members**, make an effort to deal with the issues of unfilled vacancies.
- Recent amendments make both the National Commission as well as the State Commissions to be **more compliant with the Paris Principles** concerning its autonomy, independence, pluralism.
- **Gender sensitive**: Inclusion of women member in the commission would make it gender sensitive organization.
- Besides, NHRC, it makes multiple stakeholders responsible for protection of human rights such as civil society organizations, NGOs, Government etc.
- It addresses the hurdle of lack of expertise in NHRC by proposing eligibility norms for the chairperson and members.

• The number of **"persons having knowledge of or experience in matters relating to human rights"** has been increased from 2 to 3.	• Increase the **government's influence** in the commission.
• The term of the members has been reduced from **5 years to 3 years.**	• **Affects the faster disposal** of cases.
• Increase in the **number of ex-officio members** to include chairpersons of NCPCR, NCBC and Chief Commissioners for PwDs.	• **Increase in ad-hoc members** rather than permanent members.

What are the criticisms of the amendment act 2019?

Despite having the above significance, the following are the issues related to certain provisions of the act:

Provision	Criticism
• **Any other retired SC judge** can be appointed as Chairperson.	• Scope for in **favoritism** appointment.

John F Kennedy said that "The rights of every man are diminished when the rights of one man are threatened ". Thus, to ensure that the rights of none are diminished, NHRC need to be given more teeth so that it can even bite in case of any violation.

H122- Central Information Commission

"Information is the currency of democracy" - Thomas Jefferson.

On 19 August 2021, the Supreme Court directed states to file status reports on the number of vacancies and pending pleas in State Information Commissions (SICs) under the Right to Information (RTI) Act.

What are the issues associated with the functioning of CIC?

- **Transparency issue:** As there is **no documentation of the selection criteria.**
- **Backlog of cases: High pendency of cases** for example, as per **Satark Nagarik Sanghathan's report 2021, more than 2.2 lakh Right to information cases are pending with the commission.**
- **Delay:** it is taking **388 days** (more than a year) to resolve complaints.
- **Huge vacancies** in the CIC despite repeated direction from the court.
- **Culture of impunity:** As per the **Satark Nagarik Sanghathan's report 2021** the government officials do not face any punishment for violating the law.
- **Inadequately trained PIOs**: Due to lack of proper training PIOs are not able to provide the information in time bound manner.
- **Impact of Covid-19**: During the pandemic, most of the CICs offices were not working.
- Low awareness: People are not very aware about RTI, especially the lower strata of society.
- **No powers to enforce decisions:** for example, CICs 2013 order with respect to political parties being public authority and hence must come under the RTI act was not followed by the political parties.

What are the achievements of the CIC?

- To facilitate reporting of pendency and disposal figures on a real-time basis, the **automatic generation of data system is launched.**
- **Increasing disposal rate:**

Number of Second Appeals/Complaints Registered during 2021- 19183.

Number of Second Appeals/Complaints disposed during 2021- 17017.

- **Increasing penalties imposed:** During the 2021, CIC imposed penalties amounting to ₹ 14,86,750/- under Section 20(1) of the RTI Act, 2005.
- **Initiatives by CIC:**
  - **e-Court and Video Conferencing:** The e-Court and video conferencing facility were established in the Commission in the Year 2016.
  - **CIC has been organizing seminars and conferences** on subjects of interest from the point of view of transparency.
  - The Commission has been organizing **Annual Conventions** since 2006, as a major event. These Conventions not only provide an opportunity and a forum for stakeholders to meet and discuss critical issues related to transparency, governance, information rights etc., but also contribute significantly toward the broadening and deepening of the RTI regime.
- Efforts of CIC are leading to **better maintaining of public records with efficiency.**

Which steps are needed to improve the functioning of the CIC?

- **Awareness drive:** Government should make awareness programs targeting the public as well as governmental bodies, for educating them and promoting Suo-moto disclosure under RTI Act.
- **Establishing Public Records Office (PRO) for website monitoring and auditing**: PRO would have responsibility to oversee proper record keeping in all public offices including preparation and updating of manuals, modernization and digitization, monitoring, inspections etc. The Public Records Office should function under the overall guidance and supervision of CIC or SIC.
- **Improving Infrastructure:** The ARC report had mentioned that GoI may allocate one per cent (1%) of the funds of the 'Flagship Programs' for a period of five years for improving the infrastructure requirements.

- **Strict Punishment**: for Government officials hiding truth/facts of information for camouflaging their acts of corruption/carelessness. This act should come under criminal offence.
- **Digitalization of records** and proper record management.
- There is a **need to fill vacancies** on time for speedy disposal of cases.
- The report of the **second Administrative Reform Commission** recommends that the **Official Secrets Act, 1923**, should be repealed.

RTI act is defined by the ARC as a **master key to the good governance** and as its implementation is placed at the behest of **CIC, CIC becomes a key pillar to ensure good governance in the country**, therefore there is a **need to strengthen its role by adopting the above-mentioned measures so that the light of transparency prevails over the darkness brought by the secrecy.**

H123- Central Vigilance Commission

"Integrity, transparency and the fight against corruption have to be taught as fundamental values." - Angel Gurría

The pendency of 2,099 cases in 2018 was reduced to 227 cases by June 30, 2022 due to a special campaign initiated by the Central Vigilance Commission (CVC) in 2020. As the **apex integrity institution**, the Commission is mandated to fight corruption and to ensure integrity in public administration.

What is CVC?

- CVC is conceived to be the **apex vigilance institution,** free of control from any executive authority, monitoring all vigilance activity under the Central Government
- It **advises various authorities in Central Government organizations** in planning, executing, reviewing and reforming their vigilance work.
- It was set up by a Government Resolution in 1964. The Commission was accorded the status of **independent statutory authority** through the **Central Vigilance Commission Act**, 2003.

How does CVC ensure integrity of the administration?

- CVC creates an ecosystem of **credible deterrence against corruption** through prompt enforcement of anti-corruption laws and regulations.
- CVC works on the **"principle of Catch them before they hatch"**. It follows certain practices to eliminate/reduce corruption in an organization rather than rather than "curing the disease" later.
- CVC also raises **public awareness** to inculcate ethical values with the aim to reduce society's tolerance towards corruption. E.g., It organizes **'Vigilance Week'** every year
- By taking swift and noteworthy action **against corrupt officials,** even senior personnel and politicians.
- Others: **National Anticorruption Strategy**; Leveraging Technology to Prevent Corruption, etc.

What are the issues faced by the CVC?

The expectation that CVC can prove to be "One **Stop Solution" to tackle corruption** in the country has proved to be fallacious. The reasons being:

- **Lack of authority:** as the decisions of the CVC are **not binding** on the organizations or ministries.
  - CVC does not have powers to register criminal cases. It deals only with vigilance or disciplinary cases.
  - CVC has supervisory powers over CBI. But it does not have the power to call for any file from CBI or to direct CBI to investigate any case.
- **Appointments:** are indirectly controlled by the GoI as the candidates put up before the selection committee (having Leader of Opposition as the member) are pre-decided by the Union government.
- **Delay in the cases**: handled by that CVC => Hence, lack an effective deterrent against corruption.
- **Low conviction rate:** Very low conviction rate has reduced the impact of CVC and its effectiveness.
- **Lack of Resources:** compared with the number of complaints that it receives.
  - Sanctioned staff strength is around 300, while it deals with more than 1500 Union departments and ministries.
  - **Vacancy**: The post of Central Vigilance Commissioner has been vacant for a long period of time.
- **Vague jurisdiction:** In most cases, the domains and the jurisdiction of the organizations are not clear. There is an overlap in the jurisdictions of CVC and Lokpal.
- **Others:**
  - **Low conviction rate**: has reduced the impact of CVC and its effectiveness.
  - **Duplication of work:** Multiplicity of organization leads to work duplication and reduces efficiency => "Everybody's Responsibility is Nobody's Responsibility"

What are the steps required to ensure effective functioning of the CVC?

- Preventive Vigilance: Transforming the Commission towards early detection of corruption cases so that they could be taken to their logical conclusion faster. E.g.,
  - Identification of areas vulnerable to corruption, areas involving discretion,
  - Standardization of rules and procedures to minimize human interface,
  - Identification of sensitive posts to implement a due job rotation policy, etc.
- **Protecting Bonafide officers & whistle-blowers:** CVC should ensure that Bonafide officers need to be protected, as much as protection for whistle-blowers.
  - **Whistle Blower Protection**: Strengthening of the whistle blower protection mechanism will go a long way in helping CVC achieve its objective of preventing corruption.
- **Time-bound action**: Put timeline for timely action in disciplinary matters where major penalty proceedings were initiated.
- **Public Participation:** The organization must encourage public participation and reporting to check corruption. **E.g., Punjab Anti-Corruption helpline.**
- **Clear jurisdiction:** Jurisdiction of CVC and Lokpal should clearly be demarcated. It should be made clearer, and domain should be independent.
- **Filling Vacancy**: Vacancy should be mapped in advance and proper steps should be taken to fill the vacancies in time. Vacancies impact the efficiency of CVC and compromise good governance objective.
- **More Powers:** It should be given the power to register and act on complaints of corruption as and when complaints are filed.

What is the Integrity Pact?

- **CVC has recommended adoption of "Integrity Pact"** in government organizations for procurement activities.
- It envisages an agreement between the prospective vendors/bidders and the buyer, committing persons and officials of both sides to not resort to any corrupt practices in any aspect or stage of the contract.
- Any **violation of the clause entails the disqualification** of bidders and exclusion from future business dealings.
- **Significance:**
  - The pact ensures transparency, equity and competitiveness in public procurement.
  - **Integrity External Monitors (IEM):** The Pact envisages a **panel of IEMs for each organization**. IEM reviews independently and objectively, whether and to what extent parties have complied with their obligations under the pact.
  - If they find serious irregularities attracting the Prevention of Corruption Act provisions => They may **submit a report to the chief executive of the organization** concerned or directly to the CVO and the CVC.

"It is very difficult to contain corruption as one cannot keep honey on tongue and expect not to taste it." - Kautilya. Corruption, a serious issue in India, hasn't been dealt with well by the CVC => leading to demands for new institutions, like Lokpal.

Thus, the CVC must be empowered with respect to its mandate, financial independence, enforceability etc. to **deal with the cancer of corruption which steals away from the poor and destroys the moral fabric of the nation.**

H124- Central Bureau of Investigation (CBI)

Recently, on 28 August 2022, leaders of **the ruling alliance in Bihar called for withdrawing the general consent to the CBI**, alleging that the agency was being misused by the Centre for political purposes. The Central Bureau of Investigation (CBI) recorded a **conviction rate of 67.56%** in 2021 (69.83% in 2020), according to the CVC annual report.

What is CBI?

- CBI is India's **premier central investigation agency** which looks into matters of corruption or major criminal matter.
- It traces its origins to the **Special Police Establishment**, set up in 1941 by the Government of India to investigate bribery and corruption.
- In 1965, its jurisdiction was expanded to investigate breaches of central laws enforceable by the GoI, multi-state organized crime, multi-agency or international cases.
- It is **not a statutory body**, though it continues to derive its powers from Delhi Special Police Establishment Act, 1946. It operates under the jurisdiction of the **Ministry of Personnel, Public Grievances and Pensions.**
- The CBI is headed by a Director, who is assisted by a **Special Director** or an additional director.

What are the issues associated with the functioning of CBI?

- **Dependency:** The agency is dependent on MHA for staffing since many of its investigators come from the Indian Police Service.
    - **No independent cadre:** CBI is run by officers on deputation, who can be manipulated as they depend on central government for postings.
- **Lack of functional autonomy**: The agency depends on the **Ministry of Law** for lawyers and also lacks functional autonomy to some extent.
- **Systemic Issues**: such as lack of infrastructure, insufficient human resources, lack of technology etc. => leading to **enormous delays** in concluding investigations.
- **Political pressure**: The CBI has often been criticised for its alleged **failure to function impartially and objectively** as an agency of law and acting at the government's behest. In 2013, the Supreme Court called it a **"caged parrot".**
- **Low conviction rate:** A parliamentary panel report and studies show that the conviction rate is abysmally low (3%) in the corruption cases handled by the CBI.
- **Dependence on state governments** for invoking its authority to investigate cases in a State. For example, issue of general consent.
- **Overlapping jurisdiction:** A Parliamentary Standing Committee (2015) observed that there is an overlap in jurisdiction of CVC, CBI and the Lokpal. Also, the charter of duties of the CBI is not protected by legislation.
- **Exclusion from RTI**: The role of CBI is outside the purview of the RTI Act 2005.
- There are **questions related to quality of investigation** in many cases. E.g., **Arushi murder case**, the theory provided by the CBI was declared absurd by the Allahabad HC.

Is it justified to call CBI a 'Caged Parrot'?

In the Hawala Case 2013, the SC said that **"CBI is a caged parrot speaking in its master's voice",** due to excessive political interference by GoI. CBI can be called caged parrot because of dubious record of her in following cases:

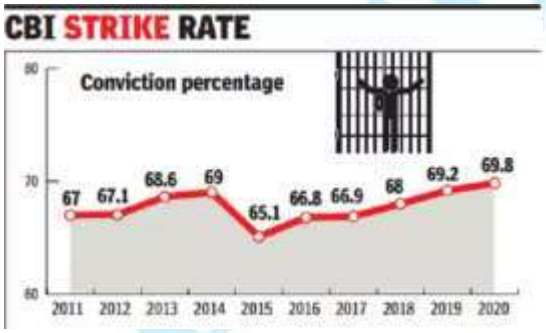
- **2G spectrum case:** The charge sheet filed by CBI was sloppy and had exaggerated claims taken apart in the court.
- **Harshad Mehta scam**: In a book called 'Scam: from Harshad Mehta to Global Trust Bank', Sucheta Dalal threw light on how CBI tried to mislead the investigation.
- **Ottavio Quattrocchi**, an Italian businessman whose name figured in the Bofors scam, was allegedly allowed to escape from India and was never brought back to face trial.
- **Bellary Mining case**: The CBI told the Commerce Department that no prima facie case could be made out of the information.
- **Sohrabuddin fake encounter case**: There has been skepticism related to the CBI's role in

investigating the case, especially after BJP came to power in 2014.

- **Prior permission of states:** The conduct or continuance of investigation into offences committed within the territory of a state, consent of the state is required which most of the time is delayed or even denied.

What are the moments of glory for the CBI?

- **Nirav Modi case:** is testimony to the CBI's capacity to execute a professional job, provided it is given a free hand.
- **Vijay Mallya case:** CBI could ensure the London High Court dismissing Vijay Malaya's' plea against extradition to India as a major milestone achievement.
- **Role during pandemic**: Despite the pandemic and imposition of lockdown, the CBI managed to solve 800 cases.
- Recently**, Bank fraud cases** have been taken up which marks major achievement on the part of CBI.
- As per the directions of SC, CBI present its **efficacy rate as 65 to 70%** of cases in last 10 years secure conviction or solved successfully. This was possible through harmonious and synergetic working of the body.



What is 'General consent'?

- CBI is governed by The **Delhi Special Police Establishment (DSPE) Act, 1946.** The jurisdiction of CBI is confined to Delhi and Union Territories under this Act.
  - **Section 5:** empowers **special police establishments (SPEs)**, including CBI, to investigate cases in the states.
  - **Section 6:** restricts the powers of SPEs and puts the condition of the 'consent of the State' to investigate any case in that state. This is called the 'general consent'.
- The CBI must mandatorily obtain the consent of the state government concerned before beginning to investigate a crime in a state. It can be **either case-specific or general.**
- A "general consent" is normally given by states to help the CBI in the seamless investigation of corruption against central government employees.

What does the withdrawal of 'General consent' mean?

- CBI has the **power to investigate cases** that had been **registered before consent was withdrawn.**
- CBI will **not be able to register any fresh cases** in the state **without the consent** of the state.
- CBI officers will **lose all powers of a police officer**, whenever they enter the state.
- CBI can investigate cases registered anywhere else in the country, which involve individuals stationed in these states.

What reforms are required to ensure effective functioning of the CBI?

- **'Specific law' to govern its working:**
  - **2nd ARC:** suggested that "a new law should be enacted to govern the working of the CBI".
  - **Parliamentary Standing Committees (2007 & 2008):** recommended strengthening of the CBI in terms of legal mandate, infrastructure and resources.
- There is a need that CBI to develop its own **dedicated cadre of officers** who are not bothered about deputation and abrupt transfers.
  - The process of **direct recruitment through UPSC**, which was stopped in 2000, can be restarted, for addressing quality and manpower issues.
- **An integrated setup of CBI, CVC & Lokpal**: would lead to a more potent body. E.g., Anti-corruption wings of CBI and CVC can be brought

under Lokpal which should utilize both the organisations for investigation and prosecution.

- **Higher autonomy with accountability**: CBI should be granted more autonomy by making it accountable only to the Parliament, like the office of CAG.
- **Should come under ambit of RTI:** Agencies like NIA, CBI, IB and Paramilitary forces should come under the purview of RTI, as there are adequate safeguards in the Act to keep sensitive information outside the public domain. (As suggested by ICs)
- Supreme Court Recommendations:
    - **CVC shall be responsible** for the efficient functioning of CBI.
    - **CBI director** shall have a **minimum tenure of 2 years**, regardless of the date of his superannuation.
    - **Vineet Narain judgement:** Transfer of an incumbent CBI Director in an extraordinary situation should have the approval of the selection committee (comprising PM, the leader of the Opposition and the CJI).

The CBI's performance in recent times has **been a mixed bag, with its moments of glory alongside its moments of criticism.** A strong central investigation is imperative for the National unity and integrity of the country.

So, there is a **need to uncage the parrot to promote transparency** in the working of CBI which can be ensured by making it a statutory body, insulated adequately from the direct influence of the government.

H125- National Investigation Agency (NIA)

NIA has taken over cases of Udaipur killing of a tailor and similar killing of pharmacists at Amravati in Maharashtra in June,2022.

The National Investigation Agency (NIA) is the **primary counter-terrorist task force of India.** The agency is empowered to deal with the investigation of terror related crimes across states **without special permission from the states** under written proclamation from the Ministry of Home Affairs.

What is NIA?

- National Investigation Agency (NIA) is **a statutory body** established under the **National Investigation Agency (NIA) Act, 2008.**
- It came into existence with the enactment of the Act after the **Mumbai terror attacks.**
- It is a **central agency** established by the Indian Government **to combat terror in India**. It acts as the **Central Counter Terrorism Law Enforcement Agency.**
- **Aim:** The NIA aims to **set the standards of excellence in counter terrorism** and other national security related investigations at the national level by developing into a highly trained, partnership-oriented workforce.

What are the amendments brought under NIA amendment act 2019 and what is their significance?

NIA Amendment Bill,2019:

- The Bill amends the **National Investigation Agency (NIA) Act, 2008.**
- In addition to offences under Acts such as the Atomic Energy Act, 1962, and the Unlawful Activities Prevention Act, 1967, the Bill seeks to allow the NIA to investigate the following offences:
  - human trafficking
  - offences related to counterfeit currency or bank notes,
  - manufacture or sale of prohibited arms,
  - cyber-terrorism, and
  - offences under the Explosive Substances Act, 1908.
- **Jurisdiction of the NIA:**
  - The Bill states that in addition, officers of the NIA will have the **power to investigate scheduled offences committed outside India**, subject to international treaties and domestic laws of other countries.
  - The central government may direct the NIA to investigate such cases, as if the offence has been committed in India.
- **Special Courts:**
  - The Act allows the central government to constitute Special Courts for the trial of scheduled offences.
  - The Bill amends this to state that the **central government may designate Sessions Courts** as Special Courts for the trial of scheduled offences.
  - The central government is required to consult the Chief Justice of the High Court under which the Sessions Court is functioning, before designating it as a Special Court.
  - When more than one Special Court has been designated for any area, the senior-most judge will distribute cases among the courts.
  - State governments may also designate Sessions Courts as Special Courts for the trial of scheduled offences.

Significance of the amendments:

- **Broader powers to NIA:** Now NIA can probe into cases of human trafficking, offences related to counterfeit notes, smuggling of illegal arms, cyber-terrorism and offences under the Explosives Substances Act, 1908.
- **Speedy trial and resolution of cases**: as, now the Centre can designate sessions courts as Special courts for the trial of scheduled offences.
- **Geographical border is no longer a barrier**: as it empowered the agency to investigate and prosecute offences committed outside India in line with the international treaties and conventions and the laws of the other countries.

What are the issues in the recent amendments?

- **No definition**: The Amendment Bill puts Section 66F of the **Information Technology Act** into the Schedule listing offences. Section 66F deals

with cyber terrorism. But India does not have a data protection act and there is no definition of cyber terrorism.

- **Prone to misuse:** The term "affecting the interest of India" is undefined and can be misused by governments to curb freedom of speech and expression.
- **Not every criminal offence in the above act is a threat to national security** and sovereignty.
- **Against federalism:** It appears that the Union government has encroached upon the rights of states to conduct investigations into a class of cases which may affect public order which is a state subject.
- **Increased burden on already overburdened sessions courts.**

India needs tough laws and greater powers to central agencies to combat terror, however special care needs to be taken to ensure that the proposed amendments are not misused.

H126- Enforcement Directorate

"Economic offences are also 'socio-economic offences' affecting the sovereignty and integrity of the country." - Justice Indira Banerjee

Recently, in August 2022, the Enforcement Directorate **(ED) raided the offices of cryptocurrency exchange Coin-Switch Kuber** for alleged violations of the Foreign Exchange Management Act. As a **premier financial investigation agency** of the GoI, ED functions in strict compliance with the Constitution and Laws of India and is often in the news because of different **cases involving economic crimes.**

What is Enforcement Directorate?

- The Directorate General of Economic Enforcement, or ED, is India's **economic intelligence agency** which **enforces economic laws and fight economic crime.**
- **Evolution of ED:**
  - It was established under the **Foreign Exchange Regulation Act 1947**, as a multi-disciplinary organization mandated with **investigation of offence of money laundering and violations of foreign exchange laws.**
  - In 1956, it was created as a **'Enforcement Unit'** under the Department of Economic Affairs.
  - In 1957, it was given a new name: 'Enforcement Directorate' (ED).
  - In 1960, it was moved to the Department of Revenue, under Ministry of Finance.
- The ED's main office is in New Delhi, but it also has other offices in different parts of the country.
- **Composition:**
  - ED for long was led by IAS and IPS officers. After a gap of 15 years, now it is again run by an IRS officer.
  - It also includes officers from IPS, IAS and promoted officers from its own cadre.
  - Also, ED deputises officials from Customs & Central Excise, Income Tax, Police, etc.
  - It has less than 2000 personnel (70% are deputies; Others: ED's own cadre).
- **Appointment: ED Director**
  - The appointment of ED director is based on the provisions of the **CVC Act, 2003.**
  - The Centre appoints the director on the **recommendation of a Committee** (Chairman: CVC; Other members: Secretaries in the Finance, Home, and Personnel & Training ministries).
- **Tenure** - ED Director: According to CVC Act 2003, ED Director has 2 years of tenure security. However, a recent modification expanded it to 3 years, for a total of 5 years.

What is the mandate of the ED?

The statutory functions of the Directorate include enforcement of following Acts:

- **PMLA, 2002**: It's a criminal statute that prevents money laundering and confiscates money-laundering-related property.
  - ED investigates crime-related assets and prosecutes perpetrators.
- **FEMA, 1999:** Consolidates and amends legislation to facilitate external commerce and payments and to support the orderly maintenance and growth of India's foreign exchange market.
  - ED may investigate foreign exchange legislation violations and issue fines.
- **Fugitive Economic Offenders Act, 2018:** is an Indian statute that prevents economic offenders from escaping Indian laws by living abroad.
  - ED may seize the property of fugitive economic offenders with an arrest warrant who have departed India.
- **FERA, 1973:** The Foreign Exchange Regulation Act, 1973 (FERA), now replaced by FEMA, had two major functions:
  - Penalties occur from adjudicating show-cause letters for suspected violations.
  - Prosecuting cases brought under the Act.
- **Conservation of foreign exchange and prevention of smuggling activities act, 1974:** Under it, ED is empowered to sponsor preventive detentions for violations of the Act.

What are the criticisms against functioning of the ED?

- **Over-use for Regular Crime:** ED has been criticised for its overuse for Regular Crimes. E.g., The PMLA is being used to look into regular crimes, which are not directly linked to the Act.
- **Opacity of charges:** as Enforcement Case Information Report (ECIR) – an equivalent of the FIR – is generally not given to the accused.
- **Operational issues:** Anonymous ED sources have complained about insufficient manpower, the difficulty in establishing evidence of a proper money trail and poor litigation strategies.
- **Independence and misuse:** Critics of ED are calling it a tool of political intimidation as it is mostly being used against opposition leaders and people related with them.
    - As statement recorded before an investigating officer is admissible in a court as evidence, statements can be taken by illegal means.
    - **Harassment:** As ED inquires family members and their financial history too.
- **Lacks Jurisdiction if the convict is out of India.** ED's power to investigate or arrest the convicts at present is limited within the territory of India.
- **Funding is inadequate:** The powers and the responsibilities of ED requires adequate financing but the previous budgetary allocations remain inadequate.

What is the key difference between CBI and Enforcement Directorate?

Central Bureau of Intelligence (CBI)	Enforcement Directorate (ED)
It examines the corruption and high-profile cases related to white-collar crimes or crime which is required by the Central or State to CBI to look into.	It is committed to preventing money laundering offenses.
It operates under the Ministry of Personnel Public Grievances and Pension.	ED is a part of the Ministry of Finance.
It can register a complaint on its own or by request of the Courts.	It cannot register a case on its own, it is required by the agencies such as CBI or state police to register an offense based on which the Case Information Report is filed by ED.

Which reforms should be undertaken to ensure effective and transparent functioning of the ED?

- **Autonomous status to ED:** can curb the question over independence and improve the ED's image as a reputed agency against economic offenses in our country.
- **Increasing funding:** Increasing the Budgetary allocation of ED will help them to improve the conduct of investigation and consequently the conviction rate.
- **Increasing man power:** can help ED become more efficient and reduce the pendency of cases. Thereby, increasing the credibility of ED as a whole.
- **Early resolution of cases**: The expanded powers of the ED should be met with a stronger commitment to resolving cases quickly.
- **Power to register a case on its own**: without depending on other agencies to file a case and refer to it.
- Supreme Court must **review ECIR, bail conditions** under PMLA at the earliest to bring clarity in the functioning of the ED.

ED need to **walk a tightrope to ensure that integrity and accountability** is maintained while dealing with crimes in economic spheres. **Credibility of ED needs to be protected by ensuring minimum government interference** in the functioning of the ED.

However, argument of use of ED against the opposition should not be entertained to limit the powers of ED, as **the country cannot afford serious offences to continue unhindered.**

Value addition:

A. FERA (The Foreign Exchange Regulation Act, 1947):

- The scope of **power of ED remained limited** from 1957 to 1973, when FERA was amended.
- **FERA empowered ED** with the **power to arrest for FERA violations** and to enter any business premises without a warrant and arrest anyone.
- But even then, the ED's domain was largely **limited to the corporate world.**

B. The Foreign Exchange Management Act, 1999 (FEMA):

- Post-liberalisation, **FERA was replaced by FEMA.**
- **ED lost its power to arrest** people or take them into custody.

C. The Prevention of Money Laundering Act, 2002 (PMLA):

- **After the 9/11 attacks**, the attention of the world turned to terror financing. **After establishment of the Financial Action Task Force (FATF)**, India was under pressure to deal with the issues of terror financing.
- Thus, **Prevention of Money Laundering Act (PMLA)** came into force in 2005. It re-empowered ED with the powers of criminal prosecution.
- **Madhu Koda case** became the first in the history of the agency to end in conviction.
- With **the amendments in 2009 and 2013**, the scope of PMLA was widened. It provided more teeth to the ED.
- It has become the **only Act in India,** under which a **statement recorded** before an investigating officer is **admissible in a court as evidence.**

H127- Governance

"Governance and leadership are the yin and the yang of successful organisations. If you have leadership without governance, you risk tyranny, fraud and personal fiefdoms. If you have governance without leadership, you risk atrophy, bureaucracy and indifference."
– Mark Goyder

Delhi Excise Policy has been in the news for all the bad reasons. This policy was implemented in 2021, allegedly without consulting the cabinet and sanction of Lieutenant Governor (LG). Once a CBI probe was ordered the Delhi govt hastily withdrew this policy and reverted to the status quo.

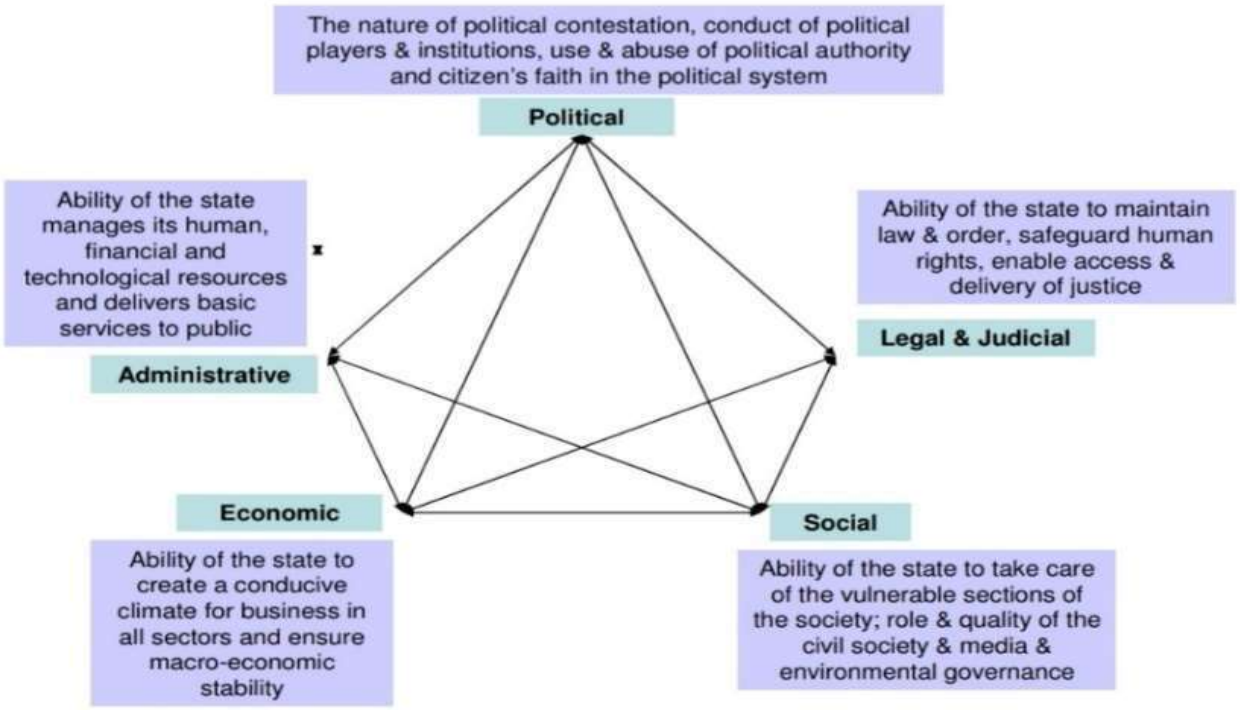
This raises larger governance issues as to how this policy was formulated, input taken, benefit to public envisaged, and if it was so good, why it was withdrawn hastily. Governance is very important in any political system, as it is the process through which the policies of a State that affect the public are implemented.

What is meant by governance?

- Governance consists of the traditions and institutions by which authority in a country is exercised. This includes the process by which governments are selected, monitored and replaced; the capacity of the government to effectively formulate and implement sound policies; and the respect of citizens and the state for the institutions that govern economic and social interactions among them.

What are the key dimensions of governance?

In order to assess governance, it has been deconstructed into five broad dimensions – Political, Legal & Judicial, Administrative, Economic and Social.

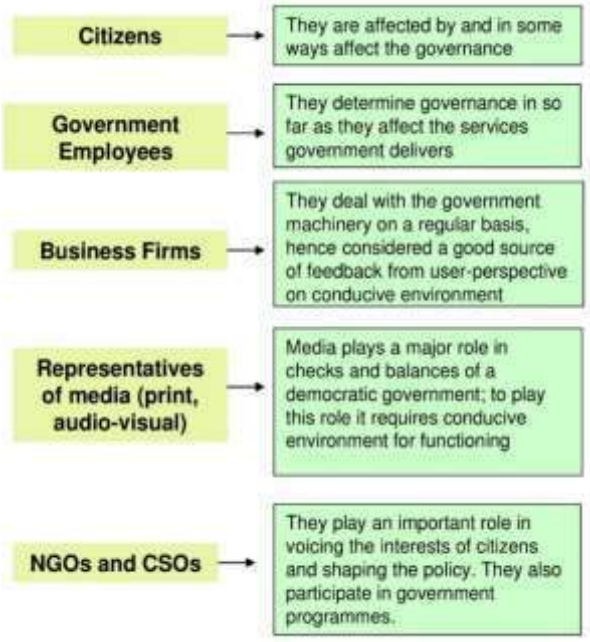


Each dimension is further broken up into components that are basically a group of interrelated aspects which together make up the dimension.

	Dimensions				
	Political	Legal / Judicial	Administrative	Economic	Social/Environmental
Components	1. Exercise of Franchise	1. General conditions of Rule of Law & Internal Security	1. Citizen orientation, responsiveness & transparency & Use of IT	1. Fiscal Governance	1. Welfare of the Poor & Vulnerable sections
	2. Profile & Conduct of Political Representatives	2. Accessibility, Approachability & Citizen-friendliness of the Police	2. Managing Human Resources	2. Business Environment	2. Role of Civil Society
	3. Conduct of Political parties & Legislative	3. Police Administration & Functioning	3. Financial Management	3. Support to the Primary Sector	3. Role of Media
	4. Quality/ Functioning of the Political Executive	4. Access to Justice & Judicial Administration	4. Basic Service Delivery		4. Environmental Management
	5. Political Decentralisation		5. Corruption Perception, Vigilance & Enforcement		

Who are the key stakeholders involved in the governance process?

Citizens, government, business, media and NGOs & CSOs are key stakeholders in the governance process.



What is the link between governance and development?

- **Governance matters for development**: Societies with more effective and accountable governing institutions have been shown to perform better on a range of issues, from economic growth to human development and social cohesion.
- Governance entails processes, decisions, and outcomes that sustain natural resources, alleviate poverty and improve the quality of life. These outcomes promote development.
- An important component of economic development is an **efficient market** which can be ensured by effective governance functionaries. But governance should be seen as more than an input to economic growth: it is both an end in itself and a means to other development outcomes.
- Governance can also be used as a **means to enhance human development and to promote sustainable development.**
    - These include open and transparent opportunities for poor and disadvantaged citizens to access information and secure their rights over land, forest, and energy resources and to encourage governments to adopt policies that are more friendly to people and the environment.
- **Some aspects of governance impact development more than others:**
    - For example, **poor capacity of the government** (in terms of number and competency of personnel) can considerably

slow down development as has been seen in some States.
    - Similarly, corruption is known to have enormous adverse impact on development. Besides hampering growth, corruption has also been shown to increase income inequality and poverty.
    - Indicators such as rule of law, corruption, and political instability are correlated with health, nutritional and educational outcomes.
- **Development is freedom, as Amartya Sen proclaims**, and participatory political systems which form critical aspects of governance are an excellent means to enlarging human choices, hence ensuring development.

What is meant by minimum government maximum governance policy?

- Minimum Government, Maximum Governance means that the government with all its ministries and regulators should **create an environment where the regulatory framework is minimum and relatively easy** for the business organizations to comply.
- The government **should create space for the private sector and should not itself occupy that space.** The government should work like an **experienced referee** but should not enter into the ground to play.
- Minimum Government, Maximum Governance does not mean that there would be no government i.e., regulatory mechanism but **the size of government would be small, effective and business friendly** which would support and promote the private sector thus channelizing more investment into the economy.

Do you think the policy of "Minimum Government Maximum Governance" is being followed in India?

Yes:

- **Digitization:** It has reduced the interface between citizens and officials, made the system fast, responsive and transparent.
- **Service Delivery:** Active governmental intervention through **JAM trinity** has reformed the way services were delivered. Service delivery has become pro-people. Use of JAM has reduced waiting time and corruption in govt services.
- **Ease of doing Business**: Govt has placed an Institutional emphasis to truncate regulatory barriers for establishing, running and closing down business which is necessary for sustainable growth and development. E.g., GST, IBC, etc.
- **Privatization:** There is an attempt to weed out the underperforming enterprises which cannot survive without government dole while strengthening and giving autonomy to those which can thrive. Govt owned companies are being increasingly privatized and the government may limit its presence to only those enterprises which are required for national security.
- **Reforms in Agriculture sector:** Govt has reformed APMC act, the Essential Commodities Act, etc. to reduce interference by government officials in the functioning of the free market.
- **Very low government officials**: In a per-capita basis, the US has about 668 employees per 100,000 of its population. According to the **Seventh Pay Commission**, India has about 139. About 4% of all workers are employed by GoI. In comparison, 34% of all workers are on Sweden's government payroll.

No:

- **Increasing Populism:** Govts at both Union and State level tend to overspend and breach the fiscal deficit, particularly due to careless populism, with the end results being a crowding out of the productive private sector — which could use the same resources more efficiently — and the unleashing of inflationary pressures on the economy.
- **Large Public Sector**: Government still dominates critical sectors like health and education. The concept of Minimum Governance Maximum Government is yet to be applied in these areas.
- **Slow Privatization**: Despite assurance that "govt has no business to be in business" the pace of privatization is very slow. Annual budgetary targets of disinvestment are never met.
- **Primary sector**: Farmers are heavily dependent on govt support through MSP, subsidized

electricity and fertilizer. Similarly, the mining sector is dominated by PSUs.

- **Babu mindset**: At district and sub-district levels govt servants are reluctant to take fast and efficient decisions.

What are the issues with minimum government principle?

- Minimum government leading to **significant dearth of State capacity** leading to consequentially slower progress in development indicators and poor delivery outcomes.
- **It leads to a view that capital expenditure is healthy and revenue expenditure is not**: Such a mindset leads to a large number of roads, schools, universities and hospitals, without a concomitant increase in the number of staffs — teachers, doctors, etc., manning them. And, then, we question why progress is slow on meeting our human development indicator targets.

What are the steps of the Policy Making Cycle?

It contains five distinct steps, according to the International Encyclopedia of the Social and Behavioral Sciences.

1. **Agenda Setting**: In this first stage, a problem or challenge that impacts the public is initially identified. Solutions are put forward by interested parties both inside and outside of the government.
2. **Policy Formation:** This step involves the development of policy options within the government. This occurs after officials narrow the range of possible policy choices by excluding infeasible options. In this step, different interested parties attempt to have their favored policy solution rank high among the remaining options. This step often involves a period of intense debate.
3. **Decision Making:** In this step, government leaders decide on a particular course of action. Ideally, it is the course that will best address the problem for most members of the public.
4. **Policy Implementation**: In this step of the policy making process, governments put the chosen public policy option into effect. The changes should reflect the sentiments and values of the affected parties.
5. **Policy Evaluation**: Interested parties both within and without the government monitor the impact of the policy and determine if it is achieving the intended goal. This can lead to further changes in public policy done in light of the impact of the original policy.

In reality, the policy making process is not typically so linear. However, these five steps provide a framework to better understand public policy formation and help identify the strengths and weaknesses of the system.

What are the issues faced in policy making process in India?

- **Excessive Fragmentation in Thinking and Action:** For example, the transport sector is dealt with by five departments/Ministries in the government of India whereas in the US and UK it is a part of one department.
  - Such fragmentation fails to recognize that actions taken in one sector have serious implications for another and may work at cross purposes with the policies of the other sector.
  - Besides, it becomes very difficult, even for closely related sectors, to align their policies in accordance with a common overall agenda.
- **Excessive overlap between policy making and implementation:** Another problem is the excessive overlap between implementation, program formulation and policy making which **creates a tendency to focus on operational convenience rather than on public needs.**
  - The Secretaries to the Government of India, who are their Ministers' "policy advisers-in-chief" are also involved in routine day-to-day administration of existing policy.
  - **Over-centralization**—excessive concentration of implementation powers at the higher levels of the Ministries.
  - The result is that sub-optimal policies, where adequate attention has not been paid to citizen needs, tend to emerge.
- **Lack of non-governmental inputs and informed debate:** Often public policy is made without adequate input from outside government

and without adequate debate on the issues involved.

- **Lack of systematic means for obtaining outside inputs**, for involving those affected by policies or for debating alternatives and their impacts on different groups.
- Secondly, outsiders are often single-issue advocates. This makes them liable to the charge of having **vested interests**, and their views lose credibility.
- Thirdly, **there is a lack of identification of stakeholders with any policy.**
  a) In countries like the USA, there are often strong advocates on both sides of a policy question—for example pro- and anti-abortion, pro- and anti-capital punishment.
  b) In India, it appears that almost every new policy announced by Government has "only opponents". This is because the **'winners' from a government policy rarely feel involved in it**, and hence rarely stand up and support it.

- **Other issues with policy making:**
  - **Flawed diagnosis:** often diagnosis of the problem is done with only a superficial understanding, thus problems end up being defined wrongly. E.g., Operation Blackboard had problem of superficial diagnosis of problem.
  - **Poor impact evaluation:** Impact evaluation is too slow and too small, and willingness to acknowledge weak points is almost non-existent. This requires a level of honesty in the relationship between the politicians and the bureaucrats on one hand, and politics and society on the other, which in India is missing.
  - **Lack of Pilot implementation:** instead of carrying out pilot implementation to see what is working, what is likely to work and what will not work, a large roll out is done because large scope enables grandstanding.
  - **Difficulties in rolling back:** Having overtly committed to a large scope, both politicians and bureaucrats find it difficult to roll back. E.g., MNREGA was hastily expanded to 600 districts without much feedback from 200 districts where initially it was implemented.
  - **Conflicting priorities:** between Union government and state government, **affect the effective implementation of scheme.**
  - **Converting Policies into Laws**: this makes things very rigid, when the requirement is flexibility, and it gets caught in the grid of the legal process, further leading to delays.

What are the remedies needed for effective policy making process in India?

- **Reduction in Fragmentation**: This would mean fewer Secretaries, each of whom would handle more than one of the existing sectors, effective coordination and integration for a smooth process of policy making and implementation.
- **Separating policy-making from implementation and decentralizing implementation authority:**
  - The **implementation responsibilities should be entrusted to Boards and Agencies, headed by a Director-General**, in the rank of Joint Secretary or Additional Secretary. While his primary responsibility would be implementation, he would also provide essential input for policy making. He would, thus, be a bridge between policy and implementation.
  - The **Secretary will be responsible for policy-making and have no implementation responsibilities.** He would only get feedback on the progress of implementation, largely to aid future policies or to correct existing policies.
- **Improving integration and the flow of knowledge from outside Government**: To this end, each Ministry or Department should have a "Policy Advisory Group". This would consist of:
  - Selected top civil servants, covering related sectors.
  - Stakeholder/ Industry representatives.
  - Academics with expertise in the field.

- These Policy Advisory Groups should cut across departmental viewpoints, and offer integrated policy suggestions.
- Consultation of the Policy Advisory Group and consideration of the Group's views would be mandatory on all policy matters, before a proposal is placed before the Cabinet.

- **Improving the competence and skills of policy-making manpower**: It can be done through implementation of a well-designed career path which has strong incentives for the progressive acquisition of expertise and professional skills.

Governance needs to be seen not merely in terms of managing resources and people during the tenure of a government but its ability to take a long-term view not only of the nation but nation in the global context. As all political power in democracy stems from people, central therefore to governance is empowerment of people by increasing their control over governance and taking requisite reforms as suggested above so that amelioration of citizens remains the topmost priority.

H128- Good Governance

"In the happiness of his people lies king's happiness, in their welfare his welfare" - Kautilya

The above suggestion of Kautilya to Chandragupta Maurya perfectly sums up the core idea of good governance for modern democracies as well. Recently, in August 2022, GoI declared its plans to develop a **"district good governance portal"** (in collaboration with the Arunachal Pradesh) for monthly monitoring of the performance of each district of the state and help in benchmarking performance.

What is the concept of good governance? What are the core principles essential for ensuring good governance?

A. Good Governance:

- **UNDP definition:** 'Good governance' is the exercise of economic, political and administrative authority to manage a country's affairs at all levels.
  - It comprises of the mechanisms, processes and institutions, through which citizens and groups articulate their interests, exercise their legal rights, meet their obligations and mediate their differences.
- **12th FYP definition:** 'Good governance' is an essential element of any well-functioning society. It ensures effective use of resources and deliverance of services to citizens and also provides social legitimacy to the system.
- It aims to minimize corruption, take into account the opinions of minorities, incorporates the voices of the oppressed people in the decision-making process and respond actively to the needs of the community now and in the future.

B. Core principles of good governance:

As per UNESCAP, the concept of good governance has eight principles.

- **Participation:** providing an opportunity for everyone to voice their opinions through institutions or representations. (Right to freedom of association and expression)
- **Rule of law:** For good governance, the legal framework in the country must be enforced impartially, especially concerning human rights law.
- **Transparency:** Every policy taken and implemented by the government must be carried out under existing regulations => with a guarantee that any information related to the policy can be accessed by everyone (including those who are directly affected).
- **Responsiveness:** Good governance needs institutions and processes to attempt to serve all stakeholders within a reasonable time.
- **Consensus oriented:** When the decision-making process cannot accommodate everyone's wishes, then the decision must be such that it is acceptable to all.
- **Equity and inclusiveness**: good governance ensures justice for all when everyone has the same opportunity to maintain and improve their welfare.
- **Effectiveness and efficiency:** Every decision-making process, its institutions and decisions should meet everyone's need while ensuring judicious use of Community resources.
- **Accountability:** All institutions involved in good governance have full answerability to the public for the sake of improving the quality of society.

What factors contributed to the rise of 'Good governance' at international level?

- **1980s**: Under globalization led economic reforms, the term **governance became popular** with its emphasis on the process and manner of governing to the notion of **'sustainable development'.**
- **End of Cold war:** brought about a **change in attitude of developed countries** and multilateral aid agencies towards developing countries, which till then were colored by the latter's position in bi-polar world.
- **1990s:** World Bank became the 1st international institution to **adopt the concept of good governance into lending arrangements** for developing countries and introduce the idea to the general public.
  - **Governance and Development Report 1992:** Good governance should be used to

regulate the economic and social resources of a country for development.
    - **Reversal by World Bank in 1996:** by placing the acute **problem of corruption** in many of the borrowing countries **at the center of its lending policy.**
- **Structural Adjustment Programme 1990 (by IMF):** contributed to recognize that good governance was needed for the success of the market reforms.
- **Competition among developing countries to attract foreign investment** prompted a shift in policy orientation towards improving governance.

How citizens participation and decentralization of power help in furthering good governance?

A. **Citizen participation & Good governance:** It could be either direct or through legitimate intermediate institutions or representatives. It is an **opportunity for mutual education for everyone involved.** It helps in Good Governance:
    - **Inputs to decision makers**: in a relatively short amount of time with additional information, technical expertise and social data about values, attitudes, and preferences of the citizenry.
    - **Changes in public attitude:** and behaviors when they are aware, informed and self-convinced that the change is needed.
    - **Effective check on administrators**: It provides citizens the opportunity to inform, influence, monitor and evaluate public decisions, processes, and actions. E.g., social audit.
    - **Builds legitimacy of public policy / law:** when communication barriers are ruptured, trust is built and people learn how to functionally work together as citizens. This becomes an asset for taking the hard decisions.
    - **Increases awareness** not only about the rights of citizens but also **reminds citizens of their duties.**

B. **Decentralization of Power & Good governance:** Decentralization remains at the core of democracy as it leads to empowerment of people by increasing their control over governance. Decentralization of power leads to good governance through:
    - **Rational decision making:** based on **'Principle of subsidiarity'** => Any decision, which may be taken at any particular level, should not be taken from higher than that level.
    - **Address local needs:** Decentralization **makes local needs evident** through active participation and transparency in the developmental process.
    - **Sense of local ownership:** is instilled by decentralization of decision making => higher acceptability of policies among the communities.
    - **Citizens as 'Active Participants':** in a decentralized system against the centralized decision making which alienates the local people making them 'passive receivers'
    - **Higher accountability:** as the delivery machinery becomes answerable to the local people through election and easy accessibility => leading to ggod governance led inclusive growth.
    - **Fiscal autonomy:** through decentralization adds to the **autonomy of local authorities** and helps them design projects as per the requirement of the region.
    - **Better Service delivery:** by local authorities => help in alleviation of poverty in all the dimensions of the life of a citizen.

According to the Human Development Report 1993, decentralization has often led to **encouraging local participation, reducing costs** and increasing efficiency.

What are the common impediments faced in ensuring good governance?

- **Lack of awareness and literacy:** lead to lack of information about the **governance and development initiatives** from the authorities and government side.

- **Lack of transparency:** and poor disclosure of information by the governments lead to apathy among people as they turn indifferent towards policies.
- **Poor accountability mechanisms:** leads to authoritarianism and creates a huge gap between the government and the governed.
- **Corruption:** and failure to check corruption by the authorities takes away the benefits of good governance from people.
- **Weak civil society:** widens the gap between people and the government and makes it challenging to check the growth of unethical practices. E.g., the distrust of governments towards NGOs impacts good governance.
- **Lack of strong institutions:** When the institutions, like CAG and Lokpal, succumb to illegal and unethical pressures, it results in the failure of the process of governance, and hampers development initiatives.

How can good governance be promoted?

- **Information Technology:** can strengthen the process of governance. E.g., e-governance initiatives like MCA21 have revolutionized the governance process.
- **Strong Institutions:** that enforce transparency and accountability should be given more power and be made autonomous in their functioning. E.g., CIC, CVC, etc.
    - **Strengthening Law Enforcement Agencies:** in terms of skills, autonomy, attitudinal change, and awareness of social problems.
- **Real devolution and decentralization of power:** by amending the constitution and making it mandatory for states to devolve power to local bodies so that they function as units of self-government. (Article 40)
- **Create avenues for Citizen participation:** The participation of citizens in the development process enhances governance, and, ultimately, democratic ideals.
- **Justice:** Ensuring a speedy and cost-effective administration of justice for all.
- **Improving bureaucratic functioning** by way of simplification of rules and regulations and procedure of work.

To ensure sustainable human development, actions must be taken to work towards good governance with the aim of making it a reality. As said by the PM Modi **"Mere good governance is not enough it has to be pro-people and pro-active**. Good governance means putting people at the center of the development process".

H129- GOVERNANCE IN INDIA: AN EVALUATION

The issue of governance in recent times has emerged **at the forefront of the development agenda**. It aims at the maximum welfare of citizens. It involves government, private sector and people's associations or civil society.

Governance relates to the management of all such processes that, in any society, which permits and enables individuals to raise their capability levels, on one hand, and provide opportunities to realize their potential and enlarge the set of available choices, on the other.

What are the major issues and challenges related to governance in India?

- **Improving the functioning of civil service and bureaucracy:** to make it responsive, professional, energetic, and caters to people's needs.
- **Issues with the institutions of governance:** for example – criminalization of parliamentarians, increased disruptions, reduced check of legislation on the executive etc.
- **Issues faced by judiciary:** for example, vacancies, high pendency, high cost of justice etc.
- **Making the private sector accountable** through adopting sound business practices, adhering to rules and regulations, and protecting the interests of consumers.
- **Lack of awareness among the citizens about their rights and obligations**, and making them partners in all development activities.
- **Lack of Accountability**: as performance evaluation systems within the government have not been effectively structured.
- **Ineffective Implementation of Laws and Rules:** for example, RTI act.
- **Red Tapism:** Adherence to rules and regulations by the Bureaucracy sometimes create unnecessary delay in the service delivery system.
- **Absence of objective and measurable data** on the quality of governance, particularly at the sub-national level.
- **The 10th Five Year Plan** document has identified some manifestations attributable to poor governance, which are:
  - **Poor management of the economy,** persisting fiscal imbalances and regional disparities;
  - **Denial of basic needs** to a substantial proportion of the population;
  - **Marginalization and exclusion of people** on account of social, religious, caste or even gender affiliation;
  - **Lack of sensitivity, transparency** and accountability in many facets of the working of State machinery;
  - **Delayed justice;**
  - **Deterioration of physical environment,** particularly in urban areas.

Which steps are taken by the central government and various state governments to ensure good governance in India?

- **Legislations:**
  - **Right to Information act 2005**: It gives greater access to the citizen to the information which in turn improves the responsiveness of the government to community needs.
  - Establishment of Lokpal under the **Lokpal and Lokayuktas Act 2013** to inquire and investigate into allegations of corruption against public functionaries.
  - **Benami transaction amendment act 2016.**
- **E-Governance:** to effectively deliver better programing and services in the era of newly emerging **information and communication technologies (ICTs).** It is based **on focus on 'Minimum Government, Maximum Governance'.**

- Digital India mission, JAM trinity, Direct benefit transfers etc.

- **Ease of Doing Business:** Steps were taken such as the Bankruptcy Code, the Goods and Services Tax, make in India initiative, single window clearances, repeal of nearly 1400 redundant laws etc. to improve the country's business environment.
- To improve service delivery:
  - **Citizen's Charters.**
  - **Sevottam model.**
  - **Social audit:** for example, it is made mandatory in MGNREGA scheme.
- **Decentralization:**
  - 73rd and 74th constitutional amendment act 1992.
  - Establishment of NITI Aayog facilitating 'cooperative federalism'.
  - Acceptance of 14th finance commission with respect to increased devolution to the state etc.
- **Aspirational Districts Programme (ADP)** to transform the lives of people in the underdeveloped areas of the county in a time bound manner.
- **Good Governance Index**: The Department of Administration Reforms and Public Grievances (DARPG), Government of India launched the Good Governance Index (GGI) Framework and published the ranking for the States and Union Territories (UTs) in 2019 on the occasion of Good Governance Day, i.e., 25 December 2019.

Which steps are required in furthering good governance in India?

- **Civil Service Reforms:**
  - **Capacity building and training:** periodic training for civil servants and other staff to live up to the changing needs of the governance.
  - **Improve professionalism:** The induction of professionals/specialists into the administrative system, on contractual appointments should be examined and suitable policy changes made in the entry policy.
  - **Rightsizing the Government:** the existing structure and size of the government need to be reviewed to avoid any duplication of work and improve efficiency.
  - **Minimizing discretion:** It is believed that less discretion would lead to a more equitable and less corrupt system.
  - (For detailed steps please refer to handout on civil services)
- **Greater transparency and accountability:** (refer to handouts on Transparency and accountability and RTI for detailed steps)
- **Reduce corruption:** (For detailed steps please refer to handout on corruption)
- **Adequate reforms to enable the use of Information Technology (IT) for Good Governance:** for example, requisite infrastructure, electricity, internet, skill upgradation of staff etc.
- **Judicial Reform:** (for detailed reforms please refer to the handout on Performance of judiciary)
- **Reforms for improvements in service delivery:**
  - **Requisite reforms in Citizen's Charters:** (please refer handout on citizens charter for detailed reforms).
  - **Reforms related to social audit** (please refer handout on citizens charter for detailed reforms).
- **Reforms related to increasing citizen participation in governance:**
  - **Mandatory Participatory budgeting at local levels:** It allows community members to decide how to spend a portion of the public budget to fund improvements for service delivery.
  - **Joint assessment:** Participatory assessment and monitoring with the stakeholders of important flagship programmes at local level.

- **Citizens committees need** to be developed for decision making process and citizens participation in governance.
- The role of **Citizen Advisory Boards** should be strengthened to ensure capacity building and citizens participation in the governance process.

In the present era when India is progressively moving towards development and prosperity, there is a need to reformulate our national strategy to **accord primacy to the Gandhian Principle of "Antyodaya"** and to restore good governance in the country.

The effective functioning of governance is the prerequisite to achieve aim of $ 5 trillion economy by 2024 and to transform from developing to developed country but what is required is a transparent, accountable, and intelligible governance system free from any bias or prejudices.

H130- SDG Governance

Governance is a key steering tool to achieving the UN's Sustainable Development Goals (SDGs). Government departments, Civil society organizations are important stakeholders in policy-making and are an integral part of the communities in which they operate. That makes them key players in driving sustainable development through good governance.

In 2018, The United Nations Committee of Experts on Public Administration has come out with the principles which countries need to embrace in their development for achievement of SDGs. These principles are: effectiveness, competence, sound policy making, collaboration, accountability, integrity, transparency, etc.

The **Sustainable Development Report, 2022** has been released. India's rank in the report has slipped for the third consecutive year. **India has been ranked 121 out of the 163 countries in 2022** and was ranked 117 in 2020 and 120 in 2021. **SDGs are designed to be a "shared blueprint for peace and prosperity for people and the planet, now and into the future".**

What are the SDGs?

- **The Sustainable Development Goals (SDGs),** also known as the **Global Goals**, were adopted by the **United Nations in 2015.**
- The **2030 Agenda for Sustainable Development formed** a global partnership to achieve **17 major targets**, which involve **interlinked goals;** interlinked because they recognize that action in one area will affect outcomes in others, and that development must balance social, economic and environmental sustainability.
- There are specific targets for each goal, along with indicators that are used to measure progress toward each target.
- **The principles of sustainable development include**:
  - Stable and long-term economic growth.
  - Proportionate and balanced economic and social development.
  - Active employment policies.
  - Reduction of regional differences.
  - Growth of personal income and consumption.
  - Preservation of the environment for future generations.
  - Efficient usage and allocation of natural resources.

17 Sustainable development goals are depicted in the image below:

How good governance is pre-requisite in achieving SDGs?

- **Coordination:** coordination is a key requirement of good governance. Various goals like no poverty, zero hunger, good health and well-being etc., require close coordination among various ministries and departments.
- **Holistic development:** The outcomes of good governance include peaceful, stable and resilient societies where services are delivered to communities especially vulnerable and marginalized. This helps in achieving various goals like economic growth, Reduced Inequality, Sustainable Cities and Communities etc.
- **Help in Planning:** In Sustainable development planning and organization to achieve the goals, the concept of governance is crucial as it encompasses the ability to plan to keep citizens at the centre.
- **Sustainability:** good governance involves processes which take long term view of the issues as it tries to reach the root cause of the issue.
- **Effective delivery of services:** Good Governance enables effective delivery of services such as:
  - education, healthcare, environment protection;
  - Enabling economic growth and development in sectors such as agriculture, industry, and;
  - Access legal protection and judicial services thereby covering major components of SDGs.
- **Institutional dimension:** Institutional dimension is crucial for good governance and contributes to it by forming a suitable environment for the performance of the sustainable development mechanisms, enabling government to be more effectively, efficiently and responsibly involved in development plans.

How can SDGs shape the governance process?

The SDGs will help in shaping the governance process in the following manner:

- **Effectiveness:** SDGs will help in strengthening governance process through competence, sound policy making and collaboration across levels of government and functional areas.
- **Accountability:** As clear goals and targets mentioned in SDGs, it helps in monitoring working of government on different goals thus aiding in ensuring accountability of the government.
- **Inclusiveness:** SDGs help in achieving inclusiveness in the governance process through equitable fiscal and monetary policy and promotion of social equity.
- **Equity:** Meeting the current generation's needs and those of future generations get equal consideration (inter-generational equity).
- **Universality:** The SDGs are framed around global problems requiring global solutions. This helps in replicating best practices of other countries with respect to governance, thus improving the overall governance process.
- **Integration/coherence:** SDGs push governance systems towards adoption of cooperation at various levels.
- **Partnerships:** to mobilize the means required to implement this agenda through a revitalized global partnership for sustainable development, based on a spirit of strengthened global solidarity, focused on the needs of the poorest and most vulnerable.
- The SDG agenda being transformative necessitates the effective use of public resources, fostering inclusive and accountable processes and ensuring robustness of data for good governance.

Effective, equitable and ethical governance is sine qua non to ensure an efficient and functioning democracy. Achieving the UN's 17 Sustainable Development Goals will require strong political leadership, a willingness to change and good, outcomes-based governance. Because governance, in contrast to government, relies on a diversity of participating actors which are key to policy-making and implementation and are central in driving and implementing the SDGs and delivering change.

H131- Models of Governance

Governance, in simple terms, is a **collective steering and management of the common problems of the society** through formal law and a rule-based system. As there is a direct correlation between good governance and improved human wellbeing, **various models of governance have been tried all over the world to ensure that welfare of the citizens** while reducing costs associated with poor governance.

What are the various models of governance?

Among plethora of government models, following models are widely discussed and used in various countries:

- **Government-as-machine model**: Herein, government is viewed as a machine dominated by rules, regulations and standards of all kinds. Although this model gained popularity earlier, it **lacked flexibility and responsiveness** to individual initiatives.
- **Government-as-network model:** Contrary to the earlier one, this model suggests government as an intertwined system **- a complex network of temporary relationships fashioned to work out problems** as they arise and linked by informal channels of communication. It intends to **3Cs - connect, communicate, and collaborate.**
- **Market model:** Here, the Government gives **space to the private sector to provide better services** than the traditional public sector.
- **Participatory state model:** This puts more emphasis on greater **individual and collective participation by segments of government organizations** that have been commonly excluded from decision-making.
- **Deregulated government model**: It focuses on less **bureaucratic control, more managerial freedom** and recommendations based on societal needs and collective decision-making.
- **Entitlement based model**: Here, the State provides **basic goods and services to citizens ('Passive receivers')** which it feels are important for the citizens. E.g., providing food grains under PDS in India.
- **Rights based model:** aims at strengthening the capacity of duty bearers (Governments) and empowering the rights holders (Citizens). It considers **citizens as 'active participants'** in decision making. (Discussed in detail - below

What is 'Rights-based model'? Discuss its advantages?

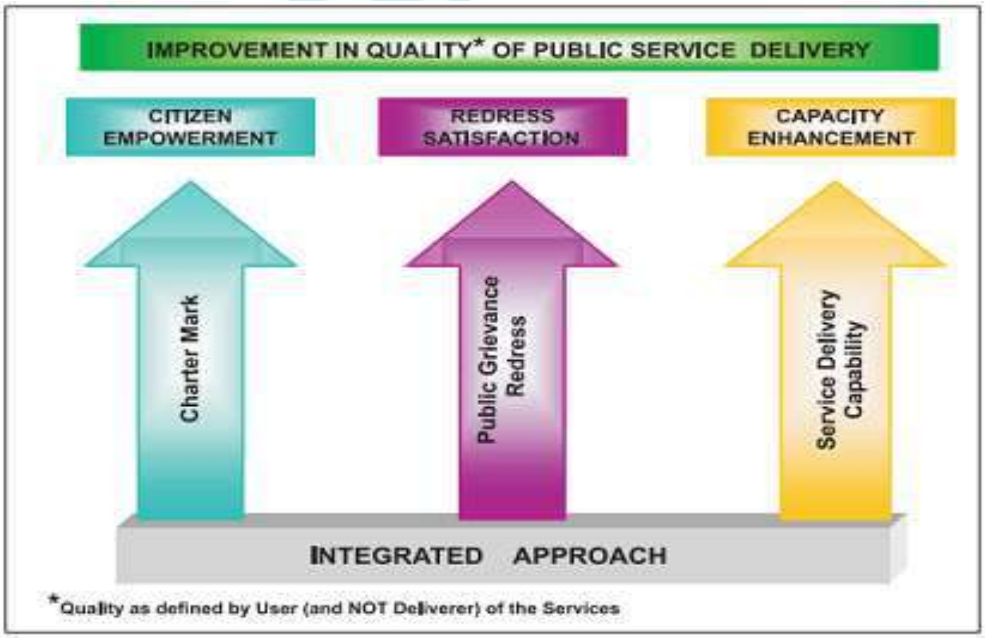
- **Rights based model of governance:** aims at strengthening the capacity of duty bearers (Governments) and empowering the rights holders (Citizens). It considers **citizens as 'active participants'** in decision making.
- In this model, governments adopt a **human-rights framework, including social and economic rights,** to foster development.
- For example, in India:
  - **Supreme Court:** has declared a **right to food, right to a clean environment, right to shelter etc. as Fundamental rights.**
  - **Parliament:** has passed Acts that guarantee a right to education, **right to information, right to rural employment, right to food** etc.
  - **States:** have recently started enacting the **Right to public service Acts** to guarantee timely delivery of designated government services, such as driver's licenses or residence certificates etc.
- **Advantages:**
  - **Active Citizen participation:** in governance is promoted. E.g., the right to information and myGov inputs enable citizens to participate in policy making.
  - **Non-discrimination and ensures equality:** All forms of discrimination in the realization of rights are prohibited, prevented and eliminated.
  - **Mainstreaming the marginalized:** While ensuring equality, the **most marginalized or vulnerable situations remain the priority**. This is crucial for a society like India where the social divisions are often stark.

- **Increases administration efficiency and accountability:** The rights-based approach **inculcates the sense of urgency in the government officials** to avoid a fine. E.g., quicker processing an income certificate.

What is the Sevottam model of governance adopted in India?

- **Sevottam model of governance:** is aimed at serving as a structure for **achieving excellence in public service delivery.**
- **Need:** for the Sevottam model emerged because of the 'Citizen **Charter' failing to produce the required results** in terms of enhancing the quality of public services on its own.
- It serves as a tool for **assessing the efficiency of internal processes** and their effect on service delivery quality.
- It has **3 Modules**:
  - **Citizen Charter:** requires effective charter implementation, which creates a mechanism for people to provide feedback on how organizations decide service delivery requirements.
  - **Public Grievance Redressal Mechanism:** needs a good grievance redress mechanism that, regardless of the final judgement, leaves the citizen more comfortable.
  - **Services Delivery Capabilities:** Organization should build its own capacity to boost delivery continuously.
- **2nd ARC Recommendations**: A 7-step ARC model was also introduced in the Sevottam model:
  1. Define all services which can be provided and identify your clients.
  2. Set standards and norms for each service.
  3. Develop the capability to meet the set standards.
  4. Perform to achieve the standards.
  5. Monitor performance against the set standards.
  6. Evaluate the impact through an independent mechanism.
  7. Continuous improvement based on monitoring and evaluation of results.

As the word Sevottam itself connotes- Seva (Service) and Uttam (Excellent), this model tries to ensure excellence in governance for effective and efficient public service delivery. However, success of this model depends upon the implementation by various government departments. Also, there is a need for political and bureaucratic will to adopt more 'citizen centric processes' like sevottam model to bring sea change in governance.



'Freebie Culture'

What is current debate over 'Freebies culture' in India? Also highlight issues with freebies culture and steps to prevent it?

A. Current debate related to Freebies:

- The issue was brought to the forefront with PM in a rally called for **ending the 'Revdi culture'** (Revdi, a sweet, used as a metaphor for freebies) as it is a threat to the development of the nation.
- A petition sought the court's intervention to direct the ECI to deregister those political parties that promise 'irrational freebies', before elections, financed from public money.

B. Freebies in India:

- Spreading beyond Tamil Nadu, the trend has caught on in other States as well. Over time, freebies have expanded **beyond rice, gas stoves, color TVs, laptops, payments for household work etc.**
- **Delhi:** the government is providing **Free water, electricity** (up to a certain limit), Bus rides for women etc. for the city's voters.
- **HP:** The Government offered **free water and power** (up to 125 units) to locals in villages and a 50% discount in bus fares for women.
- **Assam:** The Government has announced direct and **indirect cash benefit schemes** worth ₹6,000 crores impacting 9 lakh beneficiaries.

What are the issues associated with irrational 'Freebies culture'?

- **Increasing debt of states**: 5 States, namely UP, MP, HP, Andhra Pradesh and Punjab have raised over ₹47,000 crore over two years by mortgaging public assets.
- **Issue of sustainability**: Many States will find recently announced freebies difficult to fund. E.g., Andhra Pradesh announced freebies in FY23 that would consume almost 30% of its own tax; for Punjab this was around 45%.
- **Rising NPAs**: According to the Government, over the past 5 years, Banks have written off loans worth ₹10 lakh crore.
- **Morally wrong**: Making such promises is an insult to voters, when many such promises are simply left unfulfilled.
- **Increases burden on taxpayers**: To fulfill such promises, the ordinary voter has to bear the cost in the form of higher taxes or the opportunity cost of less development.

To what extent can a scheme be labelled as a 'freebie'?

The issue remains debatable, yet the following observations can be made:

- **Not every scheme or manifesto promise is a freebie:** In general sense, schemes like free Laptops, cycles, LPG cylinders, loan waivers etc. may be considered a freebie
- **Schemes like PDS, Free education and Healthcare, etc**.: are more based on development and capital expenditure. Thus, it cannot be considered as a Freebie.
- **Case study – Mid Day meal**: Under the scheme, free food is provided to students at schools. It should not be classified as a freebie given that it **helps improve the children's health (fighting malnutrition)** whilst improving attendance in schools => **leading to higher learning outcomes**
- **Education and health are 'merit goods':** Market mechanism have not been a satisfactory mechanism to deliver these things.
    - Thus, the government is obliged to provide these services at affordable costs.
    - These lay the **foundation for Demographic dividend** => giving higher income in hand => ultimately boosting economic growth of the nation.

- Thus, any scheme that offers **significantly positive social externality should not be considered a freebie**.

How to tackle the irrational 'Freebie culture' in India?

- **Funding plan**: must be provided by Governments (whether State or Centre) while announcing freebies.
    - **ECI should push political parties**: to provide a mechanism to achieve the targets highlighted in manifestos.
- **Budgetary Office:** should be established to aid in writing policies and conducting budgetary analysis for freebies.
- **Consideration of key financial indicators**: such as government's Debt to GDP ratio, revenue expenditure as a % of government income, revenue collection efficiency etc. should be taken into consideration before launching any freebies.
- Transfers towards **capital expenditure schemes should be prioritized** over other schemes.
- **Changing this political culture**: by requiring governments to stick to fiscal probity and making credible policies.

An **all-party committee** must be formed to deliberate on the issue and come up with due recommendations. Enacting an irrational scheme just to win the next election while enabling generational theft should become a **social and political taboo.**

H132- Governance during Covid

"Every crisis presents a new opportunity" - Winston Churchil

The COVID-19 pandemic has shown where the cracks lie in the interrelated levels of global, national and local governance and also exposed many glaring loopholes in the governance in various dimensions like health, education, service delivery etc.

How Covid 19 pandemic impacted various dimensions of governance in India?

A. Covid impact on Health:

- **Ad-hocism in response to covid 19:** These administrators are neither public health professionals nor do they belong to the public health cadre. Most of them are medical professionals and are appointed as clinicians.
- **Lack of dedicated cadre:** No states till date have developed a strong public health cadre by appointing public health professionals for this task at the middle level or higher-level positions.
- **Reactive approach:** Failure to develop institutionalized mechanisms for maintaining public health resulted in every public health response becoming a last-minute crisis management activity.
    - E.g., 'war rooms', 'Covid help desks' etc. all indicate the reactive approach during a crisis.
- **Lack of focus on preventive care:** as focus is mostly on treating the consequences of disease instead of treating its causes.
    - Of all healthcare spending, only 7% was spent on preventive healthcare, while more than 80% was spent on treatment and cure as of FY17.
- **Lack of adequate health infrastructure and manpower:**
    - World Bank data reveal that **India had 85.7 physicians per 1,00,000 people** in 2017 (in contrast to 98 in Pakistan, 58 in Bangladesh, 100 in Sri Lanka and 241 in Japan).
    - **53 beds per 1,00,000 people** (in contrast to 63 in Pakistan, 79.5 in Bangladesh, 415 in Sri Lanka and 1,298 in Japan),
    - and **172.7 nurses and midwives per 1,00,000** people (in contrast to 220 in Sri Lanka, 40 in Bangladesh, 70 in Pakistan, and 1,220 in Japan).
    - **Lack of adequate number of ventilators** in hospitals needed for patients with severe COVID-19 infection.
    - **Limited accredited diagnostic labs** delayed testing and consequent understanding of disease progression.
    - **Unequal distribution of healthcare workforce:** with high concentration in metropolitan or tier I cities and deficiencies in towns and villages.
- **Abysmally low health expenditure:**
    - Health is a State subject and State spending constitutes 68.6% of all the government health expenditure. This has been stagnant for years: 1% of GDP 2013-14 and 1.28% in 2017-18 (including expenditure by the Centre, all States and Union Territories).
    - Most of the States are still under-equipped to detect cases as one testing centre is available for 1.02 crore people.
- **High out of pocket expenditure: WHO** estimates that 62% of the total health expenditure in India is OOP, among the highest in the world.
- **Inter- state disparity:** With just one sample testing centre for 12 crore people, the lowest doctor-patient ratio and the least number of hospital beds per patient among States, Bihar is poorly equipped to deal with the COVID-19 crisis.
- **Failure of Integrated Disease Surveillance Programme (ISDP):** it continues to struggle for manpower and resources and has failed to create a robust and decentralized data collection system involving the district health system across states.
- **Others:**
    - **Refusal by private doctors to treat covid patients in initial phase.**
    - **Neglect towards Care of Non-COVID patients**: including lack of timely diagnosis and treatment of other chronic diseases.
    - **Lack of National vaccination strategy**: led to delay in selection criteria for procurement, and hence delayed delivery of vaccines.

- **Mental Health issues:** Covid 19 led to increased psychological distress in population.

B. Covid impact on Education: (ASER findings with respect to rural education)

- **Shift from government to private schools**: was witnessed across all grades and among both girls and boys.
  - **Covid impact:** financial distress in household and/or permanent school shutdown among private schools.
- **Decreasing enrollment:** 5.3% of rural children aged 6-10 years had not yet enrolled in school this year, in comparison to just 1.8% in 2018.
  - **Covid impact:** families are waiting for schools to open to seek admission.
- **Unequal education support from families:** during closure of schools. Children in lower grades need more family support and educated parents can provide more family support.
- **Uneven access to Learning Materials and Activities:** A higher % of private school children received learning materials/activities as compared to government school children in the same grades.
- **Digital divide:** About 36% of rural households with school-going children had smartphones. By 2020, that figure had spiked to 62%.
- **Interstate disparity:** in children's receipt of learning materials or activities during the covid period. States where less than a quarter of all children had received any materials include Rajasthan (21.5%), Uttar Pradesh (21%), and Bihar (7.7%).
- **Introduction of e learning and issues:**
  - **Social Isolation of students requires strong self-motivation.**
  - **Lack of** face to-face communication in an online setting, the students might find that they are unable to work effectively in a team setting.
  - **Cheating prevention** during online assessments is complicated.
  - **Poor Attendance and assessment process:** As a result, they do not gain anything from the classes.
  - **Teachers under stress:** due to the online mode of education. First, the preparation time has almost doubled. Second, students do not take their instructions seriously.
  - **Physical discomfort:** Given the long hours spent before the screen students reported ear, eye, body pain, Depression and stress related illnesses etc.
  - **No extracurricular activities:** Most college students begin to understand, value and internalize the institutional ethics and traditions.

C. Covid impact on service delivery:

- Travel restrictions coupled with client confidentiality clauses and work-from-home advisories due to COVID-19 resulted in low productivity and impacted the service delivery models.
- Altered the progress and sales of e-commerce, affecting the efficient delivery services.
- Similarly, it affected crucial government services like construction activities, transport etc.

What were the initiatives taken by the government to reform governance during the pandemic?

- **Decentralized Government Implementation and response:** The Central, state and district administration are seen to have galvanized the government and non-government machinery.
- **Increased use of AI, ICT and frugal innovation:**
  - E.g., Electronic Vaccine Intelligence Network (eVIN), e shushrut etc.
  - Tamil Nadu's COVID-19 Quarantine Monitor, Maharashtra's **MahaKavach,** Arogya Setu app etc. for **contact tracking:**
  - Mobilized Covid specific hospitals in record time. E.g., conversion of rail coaches into isolation centers etc.
- **Increased participation of Private sector and Civil society:** in production of ventilators, masks, PPE kits as well as manufacturing of low-cost testing etc. E.g., PM Cares fund.
- **Whole-of-government approach:** (World Bank report)

- "A whole-of-government approach
- It enagages all key ministries and state governments while ensuring clear separation of roles and responsibilities of different committees involved in procurement.
- Handholding the industry, accelerated tendering and pre-dispatch inspections by competent agencies, including testing of random samples, helped to ensure quality of products," the report stated.

- **Increased investments in Public Health:**
  - For example, ramping up investment in Health and Wellness Centres in both rural and urban areas.
  - Preparing India for any future pandemics: Maintaining Infectious Diseases Hospital Blocks in all districts of the country, strengthening of lab network and surveillance by creating Integrated Public Health Labs wtc.

Discuss some success stories of good governance during the pandemic at District, State, National and International level.

A. **Best practices at District level:** (highlighted by National Centre of Good Governance)
- **Strict enforcement:** The strategy of the District Administration in Bhilwara, Rajasthan, which has since been known as the **"Bhilwara Model",** involved **ruthless containment,** imposition of a curfew, and limited mobility.
- **Ranchi's** handling of returning migrants: Ranchi which suddenly saw migrants return to the state, launched **the 'Tatpar' initiative** – assigning dedicated vehicles to pick travelling migrants from various locations, provide footwear, food and medicines, conduct screening for COVID.
- **Tirunelveli district in Tamil Nadu** set up a **call center with multilingual staff** to address grievances of migrant labour.
- **Jabalpur:** An **app, Jabalpur mart**, was created for ensuring door to door supply of essentials. Jaipur stands out for its special helpline for senior citizens.
- **Mumbai** initiated the **strategy of using pulse oximeters** for vulnerable sections and a targeted approach for congested areas and slums with poor distancing facilities.
- **Dakshin Kannada district in Karnataka:** door-to-door surveys to check for people with symptoms, those with co-morbidities and helped generate map clusters and patterns more clearly- which ensured a high degree of COVID 19 surveillance.
- **Others:** Sircilla geo-tagging of quarantined patients; Hazaribag set up community kitchens with the help of local bakeries and roped in NGOs for food distribution; Pathanamthitta's Corona RM software: to create a database of Covid patients and their contacts.

B. Best practices at state level:
- In **Kerala, walk-in sample kiosks** were set up.
- In **Karnataka,** every time a person tested positive in an area, random testing was undertaken in the entire area.

C. Best practices at National level:
- The coaches of trains that were converted into isolation facilities by Indian Railways are examples of **innovation.**
- **Leverage technology:** A striking example of this is **India's Aarogya Setu app,** which has been able to identify at least 3,500 hotspots across the country.
- **Whole of government approach** of government of India.

D. Best practices at international level:
- **Testing:** New Zealand ramped up its diagnostic testing and was able to eliminate the virus.
- **Contact tracing:** South Korea showed a robust contact-tracing strategy; New Zealand used scan QR codes at different locations to track virus movement.
- **Institutional quarantine:** Nations that imposed passengers quarantine at airports were better off. This was the reasons why Vietnam, which shares a 1,450 km border with China reported so less Covid-19 cases.
- **Online training and protocols** help impart training to frontline workers: South

Korea undertook the training of a vast number of volunteers and frontline workers through videos and training programs.

What is smart governance? Why was its need felt during covid 19?

- **Smart governance:** is a lean, data and evidence-based working system of governance. It focuses on citizens' lives & livelihoods and **works in partnership with citizens** at every level, with a **bottom-up approach.**
- **Features:** Thus, small size, leadership of domain experts, decentralization, shunning over-politicization and direct communication with citizens are the building blocks of smart governance.

Need for Smart Governance in India during covid:

- **Centralizing tendencies during 1st wave:** E.g., the vaccine policy suffered from a 'fits and starts approach' due to over centralization, imposition of lockdown without consulting with states.
- **Lack of expert engagement**: No government – states or Centre – initially created an empowered body of experts independent of governing politicians.
  - E.g., autonomous task force of top doctors, epidemiologists, scientists, logistical experts etc.
  - This could have helped in better tracking of virus, genome sequencing, transport of oxygen and vaccine procurement was needed.
- **Trust deficit and politicization:** Tug of wars between States/ UTs and Centre in management of the pandemic. E.g.:
  - Differences between Delhi and Centre came to fore, Bengal protested at district officials being summoned to meetings with the PMO without its knowledge.

What further reforms are needed in Governance to be ready for any future pandemic?

A. Governance reforms in Healthcare:

- The inter-State variation in health expenditure highlights the **need for a coordinated national plan** at the central level to fight the pandemic. For examples, coordinated strategy on essential supplies of oxygen and vaccines.
- **Potential of telemedicine** to provide healthcare access in remote areas. "This needs to be harnessed to the fullest by especially investing in Internet connectivity and health infrastructure.
- **Need to design policies that mitigate information asymmetry in healthcare.**
- India's healthcare policy must focus on its **long-term healthcare priorities.**
- **Professional public health cadre**: There is a need to build institutions for public health practice with professional public health cadres (workers, administrators, epidemiologists, policy makers and others) with a regular mandate of maintaining public health for a designated population.
- **Focus on Prevention of outbreaks:** In public heath practice, primacy should be given to the social causes of disease occurrence rather than social consequences, as the latter may not even arise if occurrence is prevented.
- **Increase expenditure:** The economic survey 2020-21 has backed the "National Health Policy – 2017" framework for more than doubling public spending on healthcare, arguing that it can halve the out-of-pocket (OOP) expenditure on healthcare for Indians.
- **Improving robustness of Pharma Supply Chain:** India needs to diversify its sources of raw materials as well as destinations for products.
- **Upgrading urban health services**: which focuses on primary healthcare, along with major upgradation of urban living conditions, especially in "non-notified" slums which must be recognised as integral to the city.
- **Creation of Central Bed Bureau**: as recommended by SC in 1997 to ease the pressure for emergency beds. The Bureau should be equipped with wireless or other

communication facilities to find out where an emergency patient can be accommodated.

B. Other reforms:

- **Maximize the use of data analytics and bring data transparency:** Data reporting has to be standardized and real time to ensure that meaningful insights can be drawn quickly to help guide strategies.
- A decision-making process free of bureaucratic and political controls and more **reliance on experts and evidence-based decision making.**
- **Making society more resilient to critical risks.**
- **OECD has recommended the following steps to tackle future pandemics:**
    - **Identification and assessment of risks** helps set priorities and inform allocation of resources.
    - **More investment in risk prevention and mitigation** such as investments in protective infrastructure, but also non-structural policies such as land use planning.
    - **Flexible capacities for preparedness,** response and recovery help manage unanticipated and novel types of crises.
    - **Good risk governance** -transparent and accountable risk management systems that learn continuously and systematically from experience and research.

A great challenge of our time is not only to control the pandemic and minimize damage to economies and public health, but to **apply lessons the pandemic offers, to build a better system of governance.**

Focusing only on the consequences of disease without addressing its causes is always like "Mopping the floor while keeping the tap open". **Sustainable and durable governance systems must be built to prevent future pandemics and secure mankind.**

H133- Transparency

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing." -Justice P N Bhagwati.

In August 2020, elaborating on his priorities and focus points ahead of his tenure as the Chief justice of India, Justice UU Lalit said that it is important for us to strive hard to make the process of listing in the top court as clear and transparent as possible. We must focus on bringing more transparency to the judicial system.

Transparency is widely recognised as a **core principle of good governance.** Transparency is crucial because it opens up government's records to public scrutiny, thereby arming citizens with a vital tool to inform them about what the government does and how effectively, thus making the government more accountable. Also, transparency in government organisations makes them function more objectively thereby enhancing predictability which is crucial in ensuring good governance.

What is meant by Transparency?

- Transparency means sharing information and acting in an open manner. Free access to information is a key element in promoting transparency. Information, however, must be timely, relevant, accurate and complete for it to be used effectively.

How Transparency leads to good governance?

Transparency is a key pillar of good governance as:

- Transparency enhances civic engagement:
  - Transparency helps not only to inform the public about development ideas and proposals, but also to convince citizens that the public agencies are interested in listening to their views and responding to their priorities and concerns. This in turn enhances the legitimacy of the decision-making process and strengthens democratic principles.
  - Thus, transparency can help to stimulate active engagement of the private sector and civil society in public affairs.
- **Promotes openness and hence reduces malpractices:** Information is crucial to good governance as it reflects and captures government activities and processes. This is crucial in tackling a variety of malpractices as sunlight is said to be the best disinfectant.
- **Leads to accountability:** Accountability and transparency are indispensable pillars of good governance that compel the state and civil society to focus on results, seek clear objectives, develop effective strategies, and monitor and report on performance.
- **Promotes efficiency:**
  - Through public financial accountability and transparency, governments can achieve congruence between public policy, its implementation and the efficient allocation of resources.
  - Lack of financial accountability could lead to inefficiency, waste, and pilferage, and even impede development.
- **Leads to effective feedback mechanism:** Transparency, makes sure that government gets feedback from the ground about what's actually happening in their programs, especially in decentralized settings. So, information flow in this way changes the ability for the government to manage its own programs.

What should be the strategy to increase Transparency for ensuring good governance?

Strategy for Transparency and Good Governance:

Strategy	Specific initiative
I. Access to information	**1. Access to Information Laws:** • Records Management laws and Computerisation. • Whistle Blower Protection. • Disclosure of Income and Assets subject to rules. • Complaints and Ombudsman Office. **2. Putting information in the public domain:** • Web based approvals to be put on the website.
II. Ethics and Integrity	3. Developing and implementing **model code of conduct** for political representatives, civil service, judiciary, civil society groups etc. 4. **Removal of all discretionary powers** provided to officials under the law which may lead to misappropriation in government. **5. Public hearings & Public meetings:** a. Transparency in procedures and systems by opening up procedures for public review. b. Peoples' estimates; social audit. 6. **Prior consultation with the public** in the process of policy making.
III. Institutional reforms	1. **Public service agreements for delivery of services** by executive agencies – holding them accountable objectively and transparently. 2. Participation of stakeholders in various decision-making processes. **a. Citizen committees to be a part of the decision-making process.** b. Encourage and facilitate public participation through – i. Public Hearings, ii. Study Circles, iii. Citizen Advisory Boards, iv. Government Contract Committees, v. Public Watchdog Groups, vi. Independent Anti-Corruption Agencies **3.** Enhance participatory decision making through the **constitution of Citizen Boards and focus groups.** **4. Capacity building of citizen and civil society groups.**
IV. Targeting specific issues	**1. Easy access of government officials to the public** • **Contact numbers of senior officials to be made available** to the public for the purpose of registration of grievances. • Departmental websites to provide the contact numbers, emails and other details of senior officials. 2. Citizen service facilitation counters.

V. Assessment and Monitoring	1. Performance Measurement and Management: **a.** Monitoring departmental performances through **performance indicators.** **b. Annual Performance White Papers.** 2. Developing and Implementation of **citizens' charter** in all government departments Citizens' Charters: a. Citizen charters to give timelines of service delivery. **3. Publishing Annual Reports:** a. Dissemination of white papers. b. Annual reports published by departments with pre-specified framework for contents.

What are the steps taken by GOI to ensure Transparency in governance?

- **Right to Information Act, 2005:** The basic object of the Right to Information Act is to empower the citizens, promote transparency and accountability in the working of the Government, contain corruption, and make our democracy work for the people in real sense.
- The Centrally Sponsored Scheme **"Improving Transparency and Accountability in Government through Effective Implementation of the Right to Information Act"** was launched in August 2010. The scheme aimed to achieve the following Outputs:
  - RTI requests are filed by the public with ease.
  - Improvement in quality and speed of disposal of RTI requests and appeals.
  - Effective Information Commissions to ensure compliance with the provisions of the Act through capacity building of Central/State Information Commissioners
- **Citizen Charter Bill 2011:** It lays down obligations of every public authority towards citizens, specifying delivery of goods and services in a time-bound manner and providing for a grievance redressal mechanism for non-compliance of citizens' charter.
- **E-Governance:** The utilization of ICT tools, the Internet and web 2.0 tools to enhance public information provision provided to citizens/businesses regarding the operations, budget, and political process conducted by the governments.
  - For example, **Digital India mission, JAM trinity, Direct benefit transfer schemes** etc.
  - **Other Initiatives:** e-Office, e-Leave management system, Employee Information System, Smart Performance Appraisal Report Recording Online Window (SPARROW), Aadhar enabled Bio-metric Attendance System (AEBAS), Pension Sanction and Payment tracking System (Bhavishya), Public Financial Management System (PFMS), Government e-Market (GeM), Central Public Procurement Portal (CPPP), Foreign Visit Management System (FVMS), Web Responsive Pensioner's Service for pensioners etc.
- **Simplifying processes:**
  - The Central Government has **scrapped nearly 1,500 obsolete rules and laws** with an aim to bring about transparency and improve efficiency.
  - **Self-attestation of certificates** and **abolition of interviews for job selection at junior level.**

In conflict between transparency and privacy which one needs to be prioritized? Can there be compatibility between them? What are the issues in transparency vs national security debate.

Dr Manmohan Singh opined "There is a **fine balance required to be maintained between the right to information and the right to privacy**, which stems out of the fundamental right to life and liberty. The citizens' right to know should

definitely be circumscribed if disclosure of information encroaches upon someone's personal privacy. But where to draw the line is a complicated question."

Priority to Transparency:

- Transparency is a key component in the modern age and providing basic personal information could not be covered under the right to privacy.
- Though fundamental, Right to Privacy is **not an absolute one.** The State may collect and use personal data of citizens for a legitimate purpose and not by compulsion.
- **To avoid misuse:** Transparency law aims to ensure that no one puts on a facade of safety or privacy with the intention to protect himself against the disclosure of data which can be mandated through RTI.
- **Adequate safeguards are available in RTI act:** under Section 8(1)j, the applicant will have to satisfy the Public Information Officer that the data is for **public interest** and its disclosure will benefit the public as a whole. If the officer is satisfied, the data can be provided.
- **Public interest is supreme:** As mentioned by the RTI act, the general public interest should take precedence over the right to privacy of the individual.

Priority to Privacy:

- A person's body belongs to the state only in a totalitarian State. A person should have the **right to "informational self-determination".**
- **To ensure dignity:** Liberty and privacy are inalienable rights necessary to truly lead one's life.
- **Need of the time:** Laws should reflect the "needs of the times" as the use of ICT widens the scope of huge data being in public domain.
- **High scope for surveillance:** It is very well-known that the authorities are the custodians of numerous non-public records of various citizens. If such records are made subject to RTI, a large invasion with respect to the privacy of an individual.

The question arises- "do we have to sacrifice one right to enforce the other?"

- At the first inspection, it may seem that the right to access information and right to privacy is irreconcilable. But privacy law and right to information law are like **two sides of the same coin** – acting as complementary rights that encourage individual's right to protect them and to promote government accountability.
- Experts have come up with the view that "you can have varying amounts of transparency and privacy regarding a particular subject, but **you can't have total transparency and privacy at the same time."**
- **However,** these rights are **completely compatible** as:
    - These rights do not have to be balanced against one another. **Privacy protections must be inversely proportionate to power** and, as Julian Assange says, transparency requirements should be directly proportionate to power.
    - It means: There is no public interest in reducing privacy for **ordinary citizens – the powerless** – but there are huge public interest benefits to be secured by increasing transparency of **politicians and bureaucrats, who are powerful.**
- In transparency law, if the privacy of an individual could be infringed, transparency would not be required unless it is in the public interest.
- In other words, the '**public interest test'** allows us to use privacy law and transparency law to address power asymmetries rather than exacerbate them.

Way forward:

- When the two rights confront each other, the government needs to develop strategies and mechanisms to limit conflicts and to reconcile the rights as far as possible.
- **Situational imperatives or urgency must determine the primacy** of one right over the other.
- The challenge lies with demarcating the extent or **limit to which private information may be disclosed.**

What is the issue of Transparency and National Security?

The Debate:

Arguments for transparency:

- **No accountability:** Without transparency, there can be no accountability for government abuses and no way to ensure that our government's actions reflect the will of the people. Excessive secrecy also damages national security.
- **Chilling effect:** The indiscriminate application of OSA can have a chilling effect on the freedom of the press and whistleblowing by public officials and employees of governments.
    - For example, had the OSA been invoked and been considered binding at the time, a **2G or a coal scam** could never have been exposed.
- As per Supreme Court there is no provision in the OSA or any other statute under which Parliament empowers the executive to "restrain publication of documents marked as secret or from placing such documents before a court of law which may have been called upon to adjudicate a legal issue".
    - Supreme Court gave an apt example of the US Supreme Court's judicial wisdom in refusing to recognize the executive government's right to restrain the publication of the Pentagon Papers that detailed the abject failure of the US's Vietnam strategy.

Arguments for national security:

- However, the Centre, in its affidavit presented at the SC, claims that this could make all closely guarded secrets "relating to space, nuclear installations, strategic defense capabilities…" vulnerable.
- National security might sometimes require that the operational details of military or intelligence efforts be kept secret.

What should be the way forward?

- The **"public interest" should be touchstone** of whistle-blowing. Indeed, the whistleblower or a news organisation collaborating with the former hardly likely ignore the legal implications if the matter being leaked doesn't stand the test of "public interest".
- The SC also cited Section 8(2) of the RTI Act to say "notwithstanding anything in the Official Secrets Act and the exemptions permissible under sub¬section (1) of Section 8, a public authority would be justified in allowing access to information, if on proper balancing, public interest in disclosure outweighs the harm sought to be protected." This forceful vote for transparency is far more preferable to intransigent opacity in the name of state secrets.
- **Diluting Secrecy:**
    - **Change the Incentives That Lead to Overclassification:** The executive order governing classification should be revised to require officials with classification authority to document their reasons for classifying information.
    - **Curtail Secret Law:** The Parliament should adopt rules to sharply limit classification of the legal standards governing official conduct.
    - As part of the review, the **Home Secretary should take input from security** agencies to reduce the number of documents that can be classified as secret; to make the process more representative, civil society should also be included in the dialogue.
    - In 2006, the **2nd ARC recommended that the OSA be repealed and replaced** with a chapter in the National Security Act as it is "incongruous with the regime of transparency in a democratic society".

Secrecy in government operations is necessary, but it has to be limited by absolute necessity, keeping the confidentiality strictly time-bound. As rightly said by **Edward Snowden "There can be no faith in government if our highest offices are excused from scrutiny, they should be setting the example of transparency."**

Official Secrets Act, 1923:

- The draconian OSA was enacted in 1923 by the British and it was amended post-Independence, perpetuating the insulation of the government from public scrutiny.
- The statute has provisions that are too broad and vague, often leaving room for arbitrariness.
  - For instance, under Section 2(8)(d) of the Act defining a "prohibited place", "any railway, road, way or channel or other means of communication by land or water…" can be notified by the Central government as a 'prohibited place'.
  - Section 3 provides for penalty for spying to be imposed on anyone who is even found in the 'vicinity' of a prohibited place.
- **Law is misused again and again:** for example, retired general V.K. Singh, who **wrote a book detailing instance of corruption, nepotism and negligence within the Research and Analysis Wing,** was charged with an offence under the OSA.

RTI vs. OSA:

- No other Act has done more to create a hiatus between the people and the public institutions than the Official Secrets Act. It has weakened participatory democracy, made transparency look like an avoidable luxury, and provided the perfect smokescreen for unaccountable functioning of public servants. This Act promotes and nurtures irresponsibility.

The legal position is clear: **whenever there is a conflict between the two laws, the provisions of the RTI Act override those of the OSA.**

- Section 22 of the RTI Act states that its provisions will have effect notwithstanding anything that is inconsistent with them in the OSA.
- Similarly, under Section 8(2) of the RTI Act a public authority may allow access to information covered under the OSA**, "if the public interest in disclosure outweighs the harm to the protected interests".**
- It is the **interpretation of 'public interest'** that is the challenge.

National security laws should balance the need to ensure state sovereignty with principles of transparency and accountability.

Whistleblower Protection Act vs. OSA:

The amendments proposed in the Whistleblowers Act will further strengthen OSA and make governance opaque. Whistleblowers Amendment Bill:

- It not only revokes the immunity granted to whistleblowers from prosecution under the OSA, but also makes whistleblowing impossible.
- It protects information relating to national security from disclosure, would cover trade secrets, foreign relations, fiduciary relationships, etc.
- It also debars the disclosure of information obtained by any other means than RTI, and requires the clearance from authorities who may themselves be implicated if the documents are made public. Such a deliberately expansive view of what constitutes official secrets is surely not genuine and legitimate.

As aptly observed by **James Madison "A popular Government without popular information or the means of acquiring it is but a Prologue to a Farce or a Tragedy or perhaps both. Knowledge will forever govern ignorance, and a people who mean to be their own Governors, must arm themselves with the power knowledge gives.**" Thus, necessary reforms must be taken to empower the weapon of transparency to unleash the web of secrecy, which is the root cause of major issues surrounding governance.

H134- Accountability

"A body of men holding themselves accountable to nobody ought not to be trusted by anybody." — Thomas Paine

Accountability is about **being answerable** for **everything done or not done** in governance.

What is meant by accountability?

- Accountability refers to the process as well as norms that make decision makers **answerable** to ones for whom decisions are taken.
- It is **not limited to answerability to seniors** in hierarchy only as part of chain of command but **also includes to the stakeholders** including citizens and civil society.

What are the types of Accountability?

- **External accountability:** This is between the Government and the citizens which is established through the elections.
- **Internal accountability:** It refers to systems of checks and balances and oversight mechanisms.
- **Financial accountability**: demands for grants from various ministries and departments are reviewed by the various standing committees.
- **Ethical Accountability:** For example, Organization and their employees have to be accountable to each other.
- **Professional Accountability:** When anyone held accountable by his or her employer or by a professional body. This can include things like being held to a code of conduct or being required to meet certain standards.
- **Legal Accountability:** When anyone is held accountable under the law. This can happen if you break the law or if you do something that could result in legal action being taken against you.
- **Political Accountability:** It is the ability of citizens to hold their government officials accountable for their actions. It is a core principle of democracy and is essential for maintaining the rule of law and protecting human rights.

What is the importance of accountability for good governance?

- **Encourages responsible government:** as it facilitates a feedback mechanism between the Government and citizens.
- **Improves public confidence in the government:** accountability provides for remedial measures including punishment in case of deviation from norms, and thus helps in improving public confidence in government performance.
- **Necessitates Transparency:** in decision-making. Also, it presupposes that accurate and reliable information and data is maintained by the government agency and is available in public domain for public scrutiny.
- **Promotes good governance:** by helping to ensure that decision-makers are answerable for their choices and that institutions are responsive to the needs of citizens.
- **Strengthens democracy:** Accountability is a core principle of democracy, as it helps to ensure that those in power are answerable to the people they represent.
- **Help in curbing corruption:** as answerability increases transparency and hence minimizes chances of malpractice.
- Facilitates Integrity which is a key pillar of good governance.

What is the link between Transparency and Accountability?

Both Transparency and accountability are **interlinked with each other** in the following manner:

- Usually, **transparency is considered as a pre-requisite of accountability**. This is because for an action to be evaluated properly there should be access to all necessary information. If access is denied, then accountability cannot be ensured.
- Transparency and accountability in administration is the **sine qua none of participatory governance**.
- Both transparency and accountability support each other. For example, both are critical for the efficient functioning of the economy and fostering social well-being.

- Both transparency and accountability are viewed as necessary **conditions for good management.**
- Democracy loses its sense if there is no transparency and accountability, because if a democratic country does not respect these principles, then the concept of democracy as a system governed by the people becomes nonsense.

Despite having the above linkages, both (accountability and transparency) are different in the following aspects:

Criteria	Transparency	Accountability
Definition	Conducting activities of performing actions openly and clearly.	Being responsible for one's actions and having the ability to provide sound reasoning for actions.
Focus	Openness and clarity	Acknowledgement and being responsible for one's action

What are the challenges faced in ensuring accountability in governance?

- **Structural constraints** such as lack of manpower hinder the accountability in governance.
- **Grievance redressal mechanism:** Lack of proper grievance redressal mechanism hinders timely redressal of grievances and answerability of officials for any failures or malpractices.
- **Digital Divide:** There is issue of urban-rural digital divide due to unavailability of internet connectivity in rural areas hinders rural public officers' accountability.
- **Social audit:** Government has not mandated institutionalization of social audit, thus making auditors vulnerable to implementing agencies, who face resistance and intimidation and find it difficult to even access primary records for verification.
- **Bureaucratic apathy:** for example, information is denied to citizens in the name of national security or under official secrets act.
- **Lack of political will to change:** for example, lack of implementation of police reforms despite directions of supreme court, lack of compliance of political parties with the CIC order related to bringing political parties into the domain of RTI act etc.
- **Accountability issues with the judiciary:** refer performance of judiciary handout.

What steps are needed to ensure accountability in governance?

- **Digitalization: The modernization and computerization of public administration** are considered as the main factors of government transformation toward a higher level of transparency and open information accessibility.
- **Citizen charter:** as it provides platform to citizens to demand answers in case of failure in service deliveries.
- Elements of **discretion need to be minimized** for ensuring responsiveness, transparency and **accountability.**
- Strong administrative framework: **In order for the accountability** mechanism to be really effective, it also needs to be ensured that the framework itself is robust.
- **Institutional mechanism**: Existence of strong and independent accountability institutions is a necessary condition for good governance. For example, CVC, Lokpal etc.
- **Monitoring and Evaluation:** Constant monitoring of the government's initiatives, evaluation of the success and failure against the set objectives and communicating the same with all stakeholders is of utmost importance to bring trust and transparency.
- **Proactive sharing of information:** Sharing the information at stages of planning, formulation, implementation and monitoring, and giving updates at pre-decided intervals is one of the critical factors.
- **Making social audit mandatory** for all government schemes and programmes.
- **Other measures needed:**

a) Strengthening and streamlining reporting mechanisms.
b) Streamlining and fast-tracking departmental enquiries.
c) Linking performance with incentives.
d) Overhaul of employee's grievance procedures.
e) Action on audit findings.
f) Reforms in Citizen Charters for monitoring service delivery.
g) Reforms in the Right to Information Act.
h) Code of conduct for civil servants.

What are the steps taken by GOI to ensure accountability in governance?

- The **Right to Information Act 2005** has introduced a huge element of transparency in the decision-making in the government as well as access to information.
- **Digitalization:** Digitization of various services to the citizens has not only facilitated transfer of delivery of services but also provided a clear trail of transactions for any analysis by an oversight agency.
- **Citizen Charter:** The Citizen's Charter also clearly spelt out the responsibilities of various agencies of the government. For example, CBDT provides service delivery standards for the issue of refund or redressal of grievances.
- **Structural reforms:** Such as the **Real Estate Regulation and Development Act 2016(RERA), GST, Benami Transaction Prohibition (Amendment) Act, 2016, Insolvency and Bankruptcy Code (IBC) and digitization of land records** also brings greater transparency in a sector.
    - **Institution of Lokpal:** to keep an eye on corruption related issues.
    - **Centralized Public Grievance Redress and Monitoring System (CPGRAMS):** The Department of Administrative Reforms and Public Grievances established CPGRAMS in June 2007.
- **E-Governance:** For example, Smart Performance Appraisal Report Recording Online Window (SPARROW), Aadhar enabled Bio-metric Attendance System (AEBAS), Pension Sanction and Payment tracking System (Bhavishya), Public Financial Management System (PFMS), Government e-Market (GeM) etc., have led to greater accountability of government.
- **Public Interest Litigation:** Justice P. N. Bhagwati introduced public interest litigation (PIL) as a means of securing public interest and ensuring accountability of the executive and the legislature.

As said by Mahatma Gandhi "It is wrong and immoral to seek to escape the consequences of one's acts." Thus, to prioritize people's welfare, accountability needs to be tied to an organization's mission and ingrained in the minds of the people leading those institutions as the cost of absence of accountability is insurmountable.

H135- CORRUPTION

Corruption is the cancer that steals away from the poor, eats away at governance and destroys the moral fabric of nation - Robert Zoellick

On 27 August, 2022, in a blow to the education department of Karnataka, two associations representing almost 13,000 schools have written to the Prime Minister over corruption in the state.

According to the **fourth report of the Second Administrative Reforms Commission on "Ethics in Governance**", corruption is an important manifestation of the failure of the ethics and value system in society".

Corruption is caused by a mix of factors, some having a basis in society, while others in administration. The two factors are also interrelated. As per **Transparency International Report, 2021, India ranks 85 among 180 countries** in a corruption perception Index (CPI), highlighting the need to address corruption comprehensively at all the levels of governance.

What is corruption? What is the status of corruption in India?

Meaning:

- Corruption is the abuse of **power or public positions for private gains.**
- Corruption is defined as a kind of illegitimate favor for immediate or future personal gain for doing an official work which one is supposed to do free of charge and objectivity.

Status of Corruption in India:

- India has the **highest rate of bribery and use of personal links to access public services** such as healthcare and education in Asia, according to a **survey released by Transparency International survey of 2019**.
- **As per the Global Corruption Barometer-Asia-India has the** highest overall bribery rate (39%) and the highest rate of citizens using personal connections (46%), following India, Indonesia and China have the second and third highest rates of people using personal connections with 36% and 32% respectively.

What are the reasons for corruption in India?

Social:

Corruption arises due to **incentive structures within society** in the following ways:

- Desires for **dominance of one's caste, family** etc. lead to issues such as rise of **criminal elements in politics, nepotism etc**.
- **Materialism** promotes desire for wealth, which is **undercut by limited opportunities for mobility** in economy and society. This convinces people to **take bribes.**
- **Lack of education, awareness and activism** contributes to increasing corruption as people show an **attitude of servility instead of raising their voice** and taking stand against corruption.
  - For example, the **fear-based social attitudes towards police and strongmen** politicians.
- **Decline in moral values** in society leads to **a crisis of character** for people manning administration as well. For example, **a civil servant who takes dowry** is unlikely to take stand against social ills due to **compromised integrity.**
- **Sanskritisation of corruption:** describes societies where corruption shows power & gives status thus, **people's tolerance and indulgence of corruption** leads to **normalization of corruption.**
  - For example, giving bribes for police verification in issuing of passports, or bribing traffic police rather than paying fine.
- **Social discrimination:** The poor and marginalized due to their lack of awareness and high dependence on the state become the easy target of exploitation by corrupt officials.

Administrative:

- **Ineffective Institutions** reduce the trust of people in working of institutions and service delivery through correct mechanisms. This convinces people to give **bribes or unauthorized fees to avail services** in timely manner.
  - For example, in **updating Aadhar** data.

- **Misuse of trust and authority** for illegitimate gains create top-down corruption.
  - For example, the Bofors scandal or 2G scam.
- **Poor socio-economic policies** over the years have limited opportunities for gainful social mobility and status to public employment. The **unhealthy competition** for public sector jobs creates **breeding ground for corruption.**
- **Lack of transparency and accountability** in government institutions results in issues like **diversion of funds, nepotism** in appointments, tender allocation, or prevalence of **fear and favor-based incentives.**
- **Nexus between political parties and industrialists:** can compromise policy making.
  - For example, lobbying by Bidi barons against pictorial warnings on smoking.
- Corruption can occur due to **low salaries**. For example, ASHA workers demanding extra money for proper care and services for childbirth.
- **Colonial bureaucracy:** The bureaucracy essentially remains colonial in nature characterized by 19th century laws e.g., Police Act 1861, complex rules, wide discretion, secrecy, moral responsibility devoid of legal accountability and the ivory tower attitude.
- **Failed reforms**: Lack of political will and resistance from within the bureaucracy has led to failure of major reforms like citizen charter, RTI and e-governance.

Political:

- **Criminalization of politics:** According to **Association for Democratic Reform (ADR),** the percentage of MPs and MLAs getting elected with criminal charges is consistently **increasing over the years.**
- **Political instability:** perpetuates corruption as political instability leads to low checks and balances and hence low accountability.
- **Crony capitalism:** as nexus between politicians and industries exchange favors to each other. For example, political funding by corporates leads to the return of favors in the form of contracts.
- **Issues in electoral funding:** for example, no cap on funding for political parties.
- **Decreasing moral values:** politics is becoming a business, as people enter the political arena to make money and retain their money and power.

Legal:

- **Lack of teeth to the institutions:** Example- CVC, CBI – lack of independence etc., Lokpal- require prior permission from government for prosecution of government officials.
- **No protection from the whistleblower.**
- **Prevention of Corruption (Amendment) act 2018: punishment to bribe giver** may reduce registration of complaints.

Ethical:

- **Lack of value education:** The value education has failed miserably in India to inculcate the value of empathy, compassion, integrity, equity etc. in the young generation. The lifestyle changes induced by globalization have further degraded the moral fabric of society.

Economics:

- **Red tapism and lack of Ease of Doing business:** The plethora of approvals required to start and run a business with no transparency and legal accountability related to matters such as time limits force the entrepreneurs to overcome the red tapism through bribery.
- **High inequalities and huge poverty:** as the poor lack the purchasing power to buy the services from the market, they tend to depend on the state for basic services- food, houses etc.

What are the consequences of corruption in India?

Negative Impact:

- **Degrades Social fabric:** of the society, erodes the credibility of the government and leads to exploitation and violation of fundamental rights of the poor and marginalized.
- **Ease of doing business**: Corruption hampers ease of doing business and also degrade India's ranking on Global Competitiveness Index.
- **Perpetuates inequality:** as rich get richer and poor get poorer.
- **High tax evasion:** Corruption in the tax administration leads to high tax evasion generating black money.

- **Increases cost of production:** Corruption increases the cost of production which ultimately has to be borne by the consumer.
- **Leads to lobbying:** It has led to elite bias in the state policies. For example, tertiary healthcare and higher education receive more political and policy attention than primary health and education.
- **Poor efficiency of the government** in executing major policies, plans and developmental projects is another shortcoming due to prevalence of corruption.
- **Ultimately it leads to low economic development.**

Positive Impact:

Corruption is said to be grease of the administration for the following reasons:

- **Overcoming red-tapism:** in the overburdened and lethargic government machinery especially for the businesses which cannot wait for government approvals for various deals and projects.
- **Reduces cost of compliance**: for many industries such as MSME sector which would have rather struggled to survive in competitive environment.

What steps have been taken by the GOI to curb corruption in India?

Government of India, in pursuance of **its commitment to "Zero Tolerance Against Corruption"** has taken several measures to combat corruption which, inter alia, include:

Legislative measures:

- **Special Police Establishment (SPE) act in 1946,** to investigate cases of bribery and corruption.
  - The CBI was established in 1963 as the main central agency to tackle corruption in India.
- **Establishment of CVC**: to undertake an enquiry into any transaction in which a public servant is suspected or alleged to have acted in corrupt manner.
- The government has introduced **the Public Procurement Bill** to check corruption and ensure transparency in public procurement.
- **The Prevention of Corruption Act, 1988.**
- **The Benami Transactions (Prohibition) Act, 1988:** to prohibit any Benami transaction (purchase of property in the false name of another person who does not pay for the property).
- **The Prevention of Money Laundering Act, 2002.**
- **Prevention of Corruption (Amendment) Bill 2013 and POC Amendment Act 2018.**
- **Right to Information (RTI) act 2005.**
- Establishment of **Lokpal under the Lokpal and Lokayukta Act 2013.**

Administrative Reforms:

- Direct Benefit Transfer initiative: Disbursement of welfare benefits directly to the citizens under various schemes of the Government in a transparent manner.
- **e-Governance** and simplification of procedure and systems.
  - Implementation of **E-tendering in public procurements.**
  - Government procurement through the Government e- Marketplace (GeM).
- **Discontinuation of interviews** in recruitment of Group 'B' (Non-Gazetted) and Group 'C' posts in Government of India.
- **Invocation of FR-56 (j) and AIS (DCRB) Rules, 1958 for retiring officials** from service in public interest whose performance has been reviewed and found unsatisfactory.
- Central Vigilance Commission (CVC) has launched Integrity Pact to ensure effective and expeditious investigation wherever any irregularity / misconduct is noticed.

Electoral Reforms:

- **Electoral Bonds**: introduced to promote transparency in funding and donation received by political parties, by building a transparent system of acquiring bonds with validated Know Your Customer (KYC) and an audit trail.
- In **Union of India (UOI) v. Association for Democratic Reforms 2002**, the SC held that every candidate, contesting an election to the Parliament, State Legislatures or Municipal Corporation, has to declare their criminal

records, financial records and educational qualifications along with their nomination paper.

- **In Ramesh Dalal vs. Union of India, 2005**, the SC held that a sitting MP or MLA shall also be subject to disqualification from contesting elections if he is convicted and sentenced to not less than 2 years of imprisonment by a court of law.
- Note: For detailed reforms please refer to the handout on electoral reforms.

What are the challenges faced in curbing corruption in India?

- **Legal Loopholes:** Prevention of Corruption Act,2018 narrows down the definition of corruption, increases the burden of proof necessary for punishing the corrupt, and makes things more difficult for whistle-blowers.
- **Restrictions on investigating agencies:** Investigating agencies have been barred from even initiating an inquiry or investigation into allegations of corruption without prior approval from the government.
- **Whistle Blowers:** Government has failed to promulgate rules and operationalize the Whistle Blowers Protection Act, 2014.
- **Loopholes in RTI Act 2005.**
- **Lack of coordination**: between various investigation agencies is another shortfall in anti-corruption legislation. The lack of coordination results in the acquittal of the accused.
- **Wide discretion** to bureaucrats in decision making.
- **Lack of adequate deterrence:** such as delays in the justice delivery system.

What reforms are needed to eradicate corruption in India?

- **Reforms in electoral financing** are needed to **curb black money** usage which is sourced through hawala transactions.
- **Decriminalization of politics:** (please refer to a handout on criminalization of politics for detailed reforms)
- **Whistleblower protection act** must be enacted on the lines of Whistleblower protection bill 2015.
- **Accountability and transparency:** (for detailed reforms please refer to handouts on transparency and accountability)
- **RTI as a powerful tool:** adequate reforms in RTI act (for detailed reforms please refer handout - RTI)
- **Strengthening the election commission:** The EC should be given power to deregister political parties involved in electoral corruption and criminal activities. There is need to add provision in RPA to empower ECI for declaring elections invalid in case of excessive use of money (presently it has to rely on its extra ordinary powers under the constitution).
- **Proactive role of media**: to bring out misconducts in governance impartially.
- Independence of the statutory bodies should be ensured – CVC, CBI, etc.
- Strong and vigil civil society groups are sine qua non to bring transparency.
- **Educate people:** against the ill effects of corruption.

The Prevention of Corruption Act, 1988:

Key provisions of the act:

- The 1988 Act enlarged the scope of the term 'public servant' and included a large number of employees within its ambit.
- MPs and MLAs, on the other hand, have been exempted from the Act despite performing "public obligations."
- By publishing a notice in the Official Gazette, the Central and State governments can appoint Special Judges.
- Under the Code of Criminal Procedure, 1973, the Special Judge must be or have been a Session Judge, an Additional Session Judge, or an Assistant Session Judge.

- Only special judges can try the offences punished under this statute. The special Judge has the authority to try any offence other than one punishable under this act with which the accused may be charged at the same time when trying a case.
- If the offense against the public servant is proved in the courts, it is punishable with imprisonment of not less than six months but extending to a maximum period of five years.
- A key problem of the 1988 Act was that the person giving the bribe was legally seen as a victim and so not held culpable or criminally liable.

Prevention of corruption amendment act 2018:

Amendments:

- Those convicted of taking bribes can be imprisoned for three to seven years besides being fined.
- It makes a provision for providing protection to 'coerced' (forced to pay a bribe) bribe-givers if the matter is reported to the concerned law enforcement agencies within a week.
- It redefines criminal misconduct and will now only cover misappropriation of property and possession of disproportionate assets.
- It proposes a 'shield' for government servants, including those retired, from prosecution by making it mandatory for investigating agencies such as the Central Bureau of Investigation to take prior approval from a competent authority before conducting an enquiry against them.
- In any corruption case against a public servant, the factor of "undue advantage" will have to be established.
- The trial in cases pertaining to the exchange of bribes and corruption should be completed within two years.
- It covers bribe-giving to commercial organizations to be liable for punishment or prosecution. However, charitable institutions have been left out of its ambit.
- It provides powers and procedures for the attachment and forfeiture of a corruption-accused public servant's property.

Drawbacks of above amendments:

- The prior sanction for investigation affords undue protection to public employees and may not withstand judicial scrutiny.
- Making bribe-giving a crime could be utilized by public officials to prevent corruption cases from being reported.
- There is no provision for whistleblower protection.
- Any legitimate income is an exemption to the possession of excessive assets, which could be misinterpreted to cover any source of income on which taxes are paid.
- Benefits after retirement, such as lucrative jobs, have not been addressed.
- Quantum of fine for commercial organizations have not been specified.

Corruption is biggest issue in India today, as corruption is all encompassing, all the stakeholders - constitutional functionaries, political parties, media, civil society groups and voters need to take responsibility for ensuring the ethical and corruption-free India.

The **Mahatma's vision** of a strong and prosperous India – **Ram Rajya** I.e., surajya can never become a reality if we do not address the issue of widespread prevalent of corruption with little impunity in our polity, economy and society.

H136- Right to Information (RTI)

"Where a society has chosen to accept democracy as its creedal faith, it is elementary that the citizens ought to know what their government is doing."
-Justice P N Bhagwati

As said by the **Thomas Jefferson "Information is the currency of democracy,"** For a society to develop into a developed democracy, freedom of information is must and curiosity should be instilled in the minds of citizen and this type of informed citizenry is only possible by broad access of information about government operations. It is in this context lies the relevance of Right to Information Act.

What is Right to information act (RTI) act 2005? What were the objectives behind enactment of RTI Act?

- **Right to information act** was enacted in **2005** with the objective of **enhancing transparency, accountability and curbing corruption.** RTI is a derivative right under Article 21 of the constitution.
- RTI also complements and supplements the fundamental right under article **19 (1)(a)** that guarantees Right to know under freedom **of speech and expression.**

Objectives behind enactment of RTI Act:

- **Empowering the citizen:**
  - It empowers the people to **question, audit, review, examine and assess government acts and decisions.**
  - RTI has given the common citizen a defining **power to shape the government schemes and policies.**
  - The citizen has **right to seek information from state** and this has promoted **openness, transparency and accountability.**
- **Access to information:**
  - It provides for proactive disclosure and reporting mechanism.
  - It has led to proper maintenance of records by government departments.
  - Appointment of dedicated public information officers in every government office.
  - The Supreme Court held that the RTI Act supersedes Official Secrets Act, thus shifting the approach of governance towards more transparency.
- **Good Governance:** RTI has seen a wide usage in areas of **women empowerment, youth development, democratic rights, rights and entitlements of underprivileged, abuse of executive discretion and strengthening of participative and good governance.**
- RTI has also led to **unearthing of various scams.** Ex. Crawford Market redevelopment issues in Mumbai.
- **Right to Know:** RTI became a pioneer tool to the citizens of India for promoting, protecting and defending their Right to know.

Supreme Court observation on Right to Information:

It was through the following cases that the concept of the public's right to know developed.

- **Bennett Coleman and Co. v. Union of India 1973**, where the right to information was held to be included within the right to freedom of speech and expression guaranteed by Art. 19 (1) (a).
- In **Indira Gandhi v. Raj Narain (1975),** the Court explicitly stated that it **is not in the interest of the public to 'cover with a veil of secrecy the common routine business** - the responsibility of officials to explain and to justify their acts is the chief safeguard against oppression and corruption.
- In **SP Gupta v. Union of India (1981),** the right of the people to know about every public act, and the details of every public transaction undertaken by public functionaries was described.
- In **People's Union for Civil Liberties v. Union of India (1996)** the court held that exposure to public scrutiny is one of

the known means for getting clean and less polluted persons to govern the country.

Discuss the evolution of RTI act in India in brief?

- **1977: Janata Government** constituted a **working group to ascertain if the Official Secrets Act, 1923 could be modified so as to facilitate greater flow of information** to the public.
- **1986: In the famous case of Mr. Kulwal v/s Jaipur Municipal Corporation** the Supreme Court gave **clear cut directive that Freedom of Speech and Expression provided under Article 19 of the Constitution clearly implies Right to Information** as without information the freedom of speech and expression cannot be fully used by the citizens.
- **1990: Prime Minister V.P Singh, first politician to lay emphasis on RTI**, stressed the importance of Right to Information as a legislated right, he tried to enact the act but failed due to political instability.
- **1994: Mazdoor Kisan Shakti Sanghatan (MKSS) started a grassroots campaign** for Right to Information – demanding information concerning development works in rural Rajasthan.
- **1995: Draft Act** was formulated in a meeting of social activists at the LBSNAA, Mussoorie, 1995.
- **1996: National Campaign for People's Right to Information (NCPRI)** was founded with the objective of getting legislation on RTI passed.
- **1997: Tamil Nādu became the first state** in India to have passed a law on the Right to Information.
- The first central legislation dealing with the right to information in India, namely, the **Freedom of Information Act, 2002** was passed but was not notified.
- Finally, the amended act known as **"The Right to Information Act"** was passed in 2005.

What are the salient features of the RTI Act, 2005

Salient provisions of RTI Act:

- **Section- 2(j):** "Right to Information" means the right to information under the control of any public authority and includes the right to:
  - Inspection of work, documents, records;
  - Taking notes, extracts or certified copies of documents or records;
  - Taking certified samples of material;
  - Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device.

What is Public Authority?

"Public authority" means any authority or body or institution of self-government established or constituted—

a) by or under the Constitution;
b) by any other law made by Parliament/State Legislature.
c) by notification issued or order made by the appropriate Government, and includes any—
d) body owned, controlled or substantially financed;
e) non-Government organisation substantially financed, directly or indirectly by funds provided by the appropriate Government.

- **Section 4** of the RTI Act requires suo motu disclosure of information by each public authority.
- **Section- 6 (2):** An applicant making a request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him/her.
- A **fee has been prescribed** for seeking information to check fraudulent applications. However, persons below the poverty line have been exempted from payment of fees.
- **Section 8 (1)** mentions **exemptions** against furnishing information under RTI Act as given in image below:

Exceptions under Section 8 of the RTI Act

The sharing of information can be denied on certain grounds:

- If the disclosure of information can **prejudicially affect**:
  - The sovereignty and integrity of India.
  - Security, strategic, scientific or economic interests of the State.
  - Relation with foreign State.
  - Lead to incitement of an offence.
- Information expressly **forbidden to be published by any court of law** the disclosure of which may **constitute contempt of court**.
- If the disclosure of information can cause a breach of privilege of Parliament or the State Legislature.
- Information including **trade secrets** or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information.
- Information received in confidence from foreign Government.
- Cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. (Material based on which decision was taken shall be made public if no exempted).
- Personal information, unless it serves larger public interest.
- Section 8 (2) provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.

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- **Section 8 (2)** provides for disclosure of information exempted under Official Secrets Act, 1923 if larger public interest is served.
- **Section- 18 (1):** Powers to Central Information Commission or State Information Commission, to receive and inquire into a complaint from any person.
  - **System of appeal:**
    a) In case of denial or not providing proper information, an appellate structure has also been provided.
    b) The **first appeal** lies with the First Appellate Authority nominated by the Department while the second appeal lies with the Central Information Commission or State Information Commission.
- **Public authorities have to provide information within 30 days** (not later than 48 hours on matters pertaining to the life and liberty of an individual).
  - **In case of delay**, the Central Information Commission or the State Information Commission can impose a **penalty.** The Commission can also recommend disciplinary proceedings against the officials guilty of not providing information with malafide intention.

What is the significance & achievements of RTI Act?

Significance of RTI:

- **Discharge of duties:** Information through RTI has led to legitimate discharge of their duties by officers.
- **Awareness of rights:** RTI has led to an awareness of rights and responsibilities which has led to increased accountability of officials.
- **Increased responsiveness: Greater** access of the citizen to information led to increased responsiveness of government to community needs.
- **Empowered poor communities:** to raise their voices on the basis of information and demand their rights from the government.
- **Proper grievance mechanism:** RTI provided for Central and the State Information Commissions to hear grievances related to RTI.
- **Healthy democracy:** RTI enabled healthy democracy and also contained corruption and held Governments accountable to the people.
- **Enabled citizen rights:** RTI has become a weapon in the hands of common citizens to fight for their rights. Earlier citizens had to struggle to get what was rightfully theirs.

Achievements of RTI:

- **Anti-corruption tool:** The success of the Act earned it fourth place among 111 countries in the

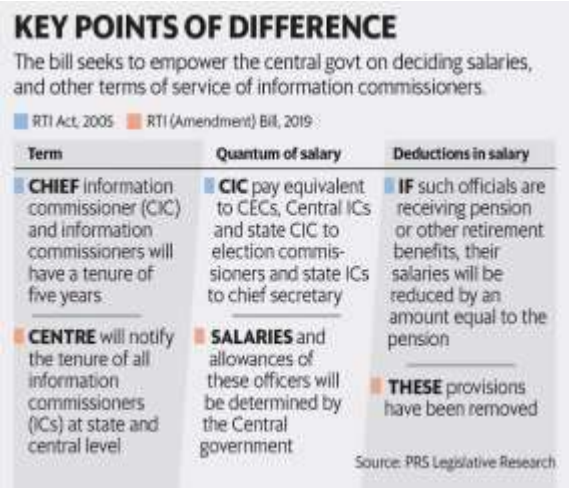
annual rating of similar empowering laws across the world in the year 2016.

- **Success stories:** RTI unearthed the following scams:
  - **2G Scam:** The 2G scam or the telecom sector scandal, which took place in the UPA regime, revolved around the government auctioning the 2G spectrum. The massive abuse of power came to light when an RTI was filed by activist Subhash Chandra Agrawal.
  - **Appropriation of Relief Funds:**
    a) **Information** obtained through an RTI application by an NGO based in Punjab, in 2008 revealed that bureaucrats heading local branches of the **Indian Red Cross Society** used money intended for victims of the Kargil war and natural disasters.
    b) Local courts charged the officials found responsible with fraud and the funds were transferred to the Prime Minister's Relief Fund.
  - **Adarsh Society Scam, Public Distribution Scam in Assam etc.**
  - **Case of misconduct by ration shops of Rajasthan's Bikaner district ration:**
    a) They were selling grains on the black market.
    b) Villagers used the Act to get all records of their ration shop in the village and exposed how grains meant for the poor were being black-marketed at a ration shop in Bikaner.
    c) After the move, the villagers got the dealer removed. Besides losing the dealership, the ration shopkeeper was also forced to pay poor families in the village the cash equivalent of the grains he had sold illegally.

What are the features of the RTI amended Act 2019? What are the issues associated with these amendments?

RTI Act was amended in 2019 because of the following loopholes in the previous act of 2005:

Key changes brought by the 2019 amendment act are given below:



Criticism of recent Amendments:

- **Blow to Federalism:** The role of State Governments has been diminished as now centre will be notifying tenure, salaries etc. of even state information commissioners.
- **A threat to transparency and accountability of CIC and ICs:** Earlier the CIC and ICs were relatively independent due to fixed tenure and salary.
  - Now the new provisions make CIC and ICs pawns to protect sensitive information related to the government.
  - The most fundamental requirement of any independent oversight institution like the CVC, CEC, the Lokpal is a basic guarantee of tenure which has been removed now.

What is the Official Secrets Act 1923? Is it antithetical to RTI act?

Official Secrets Act 1923:

- The Official Secrets Act was enacted in 1923 and was retained after Independence.
- The law **makes spying, sharing secret information, withholding sensitive information, a punishable offence.**
- The law **meant for ensuring secrecy and confidentiality in governance,** mostly on national security and espionage issues, has often been cited by authorities for refusing to divulge information.

Yes; Official Secrets Act is antithetical to RTI in the following manner:

- **Promotes culture of secrecy:** OSA impinges on the freedom of information as it has developed a culture of secrecy and non-disclosure, which is against the spirit of the Right to Information Act.
- **Ambiguity:** The word 'secret' has not been defined in the Act. Therefore, public servants enjoy the discretion to classify anything as 'secret' allowing them to deny information under RTI.
- **Tool of Corruption:** OSA has become a tool of corruption. Either its recent case of irregularities in the Rafale aircraft deal or irregularities in Bofors defence deal, OSA lead to opaqueness that undermine the very essence of RTI.
- The OSA has often been **arbitrarily used against media houses and journalists** who are found opposing the action of the government and questioning its policies.

No as:

The legal position is clear: **whenever there is a conflict between the two laws, the provisions of the RTI Act override those of the OSA.**

- Section 22 of the RTI Act states that its provisions will have effect notwithstanding anything that is inconsistent with them in the OSA.
- Similarly, under Section 8(2) of the RTI Act a public authority may allow access to information covered under the OSA, "if the public interest in disclosure outweighs the harm to the protected interests".
- It is the interpretation of 'public interest' that is the challenge.
- SC observation in Rafale deal case with respect to OSA:
    - The Court held that the RTI Act confers on ordinary citizens the **'priceless right' to demand information even in matters affecting national security** and relations with a foreign state.
    - The court held that the **government cannot refuse information if disclosure in public interest overshadows certain 'protected interests.**
    - **"Whenever there is a conflict of interest between the two laws, the RTI Act will supersede the OSA."**
    - The Supreme Court also opined that the **Official secrets Act did not provide liberty to commit unscrupulous activities and corruption.**

Reforms needed:

- **The Second Administrative Reforms Commission (ARC)** in 2006 recommended that OSA be replaced with a chapter in the National Security Act containing provisions relating to official secrets. The commission described the OSA "being incongruous with the regime of transparency in a democratic society".
- The **Shourie Committee** suggested that there should be an amendment to Section 5(1) of the Act and stated that the penal provisions of the section should be applicable only to violations affecting the national interest.

What are the issues faced in implementation of RTI act?

Common issues faced:

- **Low Public Awareness:**
    - According to survey of RTI Assessment and Advocacy Group (RaaG) 2013, less than 35% people in rural and 40% people in urban areas are aware of the act.
    - Knowledge of the entire process of seeking information is known to even less.
- **Constraints faced in filing applications:**
    - There has been **non-availability of user guides.** Lack of user guide results in undue hardship to information seekers to gather knowledge about the process for submitting a RTI request.
- **Poor Quality of Information:** For example, Raw data is given to the applicant rather than exact information.
- **Non-friendly attitude of the PIOs:** During the information seeker survey it was observed that 59% of the respondents ranked the courteousness of the PIOs as "poor" or "just fair". This discourages the citizens from filing RTI applications.
- **Inevitable delay in flow of information:**
    - For example, CIC takes on an average 388 days to dispose of the case.

- Huge backlog: More than 2.2 lakh cases are pending at both the Central and State levels.

- **Obsolete Record Management:** Ineffective record management practices and collection of information from field offices lead to delays in the processing of RTI applications.
- **Lack of monitoring and review mechanism:** There is no centralized database of RTI applicants.
- **Lack of motivation among PIOs: In** addition to lack of resources, PIOs lack the motivation to implement the RTI Act.
- **Lack of infrastructure: like** printers, computers etc.
- **Limited use of IT:** The use of Information Technology in acceptance or delivery of RTI applications is minimal in the Public Authorities.
- **Lack enforcement powers:** The CIC has minimal powers with respect to enforcement of the RTI act which makes it a toothless institution. For example: Decision related to bringing political parties under RTI.
- **High vacancies:** Report on Performance of Information Commissions in India, released by **Satark Nagrik Sangathan (SNS)** and the Centre for Equity Studies (CES) (2020):
  - **Nine out of 29 information commissions (31%) in the country were functioning without a chief information commissioner.**
  - **Currently Odisha is functioning with just four commissioners, while Rajasthan has only three.**
  - **Jharkhand and Tripura have no commissioners at all,** and have been defunct for months.
- **Lack of availability of information in public domain** on official websites.
- Attacks on RTI activists.
- **Rejection of RTI applications for frivolous reasons** such as appeals are not typed or written in English or lack index of the papers attached, list of dates etc.
- **Applicability related issues:**
  - **Political parties and their funding** remain outside the ambit of RTI.
  - **Exemptions or qualified applicability like that of judiciary.**
  - **Invocation of intellectual property rights**. Ex. Information denied by RBI on demonetisation citing intellectual property law.
  - **Private sector** is one of the major service providers, but it is not adequately covered under the ambit of RTI.

How RTI act is misused?

"The Right to Information Act is a good law, but it is being abused"- S H Kapadia, Chief Justice of India (2010-2012)

- **Misuse of certain clauses: For instance, Section 2(h)** is often evaded by the government by denying the public authority status to certain bodies as seen in case of PM-CARES fund.
- This Act also **lacks contempt provisions,** makes non-compliance with the information commission order.
- **Frivolous complaints:** Misuse by many to settle scores.
- **To harass the officials**: RTI is used to take revenge and harass senior officials. In a peculiar case of Vidya Bharti school, Delhi, a teacher was building pressure and harassing the authorities through RTI applications. Around 15 RTI petitions were filed to harass officials.
- **Vengeance**: RTI is also misused to settle personal vendetta. For instance, in Mr. Narayan Singh vs Delhi Transport Corporation, the CIC observed that Narayan Singh was involved in dozens of cases and found him misrepresenting the matters very cleverly, hiding information etc.
- **Blackmail:** As mentioned by a Supreme Court judge, some people have made a profession out of the RTI by seeking information for vested interests and are using it to blackmail others. RTI is filed to blackmail and prevent decisions from being taken by the officials.
- **Unnecessary purpose:** RTI is also being misused for unnecessary purposes. There are cases where even PhD students are using RTI as a means to collect data for their thesis.

Reason behind the misuse:

- **Non-applicability of locus standi:** as it leads to the lack of a requirement to demonstrate justification for obtaining information.

Failures of RTI:

- According to an estimate, between 40 and 60 lakh RTI applications are filed every year, but less than 3% Indian citizens have ever filed an RTI plea.
- A 'Report Card of Information Commissions in India, 2018-19' was released by the Satark Nagrik Sangathan (SSN) and the Centre for Equity Studies (CES). It was revealed that, of the applications filed, less than 45% received the information they had sought. Further, of the 55% who didn't receive the information, less than 10% filed appeals.
- As per a study by the Commonwealth Human Rights Initiative, between 2012-13 and 2018-19, there was a sharp fall in the mandatory reporting of data by Ministries and Departments to the CIC.
- As on June 30, 2021, 2.56 lakh appeals were pending with 26 Information Commissions in the country. It takes 6 years and 8 months to dispose of a matter in Odisha, as per the going rate, according to the Satark Nagrik Sangathan (SNS) 2021 report.

RTI Vs Privacy: please refer to the handout on transparency for this part.

What steps/reforms are needed to strengthen the implementation of the RTI act?

In order to improve the overall functioning of RTI, the following steps could be taken:

- **Timely filling** up of vacancies to **reduce the backlogs of cases.**
- **Rationalization of certain laws:** This must include:
  - **Consolidation** of acts like **UAPA, MISA** among others which often conflict with the RTI under National Security Act.
  - Repeal of the Official Secrets Act, 1923 (2nd ARC).
  - **Revision** of **Section 123** of the Indian **Evidence Act, 1972(Shourie committee).**
- **Independence:**
  - **Fixed tenure and salaries** can ensure independence of the commission (2nd ARC and Shourie committee).
- **Administrative reforms:**
  - Amend Central Civil Services (Conduct) Rules to match the spirit of the RTI (2nd ARC).
  - **The National Commission to review the working of the Constitution (NCRWC)** recommended that oath of transparency of Ministers must replace oath of secrecy.
- **Protection of activists: Whistleblower's Protection Act** must be reviewed and empowered periodically to protect the activists.
- **Expand applicability:**
  - Definition of public authority under sec 2(h) of the RTI act should be expanded to private sector and political parties.
  - Reduce the exemption list -section 8 of the RTI act. **Include electoral bonds, PM CARES fund, NRC, etc.**
  -
- **Effective accessibility:**
  - Information should be made available in the public domain on the official websites and in the regional languages as well .
  - **Reduce pendency -** Fast track courts for RTI cases should be set up.
  - **Proper training and capacity building** measures including improvement in the infrastructure must be taken. For example, training Public Information Commissioners.
  - The **technicalities of filing an RTI application should be more simplified**. The literacy rate of rural India is quite low and thus they find it quite difficult to comply with the procedures.

- **Maintenance of information must be automated and efficient.** The State Government has to play a facilitative role by issuing rules/procedures to mandate the compliance of the Act.
- Centralized database of applicants: with their information requests and responses from information providers will enable the PIOs to send an accurate and timely compilation under Sec. 25(1).

Measures required to prevent the misuse of the RTI act:

- Asking for desperate and voluminous information, In this case, PIO could use Section 7(3) To **increase the fee for information and deter false cases.** and also, the same for the case when RTI filed as a vindictive tool to harass or pressurize the public authority.
- **Reasonable restrictions should be placed** on the rights of individuals to seek the information and also stringent penal provisions should be in place to curb misuse of the Act, if **information sought doesn't really have a public interest.**
- **Provision of compulsorily attaching copy of ID proof should** be there for filing complaints in government-departments to prevent filing complaints in the name of others.
- The RTI Act should not be used to spill the beans, settle scores and sling mud.

Right to information has empowered millions of people to use their democratic rights creatively and dismantle exclusive power. There is a need to strengthen this powerful tool to deliver significant social benefits as transparency is the cornerstone of democracy. The need is to revisit the current RTI regime for making necessary course corrections, thus, preserve the sanctity of transparency and accountability for ensuring good governance.

H137- SOCIAL AUDIT

Social tools leave a digital audit trail, documenting our learning journey - often an unfolding story - and leaving a path for others to follow. - Marcia Conner

As **people are becoming more informed** and assertive about their rights, there **is increasing demand to make government authorities more accountable and socially responsible**. In a first-of-its-kind initiative in the country, the Rajasthan government recently decided to set up a specialized **'Social and Performance Audit Authority'** to conduct social audit of schemes.

What is Social Audit?

Social audit is a **participative mechanism** where people directly audit government programmes and projects etc. to evaluation of **performance of government** programmes conducted **jointly by administration and public,** especially the beneficiaries.

- It is done with the **involvement of key stakeholders** from the community. The **assessment and public feedback** are then used to improve the implementation of the program.
  - E.g., social audit of affordable housing scheme may verify quality of construction, functionality of the house, beneficiary identification and so on.
- Its scope goes **beyond mere financial accounting to outcomes** on the grounds. It is the scrutiny of the working of any public utility vis-a-vis its social relevance.
- **Origin:**
  - The idea of 'Social Audit' is derived from the concept, **"Corporate Social Responsibility" (CSR)** adopted first in western countries.
  - It was then followed by many corporate entities and social institutions around the globe.
  - In the 1980s, Social Audit **was introduced in the public sector** in response to the growing shift to **democratic governance and citizen participation.**
- **Objectives:**
  - To **promote transparency and accountability** in the government policies and implementation.
  - To enable prioritization of developmental activities with **proper utilization of funds.**
  - To scrutinize various policy decisions and **assess the physical and financial gaps.**
  - **To increase the efficacy and efficiency of local development** programmes keeping in view stakeholder interests.
  - To **create awareness among beneficiaries** and providers of local social and productive services;
- **Principles:**
  - **Multi-Perspective:** to reflect the voices of all stakeholders involved or affected by the decisions.
  - **Comprehensive & Comparative approach:** to report on all aspects of the organization's work and performance.
  - **Participatory:** Encourage participation of stakeholders and sharing of their values.
  - **Regularity:** Produce social accounts on a regular basis so that the practice becomes embedded in the culture of the organization.
  - **Verification:** Social accounts should be audited by a suitably experienced person or agency with no vested interests.
  - **Disclosure:** of audited accounts to the stakeholders and the wider community in the interest of accountability and transparency.

Discuss the evolution of Social Audit in India:

- **1979:** In India, Social Audit is of recent origin, initiated first by **Tata Iron and Steel Company Limited (TISCO), Jamshedpur.**
- **73rd CA Act:** Social audit gained impetus after the **73rd CA Act** relating to PRIs => The power of auditing the accounts of Panchayats is vested upon **Gram Sabha.**
- **Civil society organizations and Movements (since 1990s):** have been undertaking "Social Audits" to monitor the performance of the organizations and institutions.

- **9th FYP (2002-07):** emphasized that social audit by Gram Sabhas for effective functioning of PRIs.
- **RTI Act, 2005:** empowered the citizenry to indirectly conduct social auditing of the governments.
- **MGNREGA 2006:** particularly inclusion of section 17 as statutory provisions for transparency and public scrutiny of the MGNREGA works made social audit more relevant and acceptable across the world.
- **Social Audit Units (SAU):** have been set up by many states to facilitate SA of programmes like PMAY, MDM, etc.
- **Meghalaya Social Audit Act, 2017:** Meghalaya became the **1st state in India to implement** a law that makes social audit of government schemes and programmes a part of governance.

How social audit is different from other audits:

Social Audit	Financial Audit	Operation Audit
1. It provides an assessment of the impact of a department's **non-financial objectives** through systematic and regular monitoring by the stakeholders.	1. It is directed towards recording, processing, summarizing and **reporting of financial data.**	1. Its focuses on **establishing SoPs, measuring performance against standards,** examining deviations and taking corrective actions.
2. It is an **internally generated process** whereby the organization itself shapes the process according to its stated objectives.	1. It is verification **of reliability and integrity of financial information.**	2. It looks at **compliance** with policies, plan, procedures, laws, regulations, established objectives and efficient use of resources.
3. It creates **social wealth** in the form of useful networks of stakeholders, civil society organizations etc.	2. It focuses on **financial records** and their scrutiny by an External auditor. (Limited Stakeholder participation)	3. Public participation is **not accounted** for during the policy formations.
4. It strengthens the **legitimacy** of the state, as well as **trust** between the state and the civil society => strengthening participatory democracy.	4. It does not take into account civil society.	4. It does not take into account civil society.
5. **Sustainability** of any project is a key focus.	5. **Sustainability** is not a focused area as it prioritizes profit and loss.	5. Sustainability is not a key focus.
6. It is a **continuous process,** based on regular monitoring and **feedback** from stakeholders.	6. It is a **one-time** process, generally done once a year.	6. It is a **one-time process**, generally done once a year.
7. The **community values** are incorporated with governance principles.	7. Community values are not accounted for.	7. It focuses more on the exigencies of time.

What was the need to introduce concept of social audit?

According to CAG, all over the world, there is a growing perception among the supreme audit institutions that it is **important to partner with civil society to ensure the latter's participation in service delivery and public accountability.**

Social audit remains significant as it promotes:

- **Participatory governance:** Social Audit is conducted by organizing **public meetings**

(Jansunwais) to discuss **official RTI records;** identify irregularities; raise concerns; course correction of schemes; **remove secrecy & build trust in governance.**

- **Innovation**: Social audit goes beyond financial and regulatory audit to verifies ground realities based actual outcomes with official records.
- **Transparency:** Social audit brings out official information into public domain and spreads awareness among the beneficiaries and community regarding their entitlements, administrative procedures, etc.
- **Accountability:** Social audit helps in holding the administration accountable for poor implementation of government schemes. E.g., **Mazdoor Kisan Shakti** Sangathan brought out corruption in public works programs in Rajasthan.
- **Principle of Subsidiarity in Auditing:** The institutions closer to the beneficiaries shall conduct regular social audits of the projects. E.g., Gram Sabha audits the work of Gram Panchayat.

What are the roadblocks in effective implementation of the social audit?

- **Deficit of political and administrative will** have made SA **only a procedural requirement** with no substantial outcomes. E.g., unwillingness to share information due to fear of scrutiny
- **Lack of public awareness, incentive, interest and capacity** to participate meaningfully in SA.
- **Institutional issues** like **lack of a permanent machinery**, lack of independence, **inadequate staffing of SAUs,** absence of strict **penalties** for flouting SA rules, absence of an independent agency to act on SA finding etc.
- **Poor record keeping** practices and **fragmented availability of government data** makes it difficult to bring out the entire picture.
- SA are highly **localized, sporadic and ad-hoc in nature** that has failed to produce consistent impact. Moreover, **delays in social audits** reduce its relevance and public enthusiasm.
- **Lack of active and committed civil society organizations:** which can facilitate social audits and train stakeholders for the process.

What reforms are required to strengthen the framework of social audit in India?

- **Raising awareness and building capacities** of all stakeholders to hold executives and implementing agencies responsible.
  - E.g., Media can also play a constructive role in popularizing SA.
- **Real time and proactive data disclosure** related to financial resources, list of beneficiaries, etc. should be made mandatory.
  - SA without effective implementation of RTI Act merely remains a 'window dressing'.
  - E.g., using technology like Management **Information System (MIS).**
- Increasing **finances** and **functionaries for SAU, staffing** should be de-politicized so that SAUs can function as independent agencies.
- **Legal sanctions and punitive action:** should be taken on finding of SA to build confidence of public in SA. Meghalaya's Law can be a role model.
- **Participation of civil society organization** should be promoted for capacity enhancement and process streamlining.
  - E.g., Jharkhand has instituted a formal mechanism by inviting prominent CS representatives to be part of the SA panel.
- The **frequency of conducting social audit must be increased.** E.g., SA must be conducted in every Gram Panchayat every 6 month.
- **Implementation of training programme** on social auditing methods conducting and preparing social audit reports, and presentation at Gram Sabha.
  - E.g., Establishing **a team of social audit experts in each district** for training social audit committee members.
- **National law:** for SA should be enacted to empower the people and help in penetration of democracy to the grassroot.

Q) What are the initiatives undertaken by government at various levels to institutionalize Social Audit?

- **Information-Monitoring, Evaluation and Social Audit (I-MESA):**
  - It is a scheme formulated by **the Ministry of Social Justice and Empowerment** to

conduct **Social Audits 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 NIRD&PR (National Institute for Rural Development and Panchayati Raj).
- **Short-term certificate course on SAs:** for district-block resource persons and SHGs is developed by GoI in collaboration with TISS and NIRD&PR, Hyderabad.
- **Institutionalization of SAs:** in major rural development schemes like National Social Assistance Programme, PM Awas Yojana-Gramin and also for funds allocated through the 14th FC.
- **Training of women SHGs to conduct SAs:** Around 60,000 women SHGs have been trained through a specially-designed certificate course to conduct social audits.
- **Directorates of SAs:** have been established in many states, along with the available resource persons, for conducting social audits of government schemes.
- **Social Audit methodology and operational guidelines**: have been laid down by The Ministry of Housing and Urban Poverty alleviation for various schemes.
- **Engagement of Civil Society Organizations:** SA of Mid-Day Meals in Andhra Pradesh was conducted by MV foundation, a voluntary organization working on the issue of child labour and children's right to education.

Case studies:

- **Kerela SA cases at Panchayat/Block level:** In a 1st such move, in 2019, **Nedumangad Block panchayat in Thiruvananthapuram**, Kerela, put all schemes implemented in last 4 years for a Social Audit.
    - The team collected suggestions and opinions from the people, which were then added to the final report presented to the Jury. The jury consisted of Social Activists, like Aruna Roy, and experts in the field.
    - E.g., **Project 'Vallamnira'** for promoting organic vegetable cultivation and floriculture was audited by the community members.
    - Similarly, experiments in Social Audit were done in Vithura Panchayat, Kerala.
- **Social Audit in Tripura:** increased awareness among the stakeholders about MGNREGA – the Act and its relevance. Participation level and involvement of people in Social Audit Gram Sabhas have improved considerably.
    - Also, **SA Rules and Standards for MGNREGA:** were developed by CAG, in consultation with the Ministry of Rural Development, to conduct a performance audit in 2015.

In an age where phrases such as open data and open government are used in any conversation around governance, social audits should serve as a critical point of reference. **Social audit is the real platform for people to be informed** by official statements and records, with an **opportunity to directly contribute to the nation building exercise.**

H138- E-governance

"E-governance is easy governance, effective governance, and also economic governance. E-governance paves the way for good governance." - Narendra Modi

The pervasiveness of information technology is greatly influencing our day-to-day life, including the way we communicate, transact and deliver things. The concept of 'e-governance' is a result of such development, which is revolutionizing the government-citizen interface.

The **UN e-Government Survey 2020, India ranked 100th**, down from 96th in 2018. Given India's rising profile in the international arena, it continues to rank vary in e-Governance.

What is e-governance?

According to **World Bank**, e-governance is the **use of Information Technologies that have the ability to transform relations with citizen, businesses, and various arms of government.**

- It has become precursor to good governance as it reduces human discretion and increases work efficiency.
- **Goals of e-Governance:**
  - Better delivery service to citizens
  - Ushering in transparency and accountability
  - Empowering people through information
  - Improved efficiency within Governments
  - Improve interface with business and industry
- **Examples of e-governance in India:** Digital India initiative, National Portal of India, Prime Minister of India portal, Aadhaar, filing and payment of taxes online, digital land management systems, etc.

What are the different models of e-governance with few examples each?

- **Government to Citizen (G2C):** Here, an interface between the government and citizens enables the citizens to benefit from efficient delivery of public services.
  - **E.g., myGov; Digi Locker; Gyandoot project (MP) etc.**
- **Government to Government (G2G):** Here, e-Governance is used to restructure and increase the flow of information and services between different government entities.
  - E.g., Northeast Gang Information System **(NEGIS);** Khajane Project (Karnataka).
- **Government to Business (G2B):** Here, e-Governance tools are used to aid the business community to seamlessly interact with the government.
  - Objective: cut red tape, save time, reduce operational costs and create a more transparent business environment.
  - E.g., Single Window Interface for Trade (SWIFT); e-Procurement Project (Gujarat); SmartGov (Andhra Pradesh)
- **Government to Employee (G2E):** GoI is by far the biggest employer. The use of ICT tools in interactions with its employees helps in increasing the efficiency of governance.
  - E.g., **e-Mitra, e-Seva project, CET (Common Entrance Test)**

What is the significance of e-governance?

A. For the government:

- **Greater efficiency:** through avoiding duplication of work; simplifying bureaucratic procedures; greater coordination etc.
- **Reducing costs:** of transactions through better management of procedures, procurements, etc. E.g., Government e-marketplace.
- **It lays the foundation for SMART Governance:** (Dr. APJ Abdul Kalam, "A transparent SMART e-Governance with seamless access, secure and authentic flow of information providing a fair and unbiased service to the citizen.")
  - **Simple** – e-documentation, online submission, online service delivery, etc.
  - **Moral**- removes bribes, red-tapism.
  - Accountable- as all data is available online for everyone.
  - **Responsive**- more informed citizens --> responsible govt.
  - **Transparent**- no room for concealing information.
- **Others:**

- **Seamless Information sharing** between various agencies that can help break siloed approaches. E.g., Government Instant Messaging System.
- **Quick monitoring:** of progress of projects and policy initiatives on a real time basis. E.g., PRAGATI Platform

B. For citizens:

- **Enables citizen-centric governance:** through higher citizen participation based on reducing feudal mindset of bureaucrats with greater reach of governance. E.g., mygov.in portal, Champions dashboard of Aspirational District Programme
  - **No need for specific skills:** To avail m-governance based services.
- **Better service delivery:** to citizens and other stakeholders by better connectivity and portability. For example: E-Kranti, Aadhar linked PDS system, Mera Ration Mobile app
- **Faster information dissemination:** to the citizens, thereby increasing transparency. E.g., the 'Jan Soochna' portal by Rajasthan government to display public records online.
- **Prompt Justice delivery:** through e-governance measures like e-courts, National Court Management System, etc. => improving efficiency of court functioning.
- **Other:**
  - **Plug leakages and ensure transparency** in governance. E.g., e-auction of coal
  - **No additional costs** required to procure devices and infrastructure, like computer, furniture, modem etc.

What are the e-governance initiatives taken at various levels?

A. Steps taken by government:

- **DARPAN:** an online tool to monitor and analyze the implementation of critical and high priority projects of the States.
- **E-office:** Launched by the Department of Administrative Reforms & Public Grievances. to improve the operational efficiency of the Government by transitioning to a "Less Paper Office".
- **Common service centres (CSCs):** to develop and provide support to the use of information technology in rural areas of the country.
- **m-governance:** The government has brought National Policy on m-governance to reduce the m-governance divide in India. Better infrastructure and digital literacy can make better citizen-friendly and faster delivery of services via m-governance.
- **Meghraj:** A cloud-based Initiative to accelerate the delivery of e-services in the country while optimizing ICT spending of the Government.
- **UMANG app:** to group all the government's e-governance initiatives on a single platform.
- **MCA 21:** Launched by the Ministry of Corporate Affairs to provide electronic services to the Companies registered under the Companies Act.
- **Twitter Seva** is being actively used for grievance redressal mechanism. E.g., in railways, work efficiency has greatly improved.
- **Others:**
  - **National Policy on Information Technology (NPIT)** was adopted in 2012
  - **National e-Governance Conference**: to share best practices, latest technology developments and leveraging them for achieving effective governance and public service delivery.

B. Steps taken by Judiciary:

- **E-Governance and E-Courts:** Started in Income Tax Appellate Tribunal (ITAT) to faster disposal of cases with less hassles to litigants.

- **Inter-Operable Criminal Justice System:** Strengthened by leveraging several related applications for example, e-Police, e-Jails, and e-Prosecution.
- **LIMBS:** is a Web Portal introduced for centrally monitoring cases pending in various courts and Tribunals.
- **e-courts Mission Mode Project:** for universal computerization of district and subordinate courts with objective of providing services to litigants, lawyers, and judiciary.
    - **E- Courts phase-II** to automate workflow management, enabling the courts to exercise greater control in management of cases.
- **Video Conferencing: Links between jail and courts were established** at selected cities and court complexes. It is popular for saving time and money.
- **Notaries:** Online receiving of applications for appointment of Notaries along with supporting documents. This will reduce delays on account of postal services.

Successful case studies of e-Governance:

A. Project "Bhoomi" (Karnataka): resulted in - simplification of procedures; reduced the hardships of the poor farmers; in terms of delays; put an end to corruption; and ensured a more accountable, transparent, and responsive system.

B. Project 'Smart Government' (Andhra Pradesh):
- It was launched to provide simple, moral, accountable, responsive and transparent governance to its people.
- It has helped in introducing paper less file processing system in the Andhra Pradesh secretariat.

C. FRIENDS project (Kerala):
- The Project FRIENDS (Fast, Reliable, Instant, Efficient Network for the Disbursement of Services) is part of the Kerala State IT Mission.
- It handles 1,000 types of payment bills originating out of various PSUs.

D. e-Seva (Andhra Pradesh):
- Designed to provide 'Government to Citizen' and 'e-Business to Citizen' services.
- The project has become very popular among the citizens especially for the payment of utility bills.

What are the challenges faced in the implementation of e-governance in India?

A. Technical challenges:
- **Untrained human resources:** Service-sectors of e-Governance applications are often untrained users which restricts the potential benefit of e-governance.
- **Privacy and Security:** Recent spark in data leak cases has lowered peoples' faith in e-governance. Moreover, they become victims of cyber-crime like fishing, identity theft etc. For example, data leak of SBI debit card information.

B. Economic challenge:
- e-Governance projects require a **huge amount of money** for operational and maintenance of the electronic device.
- **Infrastructure challenge:** In the **absence of basic infrastructural facilities** like electricity, internet, broadband connection etc. E-governance initiatives are less likely to succeed. For instance, 4G services, recently reached Andaman and Nicobar Islands.

C. Social challenges:
- **Digital divide:** is present between **rich-poor, male-female and urban-rural** segments of the population
    - In India, **>50% population lacks internet access;** 20% know the use of digital services and only **4% of rural** households possess computers. E.g., rural India found it challenging to register on '**Co-Win' portal.**
    - **Wide gender-gap within digital divide**: >60% women in 12 states

and UTs have never used the internet (NFHS).

- **Lack of Vernacular content**: in e-Governance services. This hinders adoption of websites and apps as an effective tool for e-governance. E.g., mobile banking is allowed by RBI in the local languages.

D. **Others:** Lack of digital penetration, Weak monitoring and evaluation systems, Lack of a privacy law, Inadequate cyber security measures, Low Digital literacy etc.

What reforms are needed to overcome these challenges?

- **Increasing internet penetration:** Connecting villages and remote areas with broadband and steady electricity supply, for greater access to internet-based services.
  - E.g., **Bharat-Net Project** and **Saubhagya** must be speeded up.
- **Subsidizing basic smartphones and computers** for the poor, especially students.
  - E.g., laptop distribution scheme of the UP government to meritorious students.
- **Security standards and protocols** for safeguarding the interest of all classes of the people should be developed. Also, the GoI must ensure comprehensive **data protection legislation** whilst **privacy issues**
- **User-friendly websites and applications:** by using local language and easier user interface.
- **Convergence and coordination:** of different departments should be improved, leading to better services under the e-governance framework. Here, economies of scale could be used to bring down the cost.
- **High investment for e-governance projects**: to improve the reach of e-governance project. E.g., promoting PPP models in e-Governance.
- There should be a focus on the **improvement of attitude and reskilling staff** in offices so that they can enthusiastically welcome e-governance initiatives.

2nd ARC Recommendations on e-governance:

- **Building a Congenial Environment:** by providing political support at the highest level; Incentivizing e-Governance; overcoming the resistance to change within government
- **Capacity Building:** both the organizational and professional upgradation of individuals; conduct a capacity assessment
  - Training to be imparted through a network of training institutions in the States with the Administrative Training Institutes at the apex.
- **Implementation:** Breaking up entire e-Governance projects into components/ activities - Planning each activity in detail; Allocating resources (human and financial); commencement of activities with Need-based mid-course correction.
- **Monitoring and Evaluation:** Monitoring by the implementing organization and Evaluation by independent agencies on the basis of parameters fixed beforehand.
- **Protecting Critical Information Infrastructure Assets:** with improved analysis and warning capabilities as well as improved information sharing on threats and vulnerabilities.

Despite great strides being made, e-governance still suffers from various limitations which should be addressed by **auditing all the e-governance processes, creating technology diffusion department in each ministry.** A Swachh Bharat like campaign for mass digital education in order to realise the ideal of Minimum government, maximum governance. **Only then we can truly call for a 'Digital India'.**

H139- National Data Governance

India has witnessed rapid growth in digital field in a short time span. This has resulted in technological advances, new governance regimes, and bespoke, India-only digital policies. Taken together, these changes have come to define the Indian model of data governance.

As the pace of government adoption of new technologies and services has picked up, public debates in India about the need to balance data rights with digital innovation have accelerated.

In August 2022, the Ministry of Electronics and Information Technology withdrew the **Draft Data Protection Bill** due to opposition from various stakeholders and in the light of recommendation by Joint Parliamentary Committee towards **"Comprehensive Legal Framework"** to regulate the online space.

What is the importance of 'data' in Governance?

- Data is arguably the **most important asset** that organizations have. Data governance helps to ensure that data is usable, accessible and protected.
- Effective data governance leads to **better data analytics**, which in turn leads to **better decision making** and improved operations support.
- Data governance also plays an **essential role in regulatory compliance.** This is key for minimizing risks and reducing operational costs.
- Data **serves to improve the quality of administrative decision-making,** incentivize apathetic bureaucrats to do their job, **ensure course correction** and, perhaps most crucially, **induce transparency.**
- At its core, availability of relevant data leads to **decreased data management costs**, and increased access to data for all stakeholders.

Why is data called a 'new' oil?

- The phrase "data is the new oil", was originally proposed by data scientist Clive Humby. In a sense, data can be viewed as a resource that is valuable, but only if we can find ways to properly extract value from it.
- Like oil, **data is only valuable if it is in a usable form.** Just as crude oil is transformed into more useful products such as petroleum in oil refineries, **raw data needs to be preprocessed before it can be used for analytics.**

Data categorization:

Personal	Non-Personal Data
• Personal data is any information that relates to an identified or identifiable **living individual.** • Different pieces of information, which can lead to the identification of a particular person, also constitute personal data. • Example: ○ a name and surname; ○ a home address; ○ an email address such as name.surname@company.com ○ an identification card number; ○ location data (for example the location data function on a mobile phone) *; ○ an Internet Protocol (IP) address; ○ a cookie ID*;	• In its most basic form, non-personal data is any set of data which does **not contain personally identifiable information.** • This in essence means that **no individual or living person can be identified by looking at such data.** • Non-personal data has been classified into three main categories: 1. **Public Non-personal Data:** All the data collected by government and its agencies such as census, data collected by municipal corporations on the total tax receipts in a particular period or any information collected during execution of all publicly funded works.

○ the advertising identifier of your phone; ○ data held by a hospital or doctor, which could be a symbol that uniquely identifies a person.	2. **Community Non-personal Data:** Any data identifiers about a set of people who have either the same geographic location, religion, job, or other common social interests will form the community non-personal data. For example, the metadata collected by ride-hailing apps. 3. **Private non-personal data:** It can be defined as those which are produced by individuals which can be derived from application of proprietary software or knowledge.

Big Data:

- It is a phrase used to mean a massive volume of both structured and unstructured data that is so large.
- It is difficult to process using traditional database and software techniques.
- Through the use of high-end computing and algorithms, big data has been used in the industry to provide customer insights by analyzing and predicting customer behavior through data derived from social media.

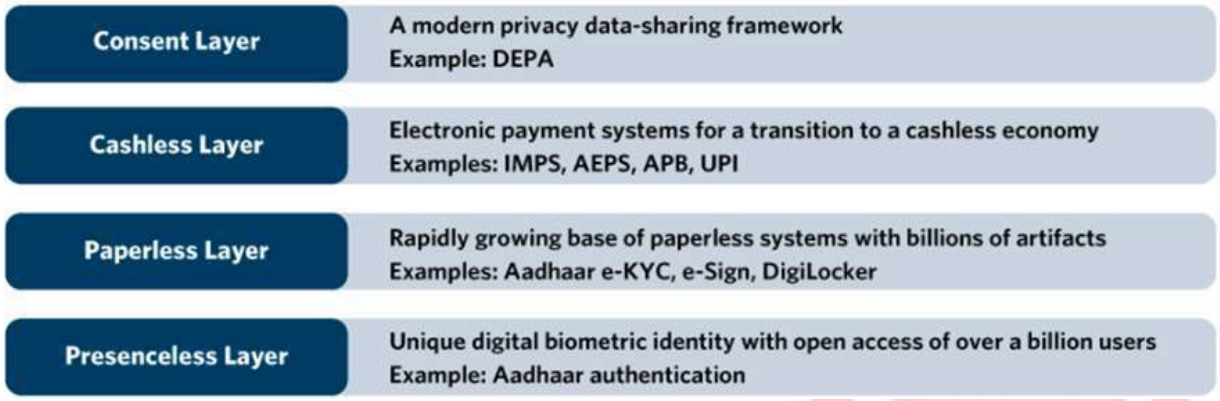
What are the challenges faced in ensuring 'Data driven Governance' in India?

- **Issues with Data collection:**
  - There is **no independent data collection machinery.**
  - Data is collected by the very officials entrusted with implementing schemes. This creates perverse incentives for **over-reporting.**
- Protecting Data: Handling and protecting data without compromising on data privacy and stifling entrepreneurship as key challenges in e-governance.
- **Cyber security:** While there are enough protective mechanisms at data centers and private networks, proper cyber security still remains a challenge.
- **Wise use of data**: Data-based governance requires not just validated and scientific data but also requires the policymakers to use it wisely by contextualizing it to ensure equality and equity.
- **Lacking legal framework:** India does not yet have a comprehensive legal framework for data governance. A draft Data Protection Bill had been introduced before the parliament, but it was recently withdrawn. The IT Rules 2011 that regulate personal data are insufficient.
- **Isolationism:** Since data are siloed and usually only available to those who have harvested it, little is being done to unlock the full value of the data.
- **Lack of Data protocols**: which make it difficult to hold the government accountable for claims.
  - For instance, the direct benefit transfer website routinely gives a figure for money "saved" by the government from using the scheme — a figure used routinely by politicians — but with no explanation for how it arrived at this number, rendering it meaningless.
- **Private control of data:** Platform capitalists (Meta, Microsoft, Twitter, etc.) have unbridled control over the data economy leading to exclusion and under-optimization of the data for common good.
- **Data colonization:** Since most of these companies are based in the West, it leaves developing countries to fend for themselves, left out of their own data's immense possibilities and uses.

What steps have been taken in the pursuit of 'Data driven Governance'?

India is pursuing ambitious institutional and technological innovations as it seeks to shift from merely using data-driven digital services to controlling

and leveraging such data for its own strategic and economic ends.



- **IT Rules 2011:** India regulates personal data through the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, which serve as a basic framework for regulating sensitive personal data.
- **Digitization of services:** Over the past ten years, India has rolled out digital infrastructure on a commensurate scale, enabling residents to make rapid strides toward a paperless virtual existence, allowing them access to digital services from anywhere in the country without having to carry physical documentation or visit specific service-delivery locations.
- **Digital India:** In 2015, the Digital India initiative was launched. This ambitious, multifaceted program aimed to transform the country's digital infrastructure into a public utility—facilitating digital governance and empowering citizens. Other programmes under Digital India initiative- BharatNet, Universal Access to Mobile and the Smart Cities Mission.
- **India Stack:** deployment of population-scale digital infrastructure: **(Refer the diagram blow)**
- **National Data & Analytics Platform (NDAP) by NITI Aayog**
  a. The platform aims **to democratize access to public government data** by making data accessible, interoperable, interactive, and available on a user-friendly platform.
  b. It hosts foundational datasets from various government agencies, presents them coherently, and provides tools for analytics and visualization.
- **India's approach to data governance is proceeding along three different tracks:**
  a. First is the regulating of personal data in ways that draw heavily on the principles set out under the EU's GDPR as well as other international regulations on personally identifiable information.
  b. Second, India is in the process of establishing a non-personal data framework—a path down which no other country has yet embarked. The broad contours of this policy can be gleaned from draft reports released by Gopalakrishnan Committee.
  c. The third aspect of this work has to do with the **governance of government data**, which is covered under the **National Data Sharing and Accessibility Policy.**
- The government established a committee, chaired by **retired justice B.N. Srikrishna**, to look into the establishment of a personal data protection law for the country.
- Govt is **working to ensure that Indian data are domestically controlled** and leveraged so that Indian citizens' data serve national interests before those of foreign players.

What reforms are required to ensure 'Data driven Governance' India?

- **Creating an enabling environment:** for the access, sharing and use of data to spark innovation and opportunities for public sector, economic and social development, while raising transparency and accountability from the government.

- Create a **data-driven culture in the public sector**, by:
  - developing frameworks to enable, guide, and foster access to, use and re-use of, data concerning public policy making.
  - balancing the need to provide timely official data with the need to deliver trustworthy data, managing risks of data misuse etc.
- The **adoption of effective and appropriate security measures**, so as to increase confidence in government services.
- **Framework for implementation of the digital strategy**, through:
  - **Identifying clear responsibilities** to ensure overall co-ordination of the implementation of the data driven governance.
- **Strengthen international co-operation** with other governments to maximize the benefits that can emerge from early knowledge sharing and co-ordination of data driven governance internationally.
- **Need legal framework:** 'Data Protection Act' to protect personal and non-personal data of Indian citizens and to make sure that these data are used for the welfare of citizens without any breach of privacy.
- **System of decentralized robust and reliable databases:** to ensure governance decisions are data centric.

What is the Draft National Data Governance Framework Policy?

The new draft, 'National Data Governance Framework Policy', is a replacement of the now scrapped **'India Data accessibility and Use policy'.**

Aim:

- To ensure that **non-personal data and anonymized data from both Government and Private entities are safely accessible to Research and Innovation eco-system.**
- To provide an **institutional framework** for data/datasets/metadata rules, standards, guidelines and protocols **for sharing of non-personal data sets** while ensuring privacy, security and trust.
- To **modernize the government's data collection, and to enable artificial intelligence (AI) and data-led research** and startup ecosystem in the country.

Provisions:

- **Indian Datasets programme: It will consist of non-personal and anonymized datasets from Central government entities** that have collected data from Indian citizens or those in India. Private companies will be "encouraged" to share such data.
  - The non-personal data housed within this programme **would be accessible to start ups and Indian researchers.**
- **India Data Management Office (IDMO):** It will be in charge of designing and managing the India Datasets platform that will process requests and provide access to the non-personal datasets to Indian researchers and startups.
  - The IDMO **will "prescribe rules and standards**, including anonymization standards for all entities (government and private) that deal with data.
  - For purposes of safety and trust, any non-personal data sharing by any entity can be only via platforms designated and authorized by IDMO.
- **No Selling of Data:** The most significant change in this new draft is the omission of the most contentious provision in the old draft — selling data collected at the Central level in the open market.
- **Application:** Once finalized, the policy will be applicable to all Central government departments along with all non-personal datasets and related standards and rules governing its access by start-ups and researchers.
- State governments will be "encouraged" to adopt the provisions of the policy.

Issues with the draft Policy:

- **Private companies are unlikely to be keen on voluntarily sharing non-personal** data as there could be trade and intellectual property issues.
- The **composition of the IDMO is not clear.**

- The process through which data housed in the India Datasets programme can be accessed by startups and researchers has not been made clear in the new draft policy.

What were the features of Draft Data Protection Bill?

- **Personal data definition:** Information "about or relating to a natural person who is directly or indirectly identifiable".
- **Sensitive personal data:** Bill created **a separate class of data subject to enhance compliance thresholds.** Sensitive personal data include financial data, healthcare data, official identifiers, biometric data, social identity.
- **Data fiduciary:** As for the entities involved in data processing, the DP Bill defined a data fiduciary along similar lines as GDPR defines a data controller.
- **Data principal:** The DP Bill referred to the individual whose personal data is being gathered as the "data principal,".
  - **a.** data principals have been accorded various rights with respect to their data under the control of a data fiduciary; these provisions include the **rights to access, erasure, correction, and portability, as well as the right to be forgotten.**
- **Consent:** remains the **primary ground for processing personal data.** However, the DP Bill also specified a few nonconsensual grounds for data processing.
- **Consent managers:** they are a new category of data fiduciaries to operationalize consented data flows. Data principals were meant to provide consent through these consent managers to share information with various data fiduciaries.
- **Data Protection Authority:** To govern implementation and enforcement of the law. In theory, the **DPA could designate certain entities as "significant data fiduciaries."**

Why was Bill withdrawn?

- The government wants to bring a "comprehensive legal framework" to regulate the online space:
  - including bringing **separate laws on data privacy, the overall Internet ecosystem, cybersecurity, telecom regulations**, and harnessing non-personal data to boost innovation in the country.
  - JPC has proposed 81 amendments and 12 recommendations were made towards a comprehensive legal framework on the digital ecosystem.
- **Faced major push back from a range of stakeholders including big tech companies** such as Facebook and Google, and privacy and civil society activists.
- The tech companies had, in particular, **questioned data localization provision**, under which it would have been mandatory for companies to store a copy of certain sensitive personal data within India, and the export of undefined "critical" personal data from the country would be prohibited.
- **Criticism by activists:** of a provision that allowed the **central government and its agencies blanket exemptions** from adhering to any and all provisions of the Bill.

What steps are needed to ensure ethical Data Governance in India?

Data environments are increasingly complex and can lead to issues for e.g., data integration or analytics may erode privacy protections; data users may unknowingly violate community controls. Therefore, agreeing on a basic and common guidance on data ethics in the public sector can help ensure that relevant rules and procedures "move with the data" and prevent inadvertent breaches of ethical principles in practice.

- **Manage data with integrity:** Public officials should always **ensure trustworthy data management** across the different stages of the data value cycle, which include, but are not limited to, data generation, collection, selection, curation, storage, disposal, access, sharing, and use. This is to maintain and strengthen public trust.
- **Incorporate data ethical considerations** into governmental, organizational and public sector decision-making processes.
- **Monitor and retain control over data inputs,** in particular those used to inform the

development and training of AI systems, and adopt a risk-based approach to the automation of decisions.

- **Purpose of data use:** Be specific about the purpose of data use, especially in the case of personal data.
- **Data minimization and proportionality:** It should be ensured that data governance and decision-making processes promote a balanced approach to data collection and use by weighing relevant trade-offs and societal costs and benefits.
- **Be clear, inclusive and open**: Governments should be open about how data is being used, for what purpose, and by whom.
- **Publish open data and source code:** as they help reap socio-economic benefits and foster citizen engagement and innovation while securing transparency, accountability, and public scrutiny of governments' decisions and policy outcomes.
- **Broaden individuals' and collectives' control over their data:** Upon being informed about how and with whom personal and collectively owned data is shared, individuals (including citizens and residents) and communities should be given decision-making power to exercise autonomy, control, and agency over their data, and to freely give or withdraw consent to its use.
- **Be accountable and proactive in managing risks:** accountable data use involves ensuring that:
    - **data users comply with all applicable policy,** legislative, and regulatory requirements by design;
    - **clear and common data management rules** are in place to support the fair and trustworthy access, sharing and use of data;
    - **data governance structures** are available to provide advice, intervene or correct actions; and
    - relevant bodies such as executives, legislatures and judicial bodies can intervene when needed.

Few developed countries are lobbying for free flow of cross border data (Japan – Osaka declaration, USA – laissez faire model) while India is pushing for data localization due its ramifications on economic prospects, national security, and overall development process, by way of bringing it under governance.

India is charting a new path for data governance. Given the size of the country's population (a significant share of which has yet to come online), its growing technological prowess, and its novel governance solutions, India can play a decisive role in shaping global data governance.

H140- Citizen Charter

"A customer is the most important visitor on our premises. He is not dependent on us, we are dependent on him. He is not an interruption on our work, he is the purpose of it. He is not an outsider to our business, he is part of it. We are not doing him a favour by serving him; he is doing a favour by giving us an opportunity to do so." - Mahatma Gandhi

Recently, the UP government decided **to implement 'citizens charters' across all the gram panchayats** to enhance accountability and ensure quality public amenities. The term 'Citizen' in the Citizen's **Charter includes not only the citizens but also all the stakeholders** like customers, clients, users, beneficiaries, other Ministries / Departments / Organizations, State Governments, UT Administrations etc.

What is meant by 'Citizen charter'?

Citizen's Charter is a **document of government commitments to public** w.r.t. services provided to them. 2nd ARC defines Citizen charter **as "an instrument which seeks to make an organization transparent, accountable and citizen friendly".**

- **Objective:** To make administration citizen centric and empower citizens by bridging information gap and make governance transparent, accountable and citizen-friendly.
- **Principles of Citizen Charter:** (CV- TASQ)
  - **Choice:** Wherever possible;
  - **Value:** For the taxpayers' money;
  - **Transparency:** Rules/ Procedures/ Schemes/Grievances.
  - **Accountability:** Individuals and Organizations;
  - **Standards:** Specify what to expect and how to act if standards are not met;
  - **Quality**: Improving the quality of services;
- **Components of a 'Good Citizen Charter':**
  - Organization's **vision and mission statements.**
  - **Business carried out and other such details** of the organization.
  - Explain who are **citizens and clients.**
  - **Statement of services** including quality, time-frame, etc. offered to citizens and how to get those services.
  - **Grievance redressal mechanisms.**
  - **Expectations from citizens/clients.**
  - **Additional commitments** like the amount of compensation in case of service delivery failure.
  - **Other Elements:** Simple language; Focus on the customer requirements; Periodic review; Reliability, i.e., consistency in performance/delivery.

How citizen charter evolved in India?

- **UK (1991):** The concept of citizen charter was first articulated and implemented as **a 'National Programme to improve the quality of public services'** for the people.
- **India (1994):** Consumer rights activists **drafted a charter for health service providers** at meeting of the Central Consumer Protection Council in Delhi.
- The Department of Administrative Reforms and Public Grievances in Government of India (DARPG) initiated the task of coordinating, formulating and operationalizing Citizen's Charters.

What is the significance of citizen charter for good governance?

- **Organizational transparency and accountability:** is ensured by the Citizen Charter which helps in achieving good governance.
- **Citizen participation:** is welcomed for efficient working of an organization by making the citizens aware of the aims and goals of the organization.
- **Reducing corruption** through transparent provisions and thus ensures accountability.
- **Citizen friendliness and convenience:** is raised through Citizen Charter => It raises efficiency and effectiveness in public delivery systems.
- It **reduces cost, prevents delays and red-tapism** and thus promotes good governance.
- Citizen Charter **set standards of service**, allowing high expectations from an organization, pushing them to work diligently.

- **Professional and customer-oriented environment is** created for the delivery of services.

Best Practices:

- **Citizen's Charter in all Municipalities/Corporations in Tamil Nadu:**
  - If grievances are not redressed in the stipulated time, citizens are entitled to bring it to the notice of the officers concerned.
  - The Commissionerate's telephone numbers are indicated in the Charter.
- **Others:**
  - Regional Transport Department, Hyderabad, has been documented by the Indian Express.
  - Jan Sewa Kendras in Vadodara and Ahmedabad has been documented by the Government of Gujarat.
- **Goicharters.nic.in** a dedicated website to provide information and awareness about citizen charter.

What are the challenges faced in implementation of the citizen charter?

- **Slow Service Delivery:** It has proved insufficient to ensure speedy delivery of public goods and the elimination of graft from the process of delivery.
- **Lack of statutory support and enforcement mechanism:** Citizen's Charters are not supported by any law and are thus **non-justiciable**, making it a mere formality. Thus, organizations / departments show little interest in adhering to their charters.
- **Linguistic gap:** Most charters are prepared either in English or Hindi with very **less emphasis on translation in vernacular language.**
- **Inadequate grievance redressal:** Details of public grievance officer are not provided in many charters.
- **Social Exclusion:** Citizen's Charter may benefit affluent customers and it is less likely to ensure access to services for the majority who suffer from various forms of social exclusion **based on class, caste, gender, region and ethnicity.**
- **Inadequate publicity:** Adequate publicity to the Charters had not been given in any of the Departments evaluated. Rather, Charters are only in the initial or middle stage of implementation.
- **Transfers and reshuffles:** of concerned officers at the critical stages of formulation / implementation of a Citizens' Charter in an organisation severely destabilised the strategic processes.
- **Charters have been designed without any participatory process:** The civil society has not been consulted before drafting charters. Most of the ministries and departments have just copy-pasted the model charter designed by the DAR&PG.
- **Others:**
  - **Lack of awareness in public offices:** By and large service providers are not familiar with the philosophy, goals and main features of the Charter.
  - **Lack of periodic review and feedback:** Charters are not updated regularly, making it a one-time exercise with no change over decades.

What reforms are needed to make citizen charters effective?

- **SEVOTTAM MODEL for public Service Delivery:** Sevottam is an assessment - improvement model needs to be adopted by all the departments at all levels.
- **Information and facilitation centres (IFCs):** must be used to provide information to citizens about their programs/ schemes about citizen charter.
- **Bottom-up approach:** NGOs, civil society must be consulted before designing the citizen charter to make it more effective and inclusive.
- **Statutory backing:** to the citizen charter to make it justiciable, like in UK. E.g., 'The Right to Citizens for Time Bound Delivery of Goods and Services and Redressal of their Grievances Bill' (Citizen's Charter Bill) must be passed to make

charters enforceable and levy a penalty for non-adherence to citizens charters.

- **Accountability of officers:** The specific responsibility must be fixed to the grievance redressal officer to make citizen charter more accountable.
  - E.g., Non-compliance to the citizen charter in Tamil Nadu's municipalities may result in a **monetary fine from the salary of the grievance redressal officer.**
- **Capacity building and sensitization of the officers** regarding benefits of citizen charter needs to be promoted.
- **Replicate best practices:** For instance, in United Kingdom, end-user feedback is used to assess the progress and outcomes an agency derives through the use of citizens' charters.
- **Specification of time-frames:** There should be a clear commitment about the time-frame for service delivery and grievance redressal.
- **Clear Grievance redressal procedures:** Charter should encourage the citizens to complain about their grievances and organizations should aspire to redress these.
- **Others:**
  - **More publicity of the Charter** through print media, posters, banners, leaflets, handbills, local newspapers and also through electronic media.
  - **Periodic assessment** of citizen charter must be done **by the independent agency** to improve the effectiveness of the charter.

Recommendations of 2nd ARC:

- **Specify the remedy/compensation in the case of any default.**
- **Restricted promises that can be kept** rather than have a long unfulfilled list.
- The organization should restructure its set-up and processes; **All stakeholders must be kept on board** to make a charter; **should be reviewed and revised regularly.**
- **Local and customized charters,** not uniform charter across organizations.
- **Commitments made should be** firm and there should be a **citizen-friendly redressal mechanism.**
- **Officers should be held accountable** if commitments made are not fulfilled.

Recommendations of Indian Institute of Public Administration (IIPA):

- Create a **database on consumer grievances** and redress.
- Earmarking of **specific budgets for awareness generation.**

What initiatives are taken by the governments with respect to Citizen Charter?

- **Charter Mark:** are awarded after due assessment by an independent panel of judges.
- **Regional seminars:** are organized with a view to bringing national and state level organizations for formulation and implementation of the Citizen Charter.
- **Capacity building workshops:** On the basis of the feedback received and experience gained in these seminars, capacity building workshops are organized to:
  - Formulate and effectively implement Charters.
  - Enhance the capacity of trainers.
- **Information and Facilitation Counters (IFCs):** as a facility are set up by central government organizations to provide information to citizens about schemes and plans.
- **The Citizen's Charter and Grievance Redressal Bill 2011** was introduced to give statutory backing to the concept of citizen charter. (Discussed in the box)

The Citizen's Charter and Grievance Redressal Bill 2011:

A. Key highlights:

- The Bill seeks to create a **mechanism to ensure timely delivery** of goods and services to citizens.
- Every public authority is required to **publish a citizen's charter within 6 months** of the commencement of the Act.
- The Charter will **detail the goods and services** to be provided and their **timelines for delivery.**
- A citizen may file a complaint regarding grievance related to: (a) citizens charter; (b) functioning of a public authority; or (c) violation of a law, policy or scheme.
- All public authorities must appoint officers to redress grievances to ensure redressal of grievances within 30 working days.
- It provides for the **appointment of Central and State Public Grievance Redressal Commissions**.

B. Issues and Analysis:

- **Parliament may not have the jurisdiction** to regulate the functioning of state public officials as state public services fall within the purview of state legislatures.
- This Bill may create a **parallel grievance redressal mechanism** as many central and state laws have established similar mechanisms.
- **Appeals** from the Commissions' decisions **on matters of corruption will lie before the Lokpal or Lokayuktas**, while many Lokayuktas have not been established.
- **Only citizens can seek redressal** of grievances under the Bill. The **Bill does not enable foreign nationals** who also use services such as driving licenses, electricity, etc., to file complaints.

Citizen's Charters are a . The proper implementation of the recommendations and following the **Sevottam Model of public service delivery** will ensure that the citizens' charter **transforms from a piece of paper into an instrument for changing long-entrenched values and mindset.**

H141- [2nd ARC Recommendations Summary – I]

1st Report

Right to Information: Master Key to Good Governance

2nd ARC recommendations:

Areas of Governance	Reforms Suggested
1. **The Official Secrets Act**	• All laws relating to national security should be consolidated under the **National Security Act (NSA)**. • The **Official Secrets Act, 1923 should be repealed**, and substituted by a chapter in the National Security Act, containing provisions relating to official secrets. • A **comprehensive amendment of Section 5(1)** to make the penal provisions of OSA **applicable only to violations affecting national security**. • Any person who **voluntarily receives any official secret** knowing or having reasonable grounds to believe, at the time he receives it, that the official secret is **communicated in contravention of this Act, shall be guilty of an offence** under this section.
2. **Governmental Privilege in Evidence**	• Section 123 of the **Indian Evidence Act, 1872 should be amended** to read as follows: Subject to the provisions of this section, no one shall be permitted to give any evidence derived from official records which are exempt from public disclosure under the RTI Act, 2005.
3. **The Oath of Secrecy**	• As an affirmation of the importance of transparency in public affairs, Ministers on assumption of office may take an oath of transparency along with the oath of office and the requirement of administering the **oath of secrecy should be dispensed with**.
4. **The Central Civil Services (Conduct) Rules**	• Civil Services Rules of all States may be reworded on the following lines: "Communication of Official Information: **Every Government servant shall**, in performance of his duties in good faith, **communicate to a member of public** or any organization full and accurate information, which can be **disclosed under the Right to Information Act, 2005**.
5. **Classification of Information**	• The GOI should amend the **Manual of Departmental Security Instructions** in the following manner: It would be advisable for each Ministry/Department to identify the information which deserves to be given a security classification provided they qualify for exemption from disclosure under the Right to Information Act, 2005.
6. **Building Institutions**	• Section 12 of the Act may be amended to constitute the **Selection Committee of CIC with the PM, LoP and CJI**. • Section 15 may be similarly amended to constitute the **Selection Committee at the State level with the CM, LoP and CJ-HC**. • The CIC should establish **4 regional offices of CIC** with a Commissioner heading each. Similarly, regional offices of SICs should be established in larger States.

	• At least **half of the members of the Information Commissions should be drawn from non-civil services background** applicable to both CIC and SICs.
7. **Organising Information and Recordkeeping**	• **Suo motu disclosures** should also be available in the form of **printed, priced publication in the official language**, revised periodically. Such a publication should be available for reference, free of charge. • In respect of **electronic disclosures, NIC should provide a single portal** through which disclosures of all public authorities under appropriate governments could be accessed, to facilitate easy availability of information. • **Public Records Offices** should be established as an independent authority in GOI and all States by integrating and restructuring the multiple agencies currently involved in record keeping. • It would function under the **overall supervision and guidance of CIC/SIC**.
8. **Capacity Building and Awareness Generation**	• Training programmes should not be confined to merely PIOs and APIOs. All government functionaries should be imparted **at least one day training in the Right to Information**. • The CIC and the SICs may issue **guidelines for the benefit of public about key concepts in the Act** and approach to be taken in response to information requests on the lines of the Awareness Guidance Series.
9. **Monitoring Mechanism.**	• The **CIC and the SICs** may be entrusted with the task of **monitoring effective implementation** of Right to Information Act in all public authorities. • A **National Coordination Committee (NCC)** may be set up under the chairpersonship of the Chief Information Commissioner. It would: o serve as a national platform for effective implementation of the Act, o document and disseminate best practices in India and elsewhere, o monitor the creation and functioning of the national portal for Right to Information, o review the Rules and Executive orders issued by the appropriate governments under the Act, o carry out impact evaluation of the implementation of the Act and o perform such other relevant functions as may be deemed necessary
10. **Application to Non-Governmental Bodies**	• **Organizations which perform functions of a public nature** that are ordinarily performed by the government or its agencies may be **brought within the purview of the Act**. • **Norms should be laid down that any institution** or body that has received 50% of its annual operating costs, or a sum >= Rs.1 crore during any of the preceding 3 years should be understood to have **obtained 'substantial funding' from the government**. • Any information which, if it were held by the government, would be subject to disclosure under the law, must remain subject to such disclosure even when it is transferred to a non-government body or institution.
11. **Mechanism for Redressal of Public Grievances**	• **States** may be advised to set up **independent public grievances redressal authorities** to deal with complaints of delay, harassment or corruption.
12. **Frivolous and Vexatious Requests**	• The **PIO may refuse a request for information** if the request is manifestly **frivolous or vexatious**

	• It may be provided that **information can be denied if** the work involved in processing the request would **substantially and unreasonably divert the resources of the public body**. • Provided that **such refusals shall be communicated within 15 days** of receipt of application, with the prior approval of the appellate authority and all such refusals shall stand transferred to CIC/ SIC.
13. **Application of the Act to the Legislature and the Judiciary**	• A system of **indexing and cataloguing of records** of the legislatures, which facilitates easy access, should be put in place. This could be best achieved by **digitizing all the records and providing access to citizens** with facilities for retrieving records based on intelligible searches. • A **tracking mechanism** needs to be developed so that the action taken by the executive branch on various reports like CAG, Commissions of Enquiry and House Committees is available to legislators and the public, online. • The **working of the legislative committees should be thrown open** to the public. The presiding officer of the committee, if required in the interest of the State or privacy, may hold proceedings in camera. • The **records at the district court and the subordinate courts** should be **stored in a scientific way**, by adopting uniform norms for indexing and cataloguing. • The administrative processes in the district and the subordinate courts should be **computerized in a time bound manner**. These processes should be totally in the public domain.

2nd Report
Unlocking Human Capital: Entitlements & Governance

"The measure of a country's greatness should be based on how well it cares for its most vulnerable populations." - Mahatma Gandhi

2nd ARC Recommendations:

The Commission has analyzed the NREGA and given recommendations in this regard. These recommendations (with suitable modifications) would be valid for other programmes too.

Areas of Governance	Reforms Suggested
1. Guaranteeing Reach	• **Awareness generation programmes** should be taken up by all State Governments in local languages. • **Intensive use of All India Radio and Doordarshan** should be made in local languages. • In order to ensure proper coverage, **voters lists may be used for ascertaining the number of eligible households**. • The **number of households registered should be monitored and compared against other data like census, BPL survey etc,** so that affirmative action could be taken wherever the participation is not satisfactory. • Independent monitors, wherever necessary, should be deployed in areas where participation of vulnerable sections is not adequate, to ensure that the weaker sections are participating and getting their entitlements.
2. Financial Management System	• **Funds** from Government of India should be **transferred directly to the districts**. • **The State Governments contribution may be fixed at 10 per cent of the total cost of REGS in a year**, and may be made annually. If the state does not make this contribution, it may be deducted from its Central Assistance for State Plans. • **Target (maximum) levels of funds should be fixed for Panchayats** (village, block and district levels). **Government of India should release funds to districts every month**, so that the target levels are restored. • The system of releasing funds based on utilization certificates should be replaced with a **system of concurrent monitoring and audit through an independent agency.** • A **uniform financial information flow system** should be prescribed for the entire country.
3. Maintaining Labour Material Ratio	• The stipulation that the **material component should not exceed 40 per cent of the total cost should be strictly adhered to** for each work.
4. Mechanism for procurement	• State Governments should evolve transparent procurement procedures.
5. Strengthening Local Governments - Capacity Building	• NREGA should be implemented by a **judicious mix of permanent and contractual staff**.

	• Services of Non-Governmental Organisations with proven track records could also be used to supplement staff deficits. • Training should not be envisaged as a one-time intervention but should be a continuing process.
6. Selection and maintenance of works	• Selection of shelf of works at the Gram Panchayat and Block/Intermediate Panchayat level **should be in harmony with the district development plan**. • **Stand-alone work should be discouraged**.
7. Entrepreneurship Institutes for the Rural Poor	• **Entrepreneurship training institutes should be set up in every block** to train and impart skills to the rural poor so that they get the opportunity to be self-employed. • **This should be financed out of the funds earmarked for administrative expenses under NREGA.**
8. To curb corruption.	• To the extent possible, **a photograph of the work carried out**, at different stages, should be taken for a record. • The **Grievances Redressal Mechanism as provided in the NREGA should proactively reach out to the people** to redress their grievances.

3rd Report
CRISIS MANAGEMENT

2nd ARC recommendations:

Areas of Governance	Reforms Suggested
1. Constitutional provision	• A new entry, **"Management of Disasters and Emergencies, natural or man-made"**, may be included in List III (Concurrent List) of the Seventh Schedule of the Constitution.
2. The Disaster Management Act, 2005 (Central Act) needs to be amended to bring in the following features.	• **Disaster/Crisis Management** à primary responsibility of the State Governments and the Union Government should play a supportive role. • **Categorization of disasters** (say, local, district, state or national level) along with intensity of each type of disaster will help in determining the level of authority primarily responsible for dealing with the disaster as well as the scale of response - detailed guidelines may be stipulated by the NDMA on this subject. • Provisions for stringent punishment for misutilization of funds meant for crisis/disaster management. • The role of the local governments should be brought to the forefront for crisis/disaster management.
3. Role of Local Self-Governments	• State Governments shall amend the state disaster management law to define role of the municipal bodies and panchayat raj institutions during disasters.
4. Crisis Management Set Up for Metropolitan Cities.	• In larger cities the mayor, assisted by the Commissioner of the Municipal Corporation and the Police Commissioner should be directly responsible for Crisis Management.
5. Creation of Legal and Institutional Framework for Managing Floods in Inter-State Rivers.	• Using powers under Entry 56 in the Union List, a Law may be enacted to set up mechanisms for collection of data, managing flow in rivers and release of water from reservoirs, so as to prevent disasters, with inter-state ramifications.
6. National Institute of Disaster Management (NIDM)	• It should document and disseminate global and national best practices and in developing planning, training and evaluation methodologies.
7. Professionalization of Disaster Management	• **'Disaster Management'** as a body of knowledge should be introduced as a subject in Management and Public Administration in selected universities. • **Exchange of experiences and learning** with foreign governments and international institutions dealing with disaster management.
8. Assessment of Risk - Hazard and Vulnerability Analysis	• Hazard and vulnerability analyses should be made an essential component of all crisis/disaster mitigation plans. • Priority should be given to seismic micro-zonation of vulnerable major cities, hazard prone areas, and urban agglomerations.

	• Integrating **Geographical Information System** tools data from satellite aerospace and Geographical **Positioning Systems** for real time monitoring of crisis situations and for scientific assessment of damages. • **Scientific, technological and research organizations** should be brought on a common platform by NDMA for developing a sound information base for crisis management. This exercise should generate base hazard maps for district and sub-district levels.
9. Generating Awareness about Risk	• Awareness generation programmes should be undertaken **using tools of social marketing**. • A responsible media, which is also **well informed about all aspects of disaster**, is a very powerful tool for sensitizing people. Proactive disclosures about all aspects of disaster management would build a healthy relationship between the media and disaster management agencies. • **Details of past accidents and disasters and the lessons learnt** should be documented and kept in the public domain.
10. Mitigation of Hazards	• Environment management should be made an integral part of all development and disaster management plans.
11. Construction of Disaster Resistant Structures with BIS standards	• Retrofitting existing buildings; disaster resilient features in **'building byelaws'**; disseminating importance of disaster resistant constructions and safety guidelines to promote compliance.
12. People's Participation in EWS	• The **role of community leaders, NGOs and others should be clearly defined** in the emergency response plan and they should be fully trained and prepared for their respective roles.
13. Building Community Resilience	• **Location specific training programme**s for the community should be executed through the panchayats. • Crisis management awareness needs to be mainstreamed in education. • **Disaster awareness should be included in training** programmes for govt servants.
14. Financial Tools for Risk-Reduction	• **Motivating citizens in vulnerable areas to take insurance cover** with part funding from government.
15. Emergency Plan	• **Emergency Response Plans** should be up-to-date and should lay down the 'trigger points' in unambiguous terms. • Standard operating procedures should be developed for each disaster at the district and community level, keeping in mind the disaster vulnerability of the area. • **Unity of command** should be the underlying principle for effective rescue operations. • The plan should be validated annually through mock drills.
16. Coordinating Relief	• Effective coordination is essential at the district and sub-district levels for rescue/relief operations and to ensure proper receipt and provision of relief.

	During rescue and relief operations, **unity of command should be ensured with the Collector in total command**. • Ensuring safe drinking water and sanitized living conditions should receive as much a priority as other basic means of livelihood. • **Trauma care and counselling** should be made an integral part of the relief operations. • **Evolve objective methods of assessing the damage** so that there are no allegations of bias, distortions, exaggeration or arbitrary scaling down. Satellite imagery could be used as a tool to validate the reported damages.
17. Civil Defence	• The **Civil Defence Act should be amended** as proposed so as to cover all types of disasters and constituting CD in all vulnerable districts; enlist para-medics as Civil Defence volunteers. • The Civil Defence set-up at the state level may be brought under the control of the Crisis/Disaster Management set-up
18. Police, Home Guards and Fire Services.	• These first responders should be adequately trained in handling crises/disasters and included in DM plans.
19. Organizing Emergency Medical Relief	• An institutional arrangement to attend to medical emergencies is required to be put in place, like identical telephone numbers throughout the country and involving private hospitals.
20. Relief and Rehabilitation	• **Damage assessment** should be carried out by multi-disciplinary teams in accordance with guidelines laid down by NDMA. • A **recovery strategy** should be evolved in consultation with the affected people and concerned agencies and organizations and include all aspects of rehabilitation - social, economic and psychological. • **Minimum standards of relief** should be developed to address the requirements of food, health, water and sanitation shelter requirements. Focus à special needs of the vulnerable population that is, children, women, the elderly and the physically challenged. • Involve village panchayats/local bodies in rehabilitation efforts. Priority à get the beneficiary-oriented works executed through the beneficiaries themselves. • Concurrent monitoring and a quick financial audit à prevent misuse of funds. • Risk reduction aspects should be incorporated into the recovery plans. Land use plans which ensure the safety of the inhabitants should be brought into effect during reconstruction. • All new civil constructions should mandatorily be made disaster resistant as per prescribed standards. • A mechanism for redressal of grievances should be established at the local and district levels.
21. Gender Issues and Vulnerability of Weaker Sections.	• The vulnerability analysis should bring out the specific vulnerabilities of women and these should be addressed in any mitigation effort. Disaster mitigation plans should be prepared, in consultation with women's and vulnerable groups.

	• Rescue and relief operations à the special requirements of the most vulnerable groups-women, children, the elderly and the physically challenged. • Relief measures should take into account the special requirements of women and other vulnerable groups. Particular attention needs to be given to their physical and mental well-being through health care and counselling. • In the recovery phase, efforts should focus on making women economically independent by offering them opportunities of earning incomes. • The title of new assets created should be in the names of both husband and wife. • Trauma counselling and psychological care à widows and women and other persons in distress. Arrangements à orphaned children on a long-term basis.
22. Livelihood Management in Extremely Drought Prone Areas.	• Making people pursue livelihoods compatible with their ecosystems as also alternate means of livelihood have to be evolved. • Deployment of Remote Sensing for Diagnosis and Prognosis of Drought Situations. • Making Rivers Perennial taking inti account the ecological and hydrological implications of making seasonal rivers perennial. • A **National Rainfed Areas Authority** may be constituted to deal with all the issues of drought management.
23. Epidemics	• To prevent outbreak/spread of epidemics, a comprehensive revised 'model' legislation on public health is finalized and the MoH&FW systematically pursues its enactment by the states with adaptations necessitated by local requirements. • MoH&FW has to ensure that requisite plans envisaged under the DM Act, 2005, are drawn up in respect of epidemics also and that the role of the district administration finds explicit mention in the **Public Health Emergency Bill**. The structure created by the DM Act, 2005, should be utilized for managing epidemics also. • The MoH&FW and the State Govts must ensure that 'standard operating procedures' are devised to assign roles and responsibilities of agencies and personnel outside the line organizations to prevent overwhelming capacities of 'line organisations'. • State level handbooks and manuals concerning disaster management should have a chapter on **"epidemics-related emergencies"**. It may be useful to document the past handling of epidemics like the Plague (Surat) and Japanese encephalitis (Eastern UP) (or recent Covid 19 pandemic) to facilitate standardization of response mechanisms.

4th Report

Ethics in governance

"Rivers do not drink their waters themselves, nor do trees eat their fruit, nor do the clouds eat the grains raised by them. The wealth of the noble is used solely for the benefit of others."

2nd ARC Summary of recommendations:

Areas of Governance	Reforms Suggested
1. Political Funding	• A system for **partial state funding** should be introduced in order to reduce the scope of illegitimate and unnecessary funding of expenditure for elections.
2. Tightening of Anti-Defection Law	• The issue of disqualification of members on grounds of defection should be **decided by the President/Governor on the advice of the ECI**.
3. Disqualification	• **Amend Section 8, RPA 1951** to disqualify all persons facing charges related to grave and heinous offences and corruption, with the modification suggested by the Election Commission.
4. Coalition and Ethics:	• The Constitution should be amended to ensure that **if one or more parties in a coalition with a common programme** mandated by the electorate either explicitly before the elections or implicitly while forming the government, **realign midstream with one or more parties outside the coalition,** then Members of that party or parties shall have to **seek a fresh mandate from the electorate**.
5. Appointment of the Chief Election Commissioner/Commissioners:	• A **collegium** should make recommendations for the consideration of the President for appointment of the CEC and ECs. • **Composition of the collegium**: PM (Head), Speaker of LS, the Leader of Opposition in LS, the Law Minister and the Deputy Chairman of the RS;
6. Expediting Disposal of Election Petitions	• **Special Election Tribunals** at the regional level under Article 323B of the Constitution to ensure **speedy disposal of election petitions** within a **period of six months**. • Each Tribunal should comprise a **High Court Judge and a senior civil servant** with at least 5 years of experience in the conduct of elections (not below the rank of an Additional Secretary to Government of India/Principal secretary of a State Government). • The Tribunals should normally be set up for a **term of one year only**, extendable for a period of 6 months in exceptional circumstances.
7. Grounds of Disqualification for Membership	• **Appropriate legislation** may be enacted under Article 102(e) of the Constitution **spelling out the conditions for disqualification** of Membership of Parliament **in an exhaustive manner**. Similarly, the States may also legislate under Article 198(e).
8. Ethical Framework for Ministers	• In addition to the existing Code of Conduct for Ministers, there should be a **Code of Ethics** to provide guidance on how Ministers should uphold the

	highest standards of constitutional and ethical conduct in the performance of their duties. • **Dedicated units** should be set up in the offices of the Prime Minister and the Chief Ministers **to monitor the observance of the Code of Ethics and the Code of Conduct**. • The **unit should also be empowered to receive public complaints** regarding violation of the Code of Conduct. • The **Prime Minister or the Chief Minister should be duty bound to ensure the observance of the Code of Ethics** and the Code of Conduct by Ministers even when government is of coalition. • An **annual report with regard to the observance of these Codes should be submitted to the appropriate legislature**. o This report should include specific cases of violations, if any, and the action taken thereon. • The Code of Ethics should **include broad principles of the Minister-civil servant relationship**. • The Code of Ethics, the Code of Conduct and the annual report should be **put in the public domain**.
9. Enforcement of ethical norms in Legislatures	• An **Office of 'Ethics Commissioner' may be constituted by each House of Parliament**. o This Office, functioning under the Speaker/Chairman, **would assist the Committee on Ethics** in the discharge of its functions, and **advise Members, when required**, and maintain necessary records. • **In respect of states**, the Commission recommends the following: o **All State legislatures** may adopt a **Code of Ethics and a Code of Conduct** for their Members. o **Ethics Committees** may be constituted **with well-defined procedures for sanctions in case of transgressions**, to ensure the ethical conduct of legislators. o **'Registers of Members' Interests'** may be maintained with the declaration of interests by Members of the State legislatures. o **Annual Reports** providing details including transgressions may be placed on the Table of the respective Houses. o **An Office of 'Ethics Commissioner'** may be constituted by each House of the State legislatures.
10. Office of Profit	• The **Law should be amended to define office of profit** based on the following principles: o **All offices in purely advisory bodies shall not be treated as offices of profit**, irrespective of the remuneration and perks associated with such an office. o **All offices involving executive decision making and control of public funds shall hold such offices**. o The **use of discretionary funds at the disposal of legislators, the power to determine specific projects and schemes, or select the beneficiaries or authorize expenditure** shall constitute discharge of executive functions and **will invite**

	disqualification under Articles 102 and 191, irrespective of whether or not a new office is notified and held. • **Schemes such as MPLADS and MLALADS should be abolished.** • **Members of Parliament and Members of State Legislatures should be declared as 'Public Authorities' under the Right to Information Act**, except when they are discharging legislative functions.
11. Code of Ethics for Civil Servants	• **'Public Service Values'** towards which all public servants should aspire, **should be defined and made applicable to all tiers of Government** and parastatal organizations**. Any transgression** of these values **should be treated as misconduct, inviting punishment**. • **Conflict of interests should be comprehensively covered** in the code of ethics and in the code of conduct for officers. Also, **serving officials should not be nominated on the Boards of Public undertakings**. o This will, however, not apply to non-profit public institutions and advisory bodies.
12. Ethical Framework for the Judiciary:	• A **National Judicial Council** should be constituted, where the **appointment of members of the judiciary should be by a collegium** having representation of the executive, legislature and judiciary. **The Council should have the following composition**: o The Vice-President as Chairperson of the Council o The Prime Minister o The Speaker of the Lok Sabha o The Chief Justice of India o The Law Minister o The Leader of the Opposition in the Lok Sabha o The Leader of the Opposition in the Rajya Sabha • The **National Judicial Council should be authorized to lay down the code of conduct for judges**, including the subordinate judiciary. • The **National Judicial Council should be entrusted with the task of recommending appointments of Supreme Court and High Court Judges**. • It should also be entrusted the task of **oversight of the judges, and should be empowered to enquire into alleged misconduct** and impose minor penalties. It **can also recommend removal** of a judge if so warranted. • Based on the recommendations of the NJC, the President should have the powers to remove a Supreme Court or High Court Judge. • A Judge of the Supreme Court should be designated as the **Judicial Values Commissioner**. He/she should be **assigned the task of enforcing the code of conduct.** Similar arrangement should also be made in the High Court.
13. Speeding up Trials under the Prevention of Corruption Act:	• A legal provision needs to be introduced **fixing a time limit for various stages of trial.** • **Ensure that judges declared as Special Judges** under the provisions of the Prevention of Corruption Act **give primary attention to disposal**

	of cases under the Act. Only if there is inadequate work under the Act, should the Special Judges be entrusted with other responsibilities. • The **proceedings of courts trying cases under the Prevention of Corruption Act** are held on **a day-to-day basis**, and no deviation is permitted.
14. Protection to Whistleblowers:	• **Legislation should be enacted immediately** to provide protection to whistleblowers on the following lines: o Whistleblowers exposing false claims, fraud or corruption should be **protected by ensuring confidentiality and anonymity, protection from victimization in career**, and other administrative measures to prevent bodily harm and harassment. o **The legislation should cover corporate whistle-blowers** unearthing fraud or serious damage to public interest by willful acts of omission or commission. o **Acts of harassment or victimization of or retaliation against, a whistleblower** should be **criminal offences** with substantial penalty and sentence.
15. Serious Economic Offences:	• A **new law on 'Serious Economic Offences'** should be enacted. • A **Serious Economic Offence may be defined as:** o One which involves a **sum exceeding Rs 10 crores**; or o **is likely to give rise to widespread public concern**; or o its investigation and prosecution are likely to require **highly specialized knowledge of the financial market** or of the behaviour of banks or other financial institutions; or o **involves significant international dimensions**; or o in the investigation of which there is requirement of legal, financial, investment and investigative skills to be brought together. • **A Serious Frauds Office (SFO) should be set up** (under the new law), to investigate and prosecute such offences. o This office shall have **powers to investigate and prosecute all such cases in Special Courts** constituted for this purpose. o The **SFO should be staffed by experts** from diverse disciplines such as the financial sector, capital and futures market, commodity markets, accountancy, direct and indirect taxation, forensic audit, investigation, criminal and company law and information technology. • A **Serious Frauds Monitoring Committee** should be constituted to oversee the investigation and prosecution of such offences. • In all cases of serious frauds, the Court shall presume the existence of **mens rea** of the accused, and the **burden of proof regarding its non-existence, shall lie on the accused**.
16. Prior Concurrence for Registration of Cases:	• **Permission to take up investigations should be given by the Central Vigilance Commissioner** in consultation with the secretary concerned. • In the case of investigation against a Secretary to Government, permission should be given by a committee comprising the Cabinet Secretary and the Central Vigilance Commissioner.

17. Immunity Enjoyed by Legislators:	• The Commission, recommends that **suitable amendments be effected to Article 105(2)** of the Constitution **to provide that the immunity enjoyed by Members of Parliament does not cover corrupt acts committed by them** in connection with their duties in the House or otherwise. • Similar amendments may be made in Article 194(2) of the Constitution in respect of members of the state legislatures.
18. Constitutional Protection to Civil Servants – Article 311	• **Article 311 of the Constitution should be repealed**. • Simultaneously **Article 310 of the Constitution should also be repealed.** • **Suitable legislation to provide for all necessary terms and conditions of services should be provided under Article 309**, to protect the bona fide action of public servants taken in public interest; this should be made applicable to the States. • **Necessary protection to public servants against arbitrary action should be provided through such legislation under Article 309**.
19. Ombudsman at the Local Levels	• **A local bodies Ombudsman should be constituted for a group of districts** to investigate cases against the functionaries of the local bodies. • The State Panchayat Raj Acts and the Urban Local Bodies Act should be amended to include this provision**.** • **The competent authorities should normally take action as recommended by ombudsmen** against accused officials. • **In case they do not agree with the recommendations, they should give their reasons in writing** and the reasons should be made public.
20. Citizens' Initiatives	• Citizens' Charters should be made effective by stipulating the service levels and also the remedy if these service levels are not met. • **Reward schemes should be introduced to incentivise citizen's initiatives**. • **School awareness programmes** should be introduced, highlighting the importance of ethics and how corruption can be combated.
21. False Claims Act	• **Legislation on the lines of the US False Claims Act** should be enacted, providing for citizens and civil society groups **to seek legal relief against fraudulent claims against the government**. This law should have the following elements: o Any citizen should be able to bring a suit against any person or agency for a false claim against the government. o If the false claim is established in a court of law, then the person/agency responsible shall be liable for penalty equal to five times the loss sustained by the exchequer or society. o The loss sustained could be monetary or non-monetary as in the form of pollution or other social costs. In case of non-monetary loss, the court would have the authority to compute the loss in monetary terms. o **The person who brought the suit shall be suitably compensated out of the damages recovered.**

22. Role of Media	• **Evolve norms and practices requiring proper screening of all allegations/complaints by the media**, and taking action to put them in the public domain. • Electronic **media should evolve a Code of Conduct** and **a self-regulating mechanism** in order to adhere to a Code of Conduct as a safeguard against malafide action.
23. Social Audit:	• Operational guidelines of all developmental schemes and citizen centric programmes should provide for a social audit mechanism.
24. Promoting Competition	• Every Ministry/Department may undertake an **exercise to identify areas where the existing 'monopoly of functions' can be tempered with competition**. • **Roadmap should be laid down to reduce 'monopoly' of functions**.
25. Reducing discretion	• All government offices having public interface should **undertake a review** of their activities and list out those which involve use of discretion. In all such activities, an attempt should be made to **eliminate discretion**. • Where it is not possible to do so, **well-defined regulations** should attempt to 'bound' the discretion.
26. Supervisory officers:	• **In the Annual Performance Report of each officer, there should be a column** where the officer should indicate the **measures, he took to control corruption in his office** and among subordinates**. The reporting officer should then give his specific comments** on this. • **Supervisory officers who give clean certificates to subordinate corrupt officers** in their Annual Performance Reports **should be asked to explain their position in case the officer reported upon is charged with an offence under the Prevention of Corruption Act**. • In addition, the fact that they have not recorded adversely about the integrity of their subordinate corrupt officers should be recorded in their reports. • Supervisory officers should **ensure that all offices under them pursue a policy of suo motu disclosure of information** within the ambit of the Right to Information Act.
27. Ensuring Accessibility and Responsiveness	• Service providers should **converge their activities** so that **all services** are delivered **at a common point**. • **Such common service points could also be outsourced** to an agency, which can even pursue citizen requests with concerned agencies. • **Public interaction should be limited to designated officers**. **A 'single window front office'** for provision of information and services to the citizens **with a file tracking system** should be set up in all government departments.
28. Monitoring Complaints	• All offices having a large public interface should have **an online complaint tracking system**. If possible, this task of complaint tracking should be outsourced. • There should be an **external, periodic mechanism of 'audit' of complaints** in offices having a large public interface.

29. Risk Management for Preventive Vigilance	• **Risk profiling of jobs** needs to be done in a more systematic and institutionalized manner in all government organizations. • **Risk profiling of officers** should be done by a committee of 'eminent persons' after the officer has completed ten years of service, and then once every five years.
30. Protecting the Honest Civil Servant	• **Every allegation of corruption** received against a public servant **must be examined in depth at the initial stage** before initiating any enquiry. • In matters relating to allegations of corruption, **open enquiries should not be taken up straightaway.** • **When verification/secret enquiries are approved, it should be ensured that secrecy of such verifications is maintained** and the verifications are done in such a manner that neither the suspect officer nor anybody else comes to know about it. Such secrecy is essential not only to protect the reputation of innocent and honest officials but also to ensure the effectiveness of an open criminal investigation • **There should be profiling of officers**. The capabilities, professional competence, integrity and reputation of every government servant must be charted out and brought on record. **Before proceeding against any government servant, reference should be made to the profile** of the government servant concerned. • **A special investigation unit should be attached to the proposed Lokpal** (Rashtriya Lokayukta) / State Lokayuktas / Vigilance Commission, to investigate allegations of corruption against investigative agencies.

5th Report

Public order

If real criminals in our society are left without punishment for years, because of delay in criminal justice for various reasons, it will indeed result in the multiplication of people taking to criminal acts." - Dr. A.P.J. Abdul Kalam

Areas of Governance	Reforms Suggested
1. **Separation of Investigation from other Functions**	• **Crime Investigation should be separated from other policing functions**. • **A Crime Investigation Agency** should be constituted in each state. • This agency should be headed by a Chief of Investigation under the administrative control of a Board of Investigation, to be headed by a retired/ sitting judge of the High Court. • The **Chairman and Members of the Board of Investigation should be appointed by a high-powered collegium**, headed by the Chief Minister and comprising the Speaker of the Assembly, Chief Justice of the High Court, the Home Minister and the Leader of Opposition in the Legislative Assembly. • **The Chief of the Crime Investigation Agency should have full autonomy in matters of investigation**. • He shall have a **minimum tenure of three years**. • **All crimes having a prescribed punishment of more than a defined limit** (say three or more years of imprisonment) **shall be entrusted to the Crime Investigation Agency**.
2. **Accountability of Law & Order Machinery**	• **A State Police Performance and Accountability Commission** should be constituted.
3. **Police Establishment Committees**	• A State **Police Establishment Committee should be constituted**. It should be headed by the Chief Secretary. • **These Committees should deal with all matters of postings and transfers**, **promotions** and also grievances relating to establishment matters. • The recommendations of these Committees shall normally be binding on the Competent Authority. • Similarly, a **District Police Establishment Committee** (City Police Committee) should be constituted under the Superintendent/Commissioner of Police. This Committee **should have full powers in all establishment matters of non-gazetted police officers.** • **For inter-district transfers of non-gazetted officers, the State level Establishment Committee** may deal with it or delegate it to a Zonal or a Range level Committee.
4. **Competent Prosecution and**	• A **system of District Attorney** should be instituted. An officer of the rank of District Judge should be appointed as the District Attorney.

Guidance to Investigation	• The **District Attorney shall be the head of Prosecution in a District** (or group of Districts). • The District **Attorney shall function under the Chief Prosecutor** of the State. • The District Attorney **should also guide investigation** of crimes in the district. • The **Chief Prosecutor for the State shall be appointed by the Board of Investigation** for a period of three years. • The **Chief Prosecutor shall be an eminent criminal lawyer**. The Chief Prosecutor **would supervise and guide the District Attorneys.**
5. The Metropolitan Police Authorities	• All cities with population above one million should have Metropolitan Police Authorities. • This Authority should have powers to plan and oversee community policing, improving police-citizen interface, suggesting ways to improve quality of policing, approve annual police plans and review the working of such plans. • The Authorities should have nominees of the State Government, elected municipal councilors, and non-partisan eminent persons to be appointed by the government as Members.
6. Reducing Burden of Police	• **Outsourcing Non-Core Functions** Each State Government should immediately set up a multi-disciplinary task force to draw up a list of non-core police functions that could be outsourced to other agencies. • **Necessary capacity-building exercises would have to be carried out for such agencies** and functionaries in order to develop their skills in these areas.
7. Independent Complaints Authorities	• A District Police Complaints Authority should be constituted to enquire into allegations against the police within the district. • The District Police Complaints Authority should have the **powers to enquire into misconduct or abuse of power against police officers** up to the rank of Deputy Superintendent of Police. • It should exercise all the powers of a civil court. • A State Police Complaints Authority should be constituted to look into cases of serious misconduct by the police above the rank of Superitendent of police.
8. An Independent Inspectorate of Police	• In addition to ensuring effective departmental inspections, an Independent Inspectorate of Police may be established to carry out **performance audit of police stations** and other police offices through inspections. • **For all cases of deaths during 'encounters' the Independent Inspectorate of Police should commence an enquiry within 24 hours of the incident**. The Inspectorate should submit its report to the PPAC and the SPAC. • **The working of the Bureau of Police Research and Development needs to be strengthened** by adequate financial and professional support.
9. Improvement of Forensic Science	• There is a need **to set up separate National and State Forensic Science Organisations** as state-of-the-art scientific organizations.

Infrastructure-Professionalization of Investigation.	• At the state level these organisations should function under **the supervision of the Board of Investigation**. • There is a need to expand the forensic facilities and **upgrade them technologically**. • Every district or a group of districts having a population of 30 to 40 lakhs should have a forensic laboratory. • Government of India should **earmark funds for this purpose** for assisting the states under the police modernization scheme. • **All the testing laboratories should be accredited to a National Accreditation Body** for maintaining quality standards. • **The syllabus of MSc Forensic Science should be continuously upgraded** in line with international trends.
10. National Security Commission	• There is no need for a National Security Commission with a limited function of recommending panels for appointment to Chiefs of the Armed Forces of the Union.
11. Measures to be Taken Once a Riot has Started.	• If violence erupts, then the first priority should be to quickly suppress the violence. • In cases of communal violence, the situation should be brought under control by effective use of force. • Prohibitory orders must be enforced rigorously. • If the situation so warrants, the forces of the Union and the Army should be requisitioned and used without any reluctance or delay. • The **Commissioner of Police or the District Magistrate and the Superintendent of Police should be given a free hand** to deal with the situation in accordance with the law. • The **media should be briefed with correct facts** and figures so that there is no scope for rumour-mongering. • The **police need to be equipped with state-of-the-art crowd dispersal equipment**. • The **District Magistrate should ensure that essential supplies are maintained** and relief is provided, especially in vulnerable areas and particularly during prolonged spells of 'curfew'.
12. Measures to be Taken Once Normalcy has been Restored	• **Prosecution in cases related to rioting or communal offences should not be sought to be withdrawn.** • **Commissions of Inquiry into any major riots/**violence should give **their report within one year**. • **All riots should be documented properly and analysed** so that lessons could be drawn from such experiences. • There is a need to **ensure proper rehabilitation of victims.**
13. Witness Protection	• A **statutory programmme for guaranteeing anonymity of witnesses and for witness protection** in specified types of cases, based on the best international models should be adopted early.
14. Victim Protection	• **A new law for protecting the rights of the victims** of the crimes may be enacted. • The law should include the following salient features:

	○ **Victims should be treated with dignity** by all concerned in the criminal justice system. ○ It shall be the duty of the police and the prosecution to **keep the victim updated about the progress of the case.** ○ If the victim wants to oppose the bail application of an accused he/she shall be given an opportunity to be heard. ○ Similarly, for release of prisoners on parole, a mechanism should be developed to consider the views of the victims. ○ A **victim compensation fund should be created** by State Governments for providing compensation to the victims of crime.
15. Federal crimes	• A **new law should be enacted to govern the working of the CBI**. This law should also stipulate its jurisdiction including the power to investigate the new category of crimes.
16. Organised Crime	• Specific provisions to define organised crimes should be included in the new law governing 'Federal Crimes'. • The definition of organised crime in this law should be on the lines of the Maharashtra Control of Organised Crime Act, 1999.
17. Armed Forces (Special Powers) Act,1958	• The Armed Forces (Special Powers) Act, 1958 **should be repealed instead a new chapter should be inserted in the Unlawful Activities (Prevention) Act, 1967** as recommended by the Committee to Review the Armed Forces (Special Powers) Act, 1958. • The **new Chapter VI A would apply only to the North-Eastern states**.
18. The Role of Civil Society	• **Citizens should be involved in evaluating the quality of service at police stations** and other police offices. • Government should **incentivise citizens' initiatives**.
19. The Role of the Media in Public Order	• **The Administration must make facts available to the media** at the earliest about any major development, particularly activities affecting public order. • In order to have a better appreciation of each other's viewpoints there should be **increased interaction between the Administration and the media.** • This could be done in the form of **joint workshops and training**. • The Administration should **designate points of contact at appropriate levels (a spokesperson) for the media** which could be accessed during whenever required. • **Officers should be given training in interaction with the media**. • **A cell may be constituted at the district level which may analyse media reports** about matters of public importance.

6th Report

Local Governance

2nd ARC Summary of recommendations:

Areas of Governance	Reforms Suggested
1. Strengthening the Voice of Local Bodies	• Parliament may by law provide for constitution of a **Legislative Council in each State**, consisting of **members elected by the local governments.**
2. The Electoral Process	• Local government laws in all States should provide **for adoption of the Assembly electoral rolls for local governments without any revision of names by SECs**.
3. Devolution of Powers and Responsibilities	• There should be **clear delineation of functions for each level of local government** in the case of each subject matter law. Specially, locally relevant socio-economic programmes, restructuring organisations and framing subject-matter laws. • In the case of new laws, it will be advisable to **add a 'local government memorandum'** indicating whether any functions to be attended to by local governments are involved and if so, whether this has been provided for in the law. • In case of **urban local bodies**, in addition to the functions listed in the Twelfth Schedule, **the following should be devolved to urban local bodies**: o School education; o Public health, including community health centres/area hospitals; o Traffic management and civic policing activities; o Urban environment management and heritage; and o Land management, including registration.
4. The State Finance Commission (SFC)	• SFCs **should evolve objective and transparent norms** for devolution and distribution of funds. • The norms should **include area-wise indices for backwardness**. • State Finance Commissions should **link the devolution of funds to the level/quality of civic amenities** that the citizens could expect. • **The Action Taken Report on the recommendations of the SFC must compulsorily be placed in the concerned State Legislature within six months** of submission and followed with an **annual statement on the devolution made and grants given to individual local bodies** and the implementation of other recommendations through an appendix to the State budget documents.
5. Capacity Building for Self Governance	• State Governments should encourage local bodies to **outsource specific functions to public or private agencies**, as may be appropriate, through enabling guidelines and support. • Outsourcing of activities should be backed by **development of in-house capacity for monitoring and oversight of outsourced activities**.

	• Likewise**, transparent and fair procurement procedures** to improve fiscal discipline and probity in the local bodies. • **Suitable schemes** need to be drawn up under State Plans for Rural and Urban **Development for documentations of case studies, best practices**. • **Training of elected representatives and personnel.** • **To promote academic research** Organisations like the **Indian Council of Social Science Research** must be encouraged to fund theoretical, applied and action research on various aspects of the functioning of local bodies. • A **pool of experts and specialists** (e.g. engineers, planners etc.) could be maintained by a federation/consortium of local bodies. This common pool could be then accessed by the local bodies whenever required for specific tasks.
6. Decentralized Planning	• **DPCs should be constituted in all States within three months of completion of elections to local bodies** and should become the sole planning body for the district. • The **DPC should be assisted by a planning office** with a full-time District Planning Officer. • **States may design a planning calendar prescribing the time limits within which each local body has to finalise its plan.** • **State Planning Boards** should **ensure that the district plans are integrated with the State plans** that are prepared by them. • It should be made **mandatory for the States to prepare their development plans only after consolidating the plans of the local bodies.** • **The planning departments of the Development Authorities (DAs) should be merged with the DPCs and MPCs** who will prepare the master plans and zonal plans. • **The monopoly role of Development Authorities (DAs)** in development of land for urban uses, wherever it exists, **should be done way with**.

7. Accountability and Transparency	• **Audit committees** may be constituted by the State Governments **at the district level** to exercise oversight regarding the integrity of financial information.
	• There should be **a separate Standing Committee of the State Legislature for the local Bodies**. This Committee may function in the manner of a Public Accounts Committee.
	• A **local body Ombudsman** should be constituted on the lines suggested below.
	  o Local body Ombudsman **should be constituted for a group of districts** to look into complaints of **corruption and maladministration against functionaries of local bodies**, both elected members and officials.
	  o In case of a Metropolitan Corporations, a separate Ombudsman should be constituted.

	○ **Time limits** may be prescribed for the Ombudsman to complete its investigations into complaints. ○ Each local body should have an **in-house mechanism for redressal of grievances** with set norms for attending and responding to citizens' grievances. ○ **Tools such as 'Citizens' Report Cards'** may be introduced to incorporate a feedback mechanism regarding performance of local bodies.
8. Accounting and Audit	• **Release of Finance Commission Grants to the local bodies may be made conditional** on acceptance of arrangements regarding technical supervision of the C&AG over audit of accounts of local bodies. • **Audit reports on local bodies should be placed before the State Legislature** and these reports should **be discussed by a separate committee of the State Legislature** on the same lines as the Public Accounts Committee (PAC) • **The system of outcome auditing should be gradually introduced**. ○ For this purpose, the key indicators of performance in respect of a government scheme will need to be decided and announced in advance.
9. Personnel Management in PRIs	• **Panchayats should have power to recruit personnel** and to regulate their service conditions subject to such laws and standards as laid down by the State Government.
10. PRIs and the State Government	• The **provisions** in some State Acts **regarding approval of the budget of a Panchayat by the higher tier or any other State authority should be abolished**. • **State Governments should not have the power to suspend or rescind any resolution passed by the PRIs** or take action against the elected representatives on the ground of abuse of office, corruption etc. or to supersede/ dissolve the Panchayats. • **In all such cases, the powers to investigate and recommend action should lie with the local Ombudsman** who will send his report through the Lokayukta to the Governor. • **For election infringements and other election related complaints**, the authority to investigate should be the **State Election Commission** who will send its recommendations to the Governor.
11. Position of Parastatals	• **Parastatals should not be allowed to undermine the authority of the PRIs**. • There is **no need for continuation of the District Rural Development Agency (DRDA)**. ○ Following the lead taken by Kerala, Karnataka and West Bengal, the DRDAs in other States also should be merged with the respective District Panchayats (Zila Parishad). Similar action should be taken for the District Water and Sanitation Committee (DWSC). • The **Union and State Governments should normally not setup special committees outside the PRIs**.

	○ **However, if such specialised committees are required to be set-up because of professional or technical requirements**, and if their activities coincide with those listed in the Eleventh Schedule**, they should, either function under the overall supervision and guidance of the Panchayats or their relationship with the PRIs should be worked out** in consultation with the concerned level of Panchayat.
12. Activity Mapping	• States must undertake comprehensive activity mapping with regard to all the matters mentioned in the Eleventh Schedule.
13. Resource Generation by the Panchayats	• A comprehensive exercise needed for broadening and deepening of the revenue base of local governments. ○ This exercise will have to simultaneously **look into four major aspects of resource mobilisation** viz. (i) potential for taxation (ii) fixation of realistic tax rates (iii) widening of tax base and (iv) improved collection. • **All common property resources vested in the Village Panchayats should be identified, listed and made productive** for revenue generation. • **State Governments should by law expand the tax domain of Panchayats**. • Simultaneously it **should be made obligatory for the Panchayats to levy taxes in this tax domain**. • **At the higher level, the local bodies could be encouraged to run/ manage utilities** such as transport, water supply and power distribution on a sound financial basis and viability. • The **role of State Governments should be limited to prescribing a band of rates for these taxes and levies**. • **PRIs should be given a substantial share in the royalty from minerals collected by the State Government**. This aspect should be considered by the SFCs while recommending grants to the PRI.
14. Transfer of Funds to the Panchayats	• Except for the specifically tied, major Centrally Sponsored Schemes and special purpose programmes of the States, all other allocations to the Panchayati Raj Institutions should be in the form of **untied funds.** • State Governments should release funds to the Panchayats in such a manner that these institutions get adequate time to use the allocation during the year itself.
15. PRIs and Access to Credit	• **For their infrastructure needs, the Panchayats should be encouraged to borrow** from banks/financial institutions. The **role of the State Government should remain confined only to fixing the limits of borrowing**.
16. Local Area Development Schemes	• The flow of funds for all public development schemes in rural areas should be exclusively routed through Panchayats**. Local Area Development Authorities, Regional Development Boards and other organization having similar functions should immediately be wound up** and their functions and assets transferred to the appropriate level of the Panchayat.

17. Resource Centre at the Village Level	• Steps should be taken **to set up Information and Communication Technology (ICT) and space Technology enabled Resource Centres at the Village and Intermediate Panchayat levels** for local resource mapping and generation of local information base. • These Resource Centres should also be used for **documenting local traditional knowledge and heritage**.
18. Local Government in the Fifth Schedule Areas	• **The Union and State legislations that impinge on provisions of PESA should be immediately modified** so as to bring them in conformity with the Act. • **If any State exhibits reluctance in implementing the provisions of PESA, Government of India may consider issuing specific directions** to it.
19. Effective Implementation of PESA	• **Regular Annual Reports from the Governor** of every State as stipulated under the Fifth Schedule of the Constitution **must be given due importance**. Such reports should be **published immediately and placed in the public domain**. • In order **to ensure that women are not marginalised in meetings of the Gram Sabha**, there should be a provision in the PESA Rules and Guidelines that the **quorum of a Gram Sabha meeting will be acceptable only when out of the members present, at least thirty-three per cent are women**.
20. Effictive Implementation of the Tribal Sub-Plan (TSP)	• State Governments should form a **special planning unit** (consisting of professionals and technically qualified personnel) to prepare their Tribal-Sub Plan. • **A certain portion of the allocation under TSP should be made non-lapsable.** • **A special cell may be set up in the Ministry of Tribal Affairs** to monitor expenditure from this fund. • The government may consider preparing **an impact assessment report every year** with respect to the States covered under PESA.
21. Proposed Basic Structure - Ward Committees and Area Sabhas.	• Government may consider the adoption of a **common categorisation of urban bodies across the country** to improve clarity in their definition so as to assist a systematic planning process and devolution of funds. • There should **be three tiers of administration in urban local governments**, except in the case of Town Panchayats, where the middle level would not be required. The tiers should be: o Municipal Council/Corporation (by whatever name it is called); o Ward Committees; and o Area Committees or Sabhas. • Each **Area Sabha** comprising all citizens in one or two (or more) polling station areas, **should elect, once in five years, a small Committee of Representatives**. • **The Area Sabha should perform functions similar to the Gram Sabha** such as prioritising developmental activities and identifying beneficiaries under various schemes;

	• **Ward Committees should be set up in every Ward**/Corporator's Division, The present system of having more than one ward in a Ward Committee needs to be given up; • **Ward Committees need to be given legitimate functions** which can be handled at that level. o These functions could include street lighting, sanitation, water supply, drainage, road maintenance, maintenance of school buildings, maintenance of local hospitals/dispensaries, local markets, parks, playgrounds, etc; • **Funds allocated for the functions entrusted to the Ward Committee should be transferred en-bloc to the Ward Committee**. • **Meetings of the Ward Committee should be widely publicised** to ensure maximum citizens' participation; • **Ward Committees should be given a share of the property taxes collected from the ward**, depending on the locality; • **The allocation of functional responsibilities between the tiers must be clearly spelt out**. While doing so, the principle of subsidiarity should be followed.
22. The Office of the Mayor/Chairperson	• The functions of chairing the municipal council and exercising executive authority in urban local government should be combined in the same functionary i.e. Chairperson or Mayor. • **The Chairperson/Mayor should be directly elected** by popular mandate through a city-wide election. • The Chairperson/Mayor **will be the chief executive of the municipal body**. • The elected Council should perform the functions of budget approval, oversight and framing of regulations and policies. • In municipal corporations and metropolitan cities, the Mayor should appoint the **Mayor's 'Cabinet'**. • **The members of the Cabinet should be chosen by the Mayor** from the elected corporators. • **The Mayor's Cabinet shall not exceed 10 per cent** of the strength of the elected Corporation or fifteen, whichever is higher. • **The Cabinet will exercise executive authority on matters entrusted to them by the Mayor**, under his overall control and direction.
23. Property Tax Reforms	• State Governments should ensure that **all local bodies switch over to the 'unit area method' or 'capital value method'** for assessment of property tax in a time-bound manner. • The **categories of exemptions from property tax need to be reviewed and minimised**. • In order **to ensure that unauthorised constructions do not escape the tax net**, State laws should stipulate that levy of tax on any property would not, in itself, confer any right of ownership, in case the property is found to be constructed in violation of any law or regulation. • **Tax details for all properties should be placed in the public domain** to avoid collusion between the assessing authority and the property owner.

	• The State law should **also provide for tax on properties belonging to the municipal authorities which are given on lease**, to be payable by the occupants. • The law should provide for **the levy of service charge** on properties belonging to the Union and State Governments. o This service charge should be in lieu of various services provided such as solid waste management, sanitation, maintenance of roads, streetlighting and general civic amenities. • A **computerised data base of all properties using GIS mapping** should be prepared for all municipal areas.
24. Non Tax Revenues	• A **congestion charge and/or betterment levy** in relation to such projects may be levied wherever warranted. • The **power to impose fines for violation of civic laws** should be given to municipal authorities. • The **fines prescribed for civic offences need to be enhanced**.
25. Borrowings	• **The limits of borrowings for various municipal bodies in a State may be fixed** on the recommendation of the SFC. • **Municipal bodies should be encouraged to borrow without Government Guarantees**. However, for small municipalities, pooled financing mechanisms will have to be put in place by the State Government. • The **capacity of the municipalities to handle legal and financial requirements of responsible borrowing must be enhanced**.
26. Leveraging Land as a Resource	• **Municipal bodies should have a periodically updated database of its properties.** IT tools like GIS should be used for this purpose. This database should be in the public domain; • **Land banks** available with the municipalities as well as with the development authorities **should be leveraged for generating resources for the municipalities**. o However, such resources should be used exclusively to finance infrastructure and capital expenditure and not to meet recurring costs.
27. Service delivery	• **All service providers in cities should be brought under one umbrella** by establishing 'one stop service centres. • Call centres, electronic kiosks, web based services and other tools of modern technology should be used by all ULBs to bring speed, transparency and accountability into delivery of services to the citizens.
28. Water Supply	• Municipal bodies must focus on **increasing operational efficiencies** – through reduction in pilferage, improving efficiency of staff and use of technology. • **Payment of water charges should be made hassle free** through use of Information Technology. • As far as possible **all water connections should be metered, and if necessary targeted subsidy should be provided to the poorest sections**. o Installing a hierarchy of metering system could help in identifying pilferage.

	• **Provide incentives for adoption of water harvesting measures and recycling of waste water** for non-potable purposes. • In larger cities, **non-potable water (recycled treated water) should be used for industries**.
29. Sewerage Management	• Each municipal body should prepare a **time bound programme for providing sewerage facilities in slum areas**. • This should be brought into action through **appropriate allocation in the annual budget**. • **Local bodies may impose a cess on the property tax or development charges in order to raise resources** for expansion and capacity enhancement of the existing sewerage systems. • In order to motivate the local governments to generate additional resources for sewerage management, **matching grants may be provided by the Union and State Governments**. • A **separate user charge** should be introduced in all municipalities.
30. Solid Waste Management and Scavenging	• In all towns and cities with a population above one lakh, the possibility of **taking up public private partnership projects** for collection and disposal of garbage may be explored. • **Special solid waste management charges** should be levied on units generating high amount of solid waste.
31. Special Economic Zones (SEZs)	• As in the case of private townships, **concerned local bodies should have full jurisdiction with regard to enforcement of local civic laws in the SEZs**. • SEZs may be **given autonomy** for provision of infrastructure and amenities in the SEZ area. • A **formula for sharing the resources raised in the SEZ area** needs to be developed.

7th Report

Capacity Building for conflict Resolution

"Better than a thousand hollow words is one word that brings peace" - Lord Buddha.

2nd ARC recommendations:

Areas of Governance	Reforms Suggested
1. Left Extremism	• **Periodic official inspection** and **review of organizational performances** need to be revitalized. • Need to provide **suitable security** to **senior administrative and technical officers** while on tour. • **Enhance the capacity of the security forces** to act effectively but in conformity with constitutional bounds. • **Standard operational procedures** and protocols should be laid down in detail. • **Training and reorientation,** including **sensitizing the police and paramilitary personnel** is necessary. • **Multi-disciplinary Oversight Committees** for effective implementation of the **Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Right) Act, 2006.** • **Facilitate locally relevant development,** adequate flexibility to implementing agencies in affected areas as regards centrally sponsored and other schemes. • **Nexus between illegal mining/forest contractors and transporters and extremists need to be broken. For this:** o **Special anti-extortion and anti-money laundering cells** should be established by the State police/state government.
2. Land Related Issues	A. **Steps to alleviate the distress in the agrarian sector:** • **Provide renewed impetus to land reform** measures such as: o Redistribution of surplus land; o Vesting title in tenants and carrying forward consolidation of land holdings etc.; o Promoting and maintaining the sustainability of agriculture. • **Adequate and timely facilities for farmers:** To augment the banking system in rural areas. • Redesign **poverty alleviation** programmes . • Step up **public investment to expand non-farm and off-farm activities.** • **Formation of 'Self Help Groups (SHG)** to improve access to credit and marketing and empower the disadvantaged. • **Diversify risk coverage measures** such as weather insurance schemes and price support mechanisms. **B. New legislation for land acquisition** incorporating: **A national policy on rehabilitation of project** affected persons should be implemented. **C. Amend the present approach to SEZs on the following lines:**

	• To establish SEZs, **use of prime agricultural land should be avoided.** • **The number of SEZs should be limited.** • **The livelihood of the displaced** should be a major concern of the SEZ policy. • **Allocate social responsibility** of rehabilitation to entrepreneurs seeking to establish SEZs. • The **existing ratio between processing and non-processing activities** needs to be re-examined. • **Comprehensive land use plans** prepared after wide consultation. • **Industrial activities in SEZs** should be located only in areas earmarked for the purpose of the land use plans. • **Reconsideration of extremely liberal tax holidays** provided to export units and developers.
3. Water Related Issues:	• **River Basin Organizations (RBOs**) should be set up for each inter- State River as proposed by Report of the National Commission for **Integrated Water Resources Development, 1999 by enacting River Boards Act, 1956.** • **National water laws** should be enacted to develop and conserve water resources.
4. Issues related to Scheduled Castes:	• **Speedy disposal of cases** pending in subordinate courts. • **Engaging independent agencies** to carry out field surveys to identify cases of **social discrimination.** • **Spread awareness about laws and the measures** to punish discrimination and atrocities. • District administration should organize **independent surveys to identify 'vulnerable areas.** • **Administration and the police should be sensitized towards SC/ST act.** • **Appropriate training programmes.** • **Rehabilitation of victims and provide counselling to them.** • **Deployment of police personnel** in police stations with a significant proportion of SCs and STs in proportion to their population. • **Introduce a system of incentives** wherein efforts made by public authorities in detecting discrimination against SCs are suitably acknowledged. • **Corporate and NGOs need to be involved.**
5. Issues Related to Scheduled Tribes	• **Reorganisation of existing land records.** • **Harmonise legislations and government policies** being implemented in tribal areas with provisions of PESA. • **Mining laws applicable to Scheduled Tribal Areas should be in conformity with the Fifth and Sixth Schedule.** • **Selection of police and forest officials** capable in terms of training to work in tribal areas should be chosen. • **National plan of action for comprehensive development** for the welfare of tribals. • **Comprehensive methodology** with clearly defined parameters **in determining the inclusion and exclusion of tribes in ST list** with states consultations.
6. Issues Related to Other	• **Socioeconomic survey** of the "**Other Backward Classes**" in each state could be used to create **policies and programmes** to help them get ahead.

Backward Classes	• The government needs to come up with and carry out a plan to **improve the skills of OBCs** that will bring them up to speed with the rest of society.

7. Religious Conflicts	• **District Peace Committees/Integration Councils** should be successful in resolving community conflict.
	• **Permanent committees** are needed to identify local concerns that might become community disputes and recommend solutions.
	  ○ Similarly, **Mohalla Committees** should be formed.
	• In conflict-prone regions, police should develop programmes to **create trust with the target community**.
	• **Community violence doesn't need distinct legislation**. **Strengthen the IPC and CrPC provisions** for:
	  ○ Community offences have **harsher punishment**.
	  ○ **Special tribunals** for speedy communal violence trials.
	  ○ **Executive Magistrates should have remand authority** for communal crimes.
	  ○ Prompt Relief and rehabilitation.
	  ○ **Deletion of Section 196 of CrPC,** which requires Union or State Government or District Magistrate approval before prosecuting crimes under **Sections 153A, 153B, 295A, and Section 505(c), (2), and (3) of IPC.**
	• The **Disaster Management Act 2005** may be utilised to help victims of community violence.

8. Politics and Conflicts	• **Political parties should develop a code of behaviour** for **democratic dissent**. • Parties must cultivate **consensus-building** skills.
9. Regional Disparities	• Union and state governments should **devolve cash to backward regions block-wise.** • **Backward region development boards** and authorities need to be assessed for their role in minimising intra-state inequities. • States (particularly affluent ones) that reduce intra-state inequities should be rewarded. • All **financing should be result-focused**. • The aim should be to **identify acceptable minimum standards of human and infrastructure development.**
10. Capacity Building in Administration in the North East	• Officers in the area may be able to serve outside the region to get more job experience. ○ **Local and technical officials** from the state should be able to serve in bigger states and get training in the U.S. and overseas. • **North Eastern Council** may administer regional training colleges for administration, including technical services.
11. Capacity Building of Police in the North East	• **North Eastern Police Academy (NEPA)** requires upgraded facilities and personnel to induct more policemen. ○ NEPA might also train civil police officials from other areas to combat insurgency.

	○ Financial and other incentives are needed to recruit and retain teachers from the Central Police and civil police, especially those with counterinsurgency experience. • **Concrete actions are required to deploy police officers from the area to Central Police Organizations and to promote deputation of officers** from outside the region to the North Eastern States.
12. Capacity Building in Local Governance Institutions in the North East- 6th Schedule Councils	• In **collaboration with state governments and autonomous councils,** the Ministry of Home Affairs may designate authorities in the **Sixth Schedule** that governors may execute at their discretion without the **"help and advice"** of the Council of Ministers, as required by **Article 163 (1) of the Constitution.** • As much as possible, the Assam government should bring the **"original" Autonomous Council's** financial allocations and money releases in line with the Bodoland Territorial Council.
13. Capacity Building in Local Governance Institutions – Village Level Self-governance in the Tribal North East	• All **Autonomous Councils** should approve laws to create village-level committees with well-defined powers and a transparent resource distribution mechanism. • **Passage of suitable legislation** for elected village level authorities and its execution may entitle Autonomous Councils to extra funding. • **Nagaland's attempts to introduce decentralised village self-governance** that mixes elected and traditional power centres are praiseworthy.
14. Capacity Building in Regional Institution in the North East – NEC and DONER	• **The NEC Act, 1971** may be changed to reinstate the original "**conflict resolution clause**" mandating the Council to "**examine problems of mutual concern to two or more states in the area and advise the Central Government**". • The Planning Commission must provide a framework for integrated regional planning with priority, not a collection of NEC initiatives. ○ **The regional plan should concentrate on intra-regional,** inter-state goals that may prevent disputes and promote regional integration. • **North Eastern Council** should sanction funding from the NLCPR (NEC). ○ NEC should develop systems for reviewing funding requests from the "pool" in collaboration with relevant ministries. • A 10-year strategy for the region should include human resources and infrastructural development. ○ The plan should include **governance reforms**. ○ The Prime Minister and Chief Ministers must evaluate this detailed strategy periodically for quick follow-up. • The **Ministry for Development of North Eastern Region (DONER)** may be eliminated, and responsibility for the region's development, including infrastructure, and use of the non-lapsable money should be reverted to the subject area Ministries, with the MHA functioning as the nodal Ministry.
15. Capacity Building in Other Regional	• NEC may want to make NEHU a centre for advanced study in the sciences, social sciences, and humanities to solve regional challenges. • NEC may cooperate with state governments to develop NEIGRIHMS, a tertiary health care centre for low-income people.

Institutions in the North East	
16. National Register of Indian Citizens	• **Prioritize the MNIC project.** Since various Union and State Government entities issue comparable identity cards, convergence is needed so that the MNIC may be utilised as a multi-purpose individual card. • This Project should **prioritise border regions.**

17. Capacity Building in the North East – Miscellaneous Issues	• To **solve infrastructural shortages** in the area, the High-Level Commission's Report – **"Transforming the North East" -** and the Task Force on Development Initiative's report should be implemented.
	• The area requires **a robust structure to attract investment.**
	• A **Transport Development Fund** should subsidise vital road routes.
	• Implementing a comprehensive **"look east" policy** is vital for the North East's long-term progress.
	  ○ The implementation agenda must be developed with state governments.
	  ○ Clear assignment of responsibilities for designing and implementing the strategy should be done quickly.
	• Prioritize **regional rail connections**.
	• **More relaxation and incentives in Reserve Bank and other financial institution rules** are required to create bank branches and credit disbursement outlets.
	• North East needs professional and **higher education excellence centres**.
	  ○ A large-scale growth of technical education institutions, such as ITIs, is needed to provide a trained workforce, entrepreneurial capability, and jobs.
	• To better comprehend and spread the current norms and practises, an in-depth study of the customary legal system is needed.
	• **North East land records** must be kept credibly.

18. Executive and Conflict Management – Police and Executive Magistracy	• The **Commission's Fifth Report, "Public Order"** recommends police reforms that will help them play a more proactive and effective role in **conflict resolution**.
	  ○ The Commission repeats these suggestions.
	• **Police Manuals must be revised** to incorporate dispute resolution in the officer's tasks.
	  ○ **Appropriate training** format changes may also give important insights.
	  ○ Overall performance must consider this head's achievements.
	• As **Revenue and other field-level officials, Executive Magistrates have substantial public contact** and goodwill, especially in rural regions.
	  ○ Their field **knowledge and broad acceptance** make them ideal mediators for local disputes.
	• State governments must build on **existing procedures and institutions**.

19. Judicial Delays and Alternative Dispute Redressal	• **Federal budgetary transfers** should prioritize upgrading subordinate judicial facilities and people. • To make **Lok Adalats** fulfil their intended purpose, much more emphasis must be made to engage the active involvement of the Bar. • The **Ministry of Law may launch a discourse with the Bench and Bar** of the higher courts to provide **'more finality'** to quasi-judicial rulings.

20. Civil Society and Conflict Resolution	• **Social capital building** must be encouraged to enhance service delivery and increase community self-reliance, but efforts must also encourage **'in-house' dispute** resolution. • **State governments must develop general rules** for engaging Panchayats, urban local bodies, and 'non-police' State instrumentalities in conflict resolution. • **Centrally funded and Central Sector Schemes may be adjusted** to emphasise beneficiary self-reliance in local conflict management.
21. Institutional Arrangements for Conflict Management – The National Commission for Scheduled Caste and The National Commission for Scheduled Tribes	• The **National Commissions for Scheduled Castes and Scheduled Tribes** assess and monitor SC/ST protections in different domains, including service conditions. ○ The **two Commissions must concentrate on policy and bigger implementation concerns, not individual instances**, which may be handled by administrative Ministries/appropriate forums, with the Commissions playing a vital supervision role. • The **administrative ministries** associated to the two Commissions may work with them to determine how they might better fulfil their constitutional duty.
22. Institutional Arrangements for Conflict Management – The National Integration Council	• The **NIC may be restructured** to examine more topics. • Both Houses of Parliament may review NIC proceedings. • **The ICSSR** may take the lead in building a **multidisciplinary research and policy analysis platform** to address national integration.
23. Institutional Arrangements for Conflict Management – National Development Council and Other Apex Level Bodies	• To **facilitate focused discussions**, specific rules of procedure for the National Development Council and other apex level bodies may be created.
24. Institutional Arrangements for Conflict Management – Other Institutional Innovations	• **State Integration Councils** may be formed to assess state-level conflicts with NIC links. • The NIC may review, advise, and approve State-level reports. • District level integration Councils (**District Peace Committees**) with links to State Councils may also be proposed, especially in districts with a history of violent, dividing confrontations. • In conflict circumstances, these entities may mediate and advise.

H142- Civil Services in India

Ramsay Muir has remarked that "**While governments may come and go, ministers may rise and fall, the administration of a country goes on forever. Needless to say, that civil services form the backbone of administration"**

The **Union government has recently proposed amendments to the Indian Administrative Service (Cadre) Rules, 1954** in order to exercise greater control in central deputation of IAS officials, which has often been at the center of tussles between the Centre and the states.

New India is an aspiration for inclusive growth, and prosperity for all. It attempts to provide greater ease of living through good governance while following the idea of ***'Sabka Saath, Sabka Vikas, Sabka Vishwas'***. To achieve this vision, a highly **efficient, transparent and accountable civil service** is needed, which could guide the country through this transformation. However, presently there are several constraints impeding the functioning & development of India's civil services.

What is meant by civil service?

- "Civil services form the foundation of administration, supports the pillars of Indian State and give shape to the development of our country **– Sardar Patel rightly called it as the "Steel Frame of India".**
- Civil servants are **permanent executives of the state** selected through open competitive exams conducted by UPSC.
- Civil servants are given **lifetime job security** with a fixed career path based on seniority to **insulate** them from **political pressure** and ensure their **neutrality**.
- Civil Services in India were created to foster the idea of unity in diversity through All India Services under **Article 311** of the Constitution. Civil service was expected to **give continuity and change to the administration** irrespective of the political scenario effecting the country.

Discuss in brief evolution of civil services in India?

Pre-Independence:

- **Ancient Times:** The concept of a well-organized public administration system has existed in India since ancient times. The **Mauryan government used civil servants under the guise of adhyakshas** and other titles.
- The **civil servants were recruited on the basis of merit and excellence**, according to **Chanakya's Arthashastra,** and they had a strict investigative system.
- **Mughal Era:** During the Mughal era, state officers were in charge of the land revenue system.
- **British Era:** The East India Company had a civil service in contemporary times to handle their commercial activities. The **modern civil services were founded by the British administration in India** primarily **to reinforce their grip over their Indian territories**.
    - **Lord Wellesley,** who served as Governor-General of India from 1798 to 1805, **established the College of Fort William in 1800**, where every Company employee was required to attend a three-year course.
    - **To train employees about the civil service, the East India Company College was founded in Hertfordshire, near London.**

Post-Independence Era:

- **Post-Independence Era:** The civil service was reorganized in post-independence India.
- Civil service officers were primarily concerned with **maintaining law and order and collecting revenue** during the British Raj.
- When the government took on the role of a welfare state after independence, civil services **played a key role in implementing national and state welfare and development objectives.**

What is the role played by civil services in the administration of a country?

Role played by bureaucracy in service delivery:

- **Policy Formulation:** The civil servants at the higher levels are responsible for policy formulation which transforms into services

deliverable to citizens. **For example,** formulation of the **National Food Security Act, 2013**.

- **Implementing Laws & Policies:** Civil servants are also responsible for ground level implementation of policies. **For example**, monitoring of PDS shops and procurement at MSP.
- **Welfare of vulnerable sections**: Welfare of vulnerable sections including women, senior citizens, etc. are ensured by district administration through specific programmes. For e**xample,**
  - Free distribution of sanitary napkins in Churu (Rajasthan) under District Administration.
  - At broader level, institutions like **Central Woman Commission, Minority Commission** etc. play a key role in this.
- **Crisis management:** DM is the Chairperson of District Disaster Management committee which is responsible for crisis management in district. **For example**, the administration ensured adequate provision of health services during the COVID-19 pandemic.
- **Grievance redressal: The district level administration** has an important role to play in taking into account and **disposing of the grievance** of the citizens.
- **Ensuring participation:** Civil servants play a key role in ensuring **participation of people** in decision making and implementation. For Example, Construction of the **"People's Road"** led by Armstrong Pame in **Manipur.**

Role played to Preserve India's Constitution:

However, the **role of bureaucracy** is not just service delivery but also **to preserve India's Constitutional order**. This can be seen as follows:

- **Smooth transfer of power**: Permanent bureaucracy ensures continuance in administration after every general election. The **permanent character of bureaucracy gives stability** to constitutional democratic order.
- **Non-political and secular nature of bureaucracy** ensures that **trust of people** is maintained in various institutions and mechanisms like Election Commission, CAG etc. Trust of people in intentions and capacities of these institutions is necessary for maintaining constitutional order.
- **Unity and integrity of nation:** By acting as a link between the government and governed, bringing in economic reforms, making governance inclusive, bureaucracy has promoted unity and integrity of nation **which also helped check secessionist tendencies.**
- **Rule of Law**: Government servants in **IAS, IPS and agencies like CVC, ED** play a key role as **enforcers and preservers of rule of law.**
- **Transparency**: The bureaucrat-led institutions like **Central Information Commission** play a key role in ensuring transparency in governance.
- **Ensuring equality**: Ensuring equal access to all services irrespective of **caste, sex, religion** a key feature of permanent executives or bureaucrats.

What challenges or issues are civil services facing today?

Impediments in the development of efficient, transparent and accountable civil services are:

Structural impediments:

- **Recruitment is not competency specific**, leading to a mismatch between positions and skill sets of civil servants. (Generalist vs Specialist).
- There is **opposition to lateral entry within the bureaucracy**. This hinders the development of services and restricts the flow of new energy, competition and culture in public service.
- **Around 21% of the posts in All India Services remain vacant, while there are also instances of over-staffing in some areas**. There is a need to better forecast the staffing needs of civil services.
- **Lack of autonomy** in the functioning of Central Vigilance Commission and Central Bureau of Investigation for dealing with corruption cases.

Operational Impediment:

- **Excessive job security** and **years-of-service based promotions** make civil servants **complacent and averse to risk-taking**. They avoid taking difficult decisions and tend to shift responsibility in times of crisis.

- The **politics of patronage** has diluted the value of civil service neutrality and given rise to a **committed bureaucracy.** This has increased the chances of **collusive corruption.**
- **Promotions and Transfers are rarely based on merit which hampers the motivation to do efficient work.**
- **Excessive contact with public in the services delivery** creates space for discretion and misappropriation of funds.
- **Complex social and political situations** restrict the scope of actions that can be taken.
- **Deficit of human resources**; poorly trained staff; **complex rules** and regulations.
- **Lack of adequate resources** like finances, computers, vehicles, office infrastructure etc.
- The **main reasons for inability to function with integrity and political neutrality** are:
  - **Low pay scale** and high monetary rewards for corruption.
  - **Lack** of **transparency** and weak **accountability** mechanisms.
  - Deep rooted **systemic corruption** which originated during colonial times. Many **honest officers succumb to systemic pressures**.
  - Top **government posts are filled on the basis of discretion** of ministers; **transfers and postings** are controlled by political masters.
  - Personal opinions related to politics seeping into public life and **political ambitions after retirement** dilutes political neutrality.

What is the relationship between civil services and democracy? whether they complement each other or contradict each other?

The relationship between civil services and democracy is **both paradoxical and complementary:**

Complementary role:

- **Basis of government**: No government can exist without administrative machinery. All nations, irrespective of their system of government, require some sort of administrative machinery for implementing policies.
- **Implementing law and policies:** By implementing public policies and programmes, it delivers the promised goods and services to the intended beneficiaries. **An efficient civil service can avoid waste and correct errors**.
- **Provides continuity**: Civil services carry on the governance in intermediate period when governments change due to elections etc.
- **Key in furthering socio-economic democracy**: for example,
  - To develop agriculture, civil servants have to properly manage community resources such as land, water resources, forests, wetlands, and wasteland development.
  - To facilitate industrial development, infrastructural facilities.
  - Setting right developmental goals and priorities for agriculture, industry, education, health and communications etc.
  - Mobilization of natural, human and financial resources and their proper utilization for accomplishing developmental objectives.
- **Role in furthering political democracy:** Civil servants play a **vital role in maintaining democratic ideals by protecting fundamental rights** of the citizens. For example, Indian Police Services perform key role in the events of turbulence/violence.

Contradictory role:

- Democracy in theory demands a principle of change, whereas the civil services in theory demands principles of consistency and regularity, which automatically **limits the civil servant's capacity to adapt to changing circumstances**.
- Civil services are **often traditional, bureaucratic, and sometimes authoritarian** forms of government. Whereas **democracy is associated with participation, consensus making and an accommodative outlook**.

Highlight the changing role of Bureaucracy in the post-liberalization era.

- As a **facilitator, coordinator and catalyzer of change:** in the context of economic liberalization, the civil services role has been changing in the following ways:

  - **Facilitate progressive integration** with the global economy and aggressive participation in it.
  - Move away from over-extended and inefficient public sector in commercial activities towards a clearly focused public sector, performing the core functions of defense, health and education among others.
  - **A well-functioning market and allow a more efficient private sector** to take up the growth momentum.
  - Provide space for the budding of entrepreneurs.
  - Provide for **'Ease of doing business'** and **'easy exit'**. For example, bankruptcy laws have provided space for risk taking and new ventures by private players.
- There is a changing approach **from pre-eminence of government to effective governance** with a focus on decentralization and citizen-centricity.
  - Consequently, civil servants are expected to view **civil society organizations and the private sector as partners in the process of the country's governance**.
- **Becoming more demanding:** as citizens are becoming assertive with their rights due to increasing awareness of rights.

What are All India Services?

- The All-India Services comprises the **three prestigious civil services of India** and they are the **Indian Administrative Service (IAS)**; **Indian Police Service (IPS); and Indian Forest Service (IFS).**
- The structure of All India Services (AIS) **was designed to support and maintain the federal structure of India**, under **article 312** of the constitution.
- Officers of the AIS are **under the dual control** of the state governments to which they belong and the central government, which is their recruiting, appointing, and training authority.

What is the Significance of All India Services? (Same content can be used for Need part)

- The **broad objective and purpose of All India Services**, as envisaged by the Constitution-framers, were to:
  - **Facilitate effective liaison between the Centre and the States**;
  - Enable the administrative machinery at the Centre **to keep in touch with grassroots realities in the States**;
  - **Help State administrative machinery acquire a wider outlook** as also obtain the best possible talent for its senior posts.
- **Important to ensure neutrality:** Because the officers of these services are mostly posted in states other than their home state, they are **less susceptible to local and regional influence** than officers from within the state would be.
- **National integration**: These services cherish a national vision and perspective and are important bulwarks against parochial and regional thinking. The members of these services act as instruments of national integration.
- Their **national perspective and interaction with international institutions** facilitate a wider perspective and improves the quality of policy and decisional systems.
- **Ensures merit and objectivity in decision making:** as civil servants are chosen through rigorous process.

What are the issues faced by AIS?

- **Against federalism:** It is argued that winding up AIS and separate civil services of state and center would bring the working of these governments closer to a federal system.
  - **AIS under Union list**: AIS are the joint responsibility of center and state, yet it is under list (Entry 70).
- **Operational issues:** Outsiders are vaguely aware about language, ethos, profile of the state where they are posted.
- **Central deputation:** Current rules do not provide any time limit for decision regarding deputation in case of disagreement between centre and state with respect to deputation of the officer.

Sarkaria commission recommendations:

- The AIS are **as necessary today as they were when the Constitution was framed**.
- **Any move to disband the AIS or to permit a state government to opt out of the scheme must be regarded as retrograde and harmful** to the larger interest of the country.
- The **AIS should be further strengthened** and greater emphasis laid on the role expected to be played by them. This can be achieved through well-planned improvements in selection, training and promotions.
- The **present need is to place greater emphasis on specialization** by AIS officers in one or more areas of public administration.
- There should be **regular consultations on the management of AIS between the Union and the State government**.
- An **Advisory Council for Personnel Administration of the AIS may be set up**, comprising entirely of the senior officers directly concerned with the issue to be deliberated.
    - It should meet periodically and regularly to suggest solutions to the problems referred to it by the union and state governments.

Various initiatives taken by IAS officers:

- **Sandeep Nanduri, IAS: Launched a cafe which is run exclusively by differently-abled persons in in Thoothukudi**, Tamil Nadu.
- **Umakant Umrao, IAS: Helped MP Farmers Battle Drought with Over 16,000 Ponds**. Umrao's model has been replicated in several drought-prone areas like Bundelkhand, Marathwada, Latur, Chandrapur etc.
- The IAS officer A Sridevasena initiated Swachh Shukhravaram to tackle **open defecation problem by constructing toilets** in every household and installing community toilets in 263 villages in the district.
- Recently, the **Bhilwara model (in Rajasthan)** has become a successful example for the world to emulate in **tackling the Covid-19 crisis** because of the efforts of local bureaucracy. This emphasizes the importance of the role of civil services in containing the spread of disease at community level.

What is meant by Cadre Based Services? What is its need?

Cadre based services:

- Cadre literally means a **small unit of a large organization**.
- The **officers of All India Services are organized into cadres, derived from the states they are allotted** to work in for as long as they continue to be a member of the respective Service.
- In all India services, once selected, candidates are assigned cadres based on their preferences, merit and availability of positions.
- In India, **there is one cadre in each Indian state, except for three joint cadres:** Assam–Meghalaya, Manipur–Tripura, and Arunachal Pradesh–Goa–Mizoram–Union Territories (AGMUT).

Need for Cadre based Services:

- **Impartiality and integrity:** Key administrative and police positions in state government are designed as 'cadre posts' signifying that they may only be held by IAS/IPS. This is deliberate feature of All India Service to promote quality, impartiality and integrity and All India outlook.
- **Quota**: To review the strength of officers against the promotion of quota of the IAS and suggest measures for filling up all such posts urgently.
- **Ascertain cadre gaps:** To ascertain the cadre gaps in the different state, cadres of the service

vis-à-vis the current authorized strength of each cadre etc.

- **Cadre deficit:** To make a realistic assessment of the Cadre deficit by adding the number of IAS officers likely to retire on superannuation during the next 10 years to cadre gaps ascertained.
- **Greater accountability:** In comparison to varying uniform cadre, state-based cadre is more accountable. Individual officers are responsible to their respective government.
- **Stable period of service:** Civil servants serving in a particular state will have some time to implement their programmes and ensure better delivery of services.
- **Greater understanding of region:** Civil servants belonging to a particular state will have the opportunity to work in their respective states.

Issues with cadre-based services:

- **Permanency of cadres:** It results in inefficiency and ineffectiveness in the working of civil services. It diminishes the all-India character and limits the officer concern to local issues.
- **Large variation:** There are large variations in the size of IAS cadres with respect to total state populations. As a result, the IAS Cadre in UP is 40% smaller than it should be while in Sikkim it is 15% more than it should be, based on population alone.
- **Reluctance to 'de-cadre' positions**: Due to changing social and economic conditions some posts have diminished in importance. But they were rarely 'de-cadred'.
- **Regionalism:** Staying in a particular state and working towards interest of that particular state can reduce the work of the civil servant towards realization of regional goals.
- **Political self-interest:** Staying in one state for a long time will create contacts with political parties. This will make them biased and they will be indulged in activities that are unethical.

What are the amendments proposed in IAS Cadre Rules recently? What are the issues associated with these changes? What should be the Way Forward?

What is the current rule on deputation?

- Central deputation in the Indian Administrative Service is covered under **Rule-6 (1) of the IAS (Cadre) Rules-1954, inserted in May 1969.**
- It states: "A cadre officer may, with the concurrence of the State Governments concerned and the Central Government, be deputed for service under the Central Government or another State Government.
- Provided that in case of any disagreement, the matter shall be decided by the Central Government and the State Government or State Governments concerned shall give effect to the decision of the Central Government."

Why are changes brought in? or desirability of amendment?

- According to 2021 data, of the total 6,709 IAS officers in the country, **445 were posted with the Union — only 6.6%**. In 2014, of the 4,605 officers, 651 were posted with the Union (14 %).
- In 2021, only 10% mid-level IAS officers (deputy secretary/director, 9-14 years' experience) were posted with the Centre, a sharp fall from 19% in 2014.
- **The number of officers opting for central deputation is declining**. It is increasingly getting difficult for the central government to get officers even at the joint secretary levels.
- Generally, of the total cadre strength of the states, about 25-30 percent used to be on central deputation. Currently, **less than 10 percent are working in various central ministries**.
- There are instances where **officers are reluctant to take the center's deputations** due to comparatively better service conditions in the states.
- The **center has an important role in maintaining the federal structure of the country and civil servants are the actual executive body** to give effect to the government's mandate.
- The **shortage of officers will affect the policy-making and implementation** role of the central government.

Proposed amendments in Indian Administrative Service (Cadre) Rules, 1954:

- The Centre has **proposed amending Rule 6** of the IAS (Cadre) Rules, 1954, to address the crunch of IAS officers by different state governments.
- The **pre-requisite of the states' consent is sought to be done away with**.
- The **Union government will have complete discretion** to determine the number of such officers it may wrest away.
- The decision of the Centre will be supreme in case of disagreement between center and state and the state will have to implement the decision of center **"within a specified time.**

Issues associated with IAS Cadre rules:

Several state governments are opposing and criticizing the proposed amendment on the following grounds:

- There is a breach of '**centripetal federalism'** which is specific to the constitutional provisions on civil services.
- It **may have grave implications for the independence, security and morale of IAS** officers.
- **Infringement of rights of state**: to deploy IAS officers as they deem best, especially when the cutting-edge policy implementation is mostly at the State level.
- **Consent of Officers neglected:** The proposed amendment more or less compels a state government to offer IAS officers for central deputation even when these officers themselves may not wish to go on central deputation.
- **Scope for Political Misuse:** New rules may be misused for political considerations.
- It will weaken the **State's political control over the bureaucracy** established by the constitutional scheme.
- It will affect **the autonomy of the states** as officers might hesitate in taking any decision favoring state government over the central government.
- It **reduces the significance of AIS in the eyes of state government**, and they might prefer their own State Civil Services over AIS.
- Critiques called it "**draconian move"** against the "**foundations of our federal polity".**

Way forward:

- **Involve Inter-State Council:** Need active involvement and cooperation of the central and state governments, and indeed political consensus. The issue of requirement of AIS by the governments – an important matter of 'public interest' – is of common interest between the Union and States.
- The **New Cadre policy (2017)** looks to resolve these issues. The new policy is aimed at ensuring **'national integration'** in the country's top bureaucracy
- All India Services officers are supposed to have varied experience which can be earned if they work in different states. It will also give them knowledge of best practices.
- **Lateral Entry:** Also, the recent move by the government to directly recruit experts for specialized positions is a welcome move and in accordance with **the recommendation of 2nd ARC.**
- **Reduction in size of cadres:** The proliferation of inconsequential posts is a proximate cause of both demoralization and the ability to use transfer as a penalty. Therefore, the size of cadres should be reduced after periodic review.

While bureaucracy plays a key role in ensuring service delivery and democratic governance, there are certain key issues like bureaucratic inertia, lethargy, and reactive policy making, and systemic bottlenecks that hinder its functioning.

The need, therefore, is to bring in reforms to address above issues through a spectrum of measures including capacity building, e-governance, enforceable citizen's charter while also ensuring independence, depoliticization and security of tenure to maintain the strength of "steel frame" of India.

*As observed by **Indira Gandhi,** the ex-PM of India, "**we need government servants with commitments to the development of the country and personal involvement in the tasks".***

Need for Constitutional Morality for Civil Servants:

Constitutional morality for civil servants is essential for the following reasons:

- **Professional Ethics:** A high standard of professional ethics needs to be guided by the principles of constitutional values like equality, liberty, fraternity, etc. Constitutional morality held in upholding these values in civil services.
- **Values:** Civil servants are mandated by the Constitution to amongst others to promote the Constitutional Values and Principles governing public administration.
- **Social Cohesion:** It depends on values such as human dignity, the achievement of equality, the advancement of human rights and freedoms, non-racialism, supremacy of the Constitution, the rule of law, democracy, social justice, equity and respect.
- **Impartiality:** It allows an impartial responding to people's needs and encourages the public to participate in policy making.
- **Accountability:** Constitutional morality in a way instills a sense of accountability in public administration and helps in fostering transparency.

H143- Civil Service Reforms

"Above all, I would advise you to maintain to the utmost the impartiality and incorruptibility of administration. A civil servant cannot afford to and must not take part in politics. Nor must he involve himself in communal wrangles" - Sardar Patel

The Civil Services plays a **vital role in rendering a wide variety of services, implementing welfare programs and performing core governance functions**. At present bureaucracy is marred by multi-faceted challenges like rule orientation, political interference, inefficiency with promotions etc. To change the status quo of civil services there is need to bring about the **long pending civil services reforms**.

What are the features of Mission Karmayogi programme?

'Mission Karmayogi' is a **National Programme for Civil Services Capacity Building (NPCSCB)** - which aims to reform and upskill civil servants across the country and prepare them for future.

- Under this mission, the government will be **providing mid-career training** to civil servants. The training which was **earlier available for only All India Services** will now be compulsory for all officers at all levels.
- **Objective:**
  - It is aimed at **building a future-ready civil service** with the right attitude, skills and knowledge, aligned to the **vision of New India**.
  - It aims to prepare Indian civil servants for the future by making them more **creative, constructive, imaginative, proactive, innovative, progressive, professional, energetic, transparent, and technology-enabled**.
  - Comprehensive reform of the capacity building apparatus at the individual, institutional and process levels for efficient public service delivery.
- **Features of Mission Karmayogi**
  - **Digital Learning Framework**: The programme will be delivered by a digital platform called **iGOT – Karmayogi** => enable a comprehensive reform of the capacity building apparatus at the individual, institutional and process levels.
  - **Governance:** NPCSCB will be governed by the **PM's Human Resource Council** (including CMs, Union Cabinet Ministers and experts) => This council will approve and review civil service capacity building programmes + Cabinet Secretary Coordination Unit.
  - **Civil Service Competency Framework — FRAC (Framework of Roles, Activities and Competencies)** will contain the competency requirements for every role, competency details of officers, learning records. Matching the two will help to identify the **right person for the right job**.
  - **Capacity Building Commission:** which includes experts, will prepare and monitor annual capacity building plans and audit human resources available in the government.
  - **Special Purpose Vehicle (SPV):** will own and manage 'iGOT - Karmayogi platform'. It will create and operationalize the content, market place and own all IPRs on behalf of the GoI.

Discuss its advantages and also highlight the concerns with Mission Karmayogi?

A. Advantages:

- **Tech-Aided:** The capacity building content on **iGOT Karmayogi digital platform** will be drawn from **global best practices.**
- **Large coverage:** The scheme will cover 46 lakh central government employees, at all levels, and involve an outlay of Rs. 510 crores over a 5-year period (2020-21 to 2024-25).
- **Shift from "rules-based to roles-based":** Human Resource Management (HRM) so that work allocations are done by matching competencies to the requirements
- **Functional and behavioural competencies:** are also key focus areas of the programme apart from domain knowledge training. It also includes

a monitoring framework for performance evaluations.

- **Integrated Initiative:** Eventually, service matters such as confirmation after probation period, deployment, work assignments and notification of vacancies will all be integrated into the proposed framework.

B. Challenges in Implementation

- **Complex framework:** Linking **training to career progression and performance** is complex in practice and needs careful planning, systemic ownership and a high degree of transparency and credibility.
- **Centralization:** While a centralized architecture may offer coordination and standardization, a diverse public sector workforce **needs a decentralized training and learning ecosystem**.
- **Partial reform:** Good training is an important facet of state capacity but is **unlikely to improve service delivery without a concomitant effort** to change organisational norms and learning culture.
- **Work culture:** Norms of **hierarchy and bureaucratic processes** can stifle innovation even among highly skilled workers. Hence the culture in which competence is deployed is as important as competence itself.

While training might increase awareness, behavioral change requires that information is supported by existing organizational practices and norms. Here, organizations that **foster problem-solving, participation, trust, shared professional norms, and a strong sense of mission are likely to perform much better** in delivering public services.

What do you mean by 'Lateral entry' in Civil Services? Is it desirable?

Lateral entry refers to the induction of private sector specialists in government departments with the aim to achieve the twin objectives of bringing in fresh talent as well as augment the availability of manpower

- **NITI Aayog, in 2017, recommended** the induction of 'lateral entrants' at **middle and senior management levels** in the central government who would join the central secretariat.
- Individuals, who would make a "lateral entry" into the government secretariat, would be **contracted for 3 - 5 years**. These posts were "**unreserved**", meaning there were no quotas for SCs, STs and OBCs.
- The government has, **from time to time, appointed some prominent people for specific assignments** in government, keeping in view their specialized knowledge and expertise in the domain area.

A. Arguments for: 'Lateral entry' in Civil services:

- **Specialization**: in particular domain can **improve the efficiency of decision making** at various departmental and ministerial level.
- Laterals can **address the shortage of officers at the higher hierarchy** as many leave the job for career progression.
- **Career promotions based on 'meritocracy':** would bring in experts from the professional sphere => expected to shake the IAS out of their comfort zone.
- **Already a practice:** Finance Ministry, RBI and even the current NITI Aayog have hired the likes of Raghuram Rajan, Arvind Subramanian and Arvind Panagriya to name a few.
- **New India needs New Bureaucracy:** The IAS was designed for a time when the State was all-powerful, which is not the case post-liberalization in 1991. Now, state has ceded policy decisions space to private sector, non-profits, etc.
- IAS officers get recruited at a very early age => difficult to gauge their administrative judgement and capabilities then. Allowing for **lateral entry of seasoned professionals and experts** into the service makes up for this deficiency.

B. Arguments against: 'Lateral entry' in Civil services:

- Many **serving IAS officers see this move as threatening their hegemony** and that their territory is under assault. Thus, can be a blow to their morale.

- Some retired officers and political opponents consider this as the **beginning of the end of a "neutral and impartial" civil service**.
- It has also been argued that this marks the "**Privatisation of the Bureaucracy"** with the likely induction of loyalists to the current dispensation.
- Doubts have been expressed if private business houses would "plant" their people in order to influence government policies.
- The **number of such lateral entrants may be increased with time** and that the political leadership, by creating a 'divide and rule' mechanism, would further **demoralise the 'steel frame of governance'**.
- In the garb of recruiting outstanding individuals, **politically indoctrinated persons will be inducted into the system**.
- **A failed experiment:** As RTI revealed, 3 years after formulating the **lateral recruitment scheme** for 10 joint secretaries, only seven are working now.

Generalist vs Specialist debate	
Generalists	**Specialists**
A Generalist is known for broad vision and capacity for leadership as he possesses imagination, drive, initiative and enterprise for quick decisions.	A specialist is more suitable in a technical department to assist a minister, who himself is a Generalist.
S/he comprehending the inter-play of political forces due to varied experience. Thus, serves as a better adviser than a Specialist in the state.	A technocrat like Dr. Bhabha proved administrator of great acumen in managing Atomic Energy Commission. Generalists led PSUs today have become breeding centres of gross mismanagement.
Public welfare would not be possible if the adviser at the Centre is not aware of the real conditions in the field.	Technocrats on account of their rigorous and intensive training are more capable of handling the plans and projects.
Generalist is competent and is more committed to the enterprise than a private sector entrant on a term contract.	He can provide technical inputs for better management of issues like - maintenance of law and order, public welfare, manage the economy etc.
A generalist suits a democratic set-up as s/he will be more co-operative with the ministers and accept the superiority of the political boss unreluctantly.	A specialist who has more knowledge in the art of analysis and synthesis should not be relegated to the position of comparative inferiority in the policy making hierarchy.

Way Forward:

- These fears could have been allayed by **letting the UPSC handle the recruitment process**, after defining the job requirements more explicitly.
- The **lateral entrants should have mandatory 'district immersion'**, serving **at least five of their first ten years in field postings**. The hard grind of such field postings will make lateral entry self-selecting, drawing in only those with commitment and aptitude.
- Any such reform must be complemented with other measures like **worst performing civil servants must be eased out of service after 15 years** based of course on criteria that is both transparent and accountable. This will **open up space for lateral entrants** as well.

Q.3 What is Article 311? Should it be retained?

A. **Article 311:** It deals with the **dismissal, removal or reduction in rank** of persons employed in civil capacities under the Union or a State.

- **Safeguards under Article 311 for Civil Servants:**
  - **Article 311(1):** It says that no government employee either of an all-India service or a state government shall be dismissed or removed by an authority subordinate to the one that appointed them.
  - **Article 311(2):** It says that no civil servant shall be dismissed/ removed/ reduced in rank except after an enquiry. Further, they have to be informed of the charges and given a reasonable opportunity of being heard in respect of those charges.
- **Exceptions under Article 311:**
  - **Article 311(2) (a):** It says that if a government employee is convicted in a criminal case, he can be dismissed without Departmental Enquiry.
  - **Article 311(2)(c):** It says that the government employee can be dismissed when the President or the Governor is satisfied that in the interest of the security of state it is not required to hold such an enquiry, the employee can be dismissed without Departmental Enquiry.

B. **Yes: it should be retained:** (Significance)

- It provides **immunity to civil servants from arbitrary action** and thus they can carry their function without any fear or favour.
- It **ensures 'rule of law'** as it **requires a Departmental Enquiry** to be conducted and the officer under question should be given a copy of charge sheet and be head before the decision for dismissal is made.
- The government **employee dismissed can approach either tribunal or courts**.
  - **Jaswant Singh v. State of Punjab case:** The Supreme Court held that in spite of finality of Article 311(3) the "**finality can certainly be tested in the court of law** and interfered with if the action is found to be **arbitrary or malafide or motivated** by extraneous considerations or merely a ruse to dispense with the inquiry.
- The **government is under obligation to disclose to the court** the nature of the activities of the employee on the basis of which the **satisfaction of the President or the Governor** was arrived at for the purpose of passing an order under Article 311(2)(c).

C. **No: Should not be retained in present form:** (Reforming Article 311)

- The protection given to the public servants under Article 311 is being **used to create obstacles for expeditious punitive action**.
- Article 311 as interpreted by our courts has **made it very difficult to deal effectively with corrupt civil servants**.
- **Prior sanction should not be necessary for prosecuting** a public servant who has been trapped red-handed or found in possession of assets disproportionate to known sources of income.
- The **Corrupt Public Servants (Forfeiture of Property) Bill** as suggested by the Law Commission **should be enacted** without further delay with corresponding changes in Article 311.

What do you understand by the term 'committed bureaucracy'? What are the issues and challenges associated with it?

A. Committed Bureaucracy

- Mrs. **Indira Gandhi**, the then Prime Minister, advocated the concept of committed bureaucracy.
- Not only did she express her dissatisfaction with the performance of bureaucracy, she **expressed doubt about neutrality, impartiality, anonymity etc.** and she alleged that the bureaucrats lacked commitment.
- She disgustingly referred to the **administrative machinery as 'the stumbling block in the country's progress'** and reiterated the necessity of creating an administrative cadre committed to national objectives and responsive to Indian social needs.
- She found in **'committed bureaucracy' the answer to the ills of neutrality** that crippled the development process in India.

Only a **committed bureaucracy can bring about the desired change**.

B. Issues associated with Committed Bureaucracy

- It is much contested in the political and administrative circles. It was alleged that it would **permanently damage the fabric of the services**.
- It would create a **breed of pliable civil servants** who would always say "**Yes Minister**" and would be ready to crawl when asked to bend by their political masters.
- It was also alleged that in the name of commitment the ruling party was **seeking bureaucracy's alignment with the party's ideology** in order to perpetuate its rule.

C. What kind of committed bureaucracy is needed?

- What India expects from its bureaucracy is **commitment to the development** of the country and personal involvement of bureaucracy in the tasks as opposed to ostrich like withdrawal and isolation from politics.
- Programmes and schemes launched by the government must be **effectively and timely implemented** at the local level. Thus, **committed to national transformation not to any ideology**.
- Thus, if committed bureaucracy stands for a **non-partisan, socially sensitive civil service,** which can empathize with the politician who is genuinely, interested in progress and development of the country, then a **committed civil service is more appropriate for a developing nation** than having an insensitive neutral one.

Spoils System:

- Spoils system, also called **patronage system**, is a practice in which the political party winning an election rewards its campaign workers and other active supporters by appointment to government posts and with other favours.
- The spoils system **involves political activity by public employees** in support of their party and the employees' removal from office if their party loses the election.
- A **change in party control of government** necessarily brings new officials to high positions carrying political responsibility, but the spoils system extends personnel turnover down to routine or subordinate governmental positions.
- Critics say that **'lateral entry' into civil services is another name for the nefarious spoils system**.

What do you understand by 'Civil Service activism'? Is it desirable?

Civil services' activism includes **proactive steps taken** by civil servants to make the system/**administration more people centric, transparent, efficient** and abiding by constitutional values.

- It may include gamut of activities like civil servants **holding regular public meetings**, asking for people's feedback, making **people aware of their rights**, ensuring quality of goods and services provided by government, vigilant working,
- This also entails taking a **strict stand against actions or decisions of political bosses** or colleagues/seniors which are against their **constitutional duties and constitutional values** (e.g. corruption) and thus bringing a major reform, overhauling in the office.
- It not only improves administration but majorly it reinforces people's faith in the system. For example —
  - **T. N. Seshan** (former Chief Election Commissioner) can be called an activist civil servant. He fought a tough battle to bring

down electoral malpractices and make the Election Commission a powerful, efficient and transparent body. He gave us the cleanest ever elections by implementing Model Code of Conduct strictly.

- **D. K. Ravi** – recently lost his life, allegedly due to his stiff resistance to the politician–mafia nexus which he uncovered and acted against.
- **Kiran Bedi** – actively brought reforms in jails through various innovative methods like vocational courses in prison, yoga, meditation etc. when she was I.G. (Prison).
- **Vinod Rai** (former CAG) – bluntly commented on irresponsible manner of 2G spectrum allocation.

A. Yes: Civil services activism is desirable

- Many say that **one cannot be a 'deadwood' civil servant** i.e., just be a mute spectator of corruption, irregularities and inaction.
- Civil servants' activism is a **ray of hope in an utterly corrupt system** and now since the value system of administration is changing, civil servants' activism may be given acceptance also.
- It is morally unacceptable for a dedicated civil servant to accept corruption or gross mismanagement. **By exposing it he/she is doing service to the nation**.
- CS activism can **create favorable public opinion for reforms** in the system. It saves a civil servant from being indifferent in the name of civil servant neutrality.
- Such proactive steps of a civil servant is aimed at **increasing the integrity and efficiency** and the utility of the system/administration.

B. No: Civil services activism is not desirable

- Many a times, civil servant activists take a step which is in **long term interest of democracy and** rule of law but it **may go against the conduct rules.** E.g., going to press directly as **whistleblower**.
- Activist civil servants are alleged to be doing the **right things in the wrong way** because by being part of the system, they are not expected to go against the well-set rules, even if their end intentions are to bring overall good to system.
- Critics say that many times civil servants **indulge in criticism only to get media attention**. For instance, the loss to the government in 2G spectrum allocation could not be proved in court.
- **'Anonymity' is the cardinal principle** of Civil Services. But Activist civil servants disregard such well-established conventions.
- Bureaucrats always have the **choice to disagree in writing with the political executive** if in their opinion something wrong is being done. Ultimately it will be the responsibility of the political executive to take the responsibility for actions or inactions.

Should Bureaucrats be given a compulsory Post-Retirement - Cooling Off Period?

Post-retirement commercial employment for the three All India Services (IAS, Indian Police Service, and Indian Forest Service) is covered under the AIS Death-cum-Benefits Rules, and for the Central Civil Services under the CCS (Pension) Rules.

- Rule 9 of the CCS (Pension) Rules states that "if a pensioner who, immediately before his retirement was a member of Central Service Group 'A' wishes to accept any commercial employment **before the expiry of one year** from the date of his retirement, he shall **obtain the previous sanction of the Government** to such acceptance".
- Rule 26 of the AIS Death-cum-Benefits Rules similarly **restricts a pensioner from commercial employment for one year** after retirement, except with government sanction.
- The **cooling-off period was two years until 2007**, when the government reduced it to one year by an amendment.
- **Non-compliance** with these rules can lead to the government declaring that the employee "shall **not be entitled to the whole or such**

part of the pension and for such period as may be specified".

- There is **no rule, however, to stop government servants from joining politics** after retirement. In 2013, the Election Commission had written to the DoPT and Ministry of Law, suggesting a cooling-off period for bureaucrats joining politics after retirement, but it was rejected.

A. Yes: a mandatory cooling off period:

- A cooling off period is **mandatory to ensure political neutrality** of serving bureaucrats.
- There has to be "suitable" cooling-off period for government officials before they enter politics, so that they **remain impartial during their tenure** in the government. It has suggested amendments in service conduct rules to do so.
- A bar on retiring bureaucrats joining political parties would **ensure a level-playing field ahead of the general elections**.
- While retired government servants could contest elections independently, there should be a bar on their joining a political party during the cooling-off period.
- In the absence of cooling off period **partisan bureaucrats may tend to have political ideology** and may favor particular political party if that party has the high chance of coming to power.

B. No: not a mandatory cooling off period:

- A cooling-off period would not be appropriate and it would also **go against the spirit of the Constitution**.
- Bringing a cooling off period **may impinge upon the fundamental rights** of retired bureaucrats given under Article 14.
- The **political rights of the retired/senior bureaucrats may also be compromised**. In any adult citizen of particular age is qualified to contest in parliamentary or legislative elections.

Q.7 What are the Issues & challenges faced by civil services in India?

Quality of governance and role of public servants have **performed dismally in number of crucial areas such as public health, education**, etc,. Henceforth it is clear that lack of performance of public service is due to the **absence of accountability, outdated laws, rules and procedure, excessive of red-tapism, politicization of services** and maintenance of status quo.

- **Frequent use of transfers and postings as instruments of reward and punishment** have affected the effective implementation of policies, resulting in improper allocation of public funds and undermining efficiency.
- **Lack of fixed tenure** for officials is also seen as a stumbling block to effective managerial performance; thus, leaving the officer in the position irresponsive and unaccountable.
- **Nexus between the political executive and civil servants** have raised questions on neutrality and anonymity principles.
    - The unwillingness of political executive to welcome free and frank advice of the officer and lack of confidence in civil servant have found to be serious impediment to effective implementation of public policy.
- **Rampant corruption in public offices** from bottom rung up to the top level and misappropriation of public funds have significantly hampered giving proper shape to priorities, government programmes and policy.
    - Public servants being caught red handed while **accepting bribes, or possessing assets disproportionate** to his source of income has raised questions on his ethical conduct and integrity.
    - In India, there is **no ethical code of conduct** for administrators; there is what we called the government servant conduct rules which only lay down what constitutes misconduct for the public servant.

What are the recent reforms taken by GOI to promote efficiency and accountability of civil services in India?

- **Performance Appraisal Report**: On the basis of recommendations of earlier reports on Civil

Service Reforms, the Government has decided to introduce Performance Appraisal Report in respect of IAS officers and mandatory mid-career training of IAS officers.

- **Mission Karmayogi:** Under this mission, the government will be **providing mid-career training** to civil servants. The training which was **earlier available for only All India Services** will now be compulsory for all officers at all levels.
- **e-office:** enables core operations of the Government at all levels to be performed in a virtual 'paper–less' environment. This application is, thus, a major step in realizing the objective of an open and responsive Government.
- **Centralised Public Grievance Redress and Monitoring System (CPGRAMS)** is an online platform available to the citizens 24x7 to lodge their grievances to the public authorities on any subject related to service delivery. CPGRAMS will lead to a reduction in grievance disposal time and improved quality of grievance redressal.
- **360 Degree Appraisal:** A 360-degree system of appraisal has been passed by the government for empanelment of senior level officers in the Government of India. This system involves multi-source feedback from various stakeholders in the govt such as seniors, peers and juniors.

What reforms are needed in civil services to make it efficient and accountable?

A. Hota Committee, 2004:

- Observed that "we feel that if an officer of the higher civil service is **given a fixed tenure of at least three years** in his post and given annual performance targets, effectiveness of the administrative machinery will register a quantum jump."
- It is also recommended for a **rigorous review to be carried out of performance of civil servant after 15 years of service**, based on earlier quinquennial review of performance. If an officer is not honest and performance oriented, he be weeded out of service on the completion of 15 years on proportionate pension.
- A government servant's **promotion, career advancement and continuance should be linked** to his actual performance on the job.
- It recommended for rules to be **framed under Benami Transactions (Prohibition) Act 1988 for attachment/forfeiture of ill-gotten property** of corrupt public servants.

B. Second ARC Recommendation:

- **Capacity Building:** Every government servant should undergo mandatory training at the induction stage and also periodically during his/her career.
- **Central Civil Services Authority** should deal with matters of assignment of domains to officers, preparing panels for posting of officers at the level of Joint Secretary and above, fixing tenures for senior posts, deciding on posts which could be advertised for lateral entry and such other matters that may be referred to it by the Government.
- **Performance appraisal** should be year round: provisions for a detailed work-plan and a mid-year review should be introduced for all Services.
- **Motivating Civil Servants:** There is a need to recognize the outstanding work of serving civil servants including through National awards.
- **Accountability:** A system of two intensive reviews – one on completion of 14 years of service, and another on completion of 20 years of service - should be established for all government servants.
- **Relations between the Political Executive and Civil Servants:** There is a need to safeguard the political neutrality and impartiality of the civil services. The **onus for this lies equally with the political executive and the civil services**. This aspect should be included in the Code of Ethics for Ministers as well as the Code of Conduct for Public Servants.

C. **Y K Alagh Committee:** The report deals with eligibility parameters, the desired Characteristics

of candidate in terms of knowledge, skill and attitude and the modalities of identifying the most suitable candidates.

- It makes a strong case of **lowering the age limit for recruitment**, arguing that economic cost of taking examination at a higher age affect from poorer family.
- Most civil servants, according to the report, have the **attitude that they are repositories of the wisdom and knowledge** needed to deal with matters that lie within their spheres of authority.
    - It has made them unreceptive to new ideas and impervious to innovations that are essential in a dynamic administration environment.
- The report says that the **recruitment and training of civil servants should be a long-term** exercise.
    - Future Civil servants, it says, should be exposed to field-oriented development activities so that they remain in touch with people at the grassroots.
- The report emphases the need to **recruit candidates who can champion reforms, facilitate the functioning of NGOs** and cooperative groups and help the economy and society to operate within the national & global markets.
- They should also have an **ability to interface with modern technology and institutions of local self-government** and perform their duties with a sense of fair play, compassion & commitment to achieve the objectives set by the founding fathers

D. **Yugandhar Committee:**

- To ensure good governance inter alia, civil servants be **appointed to posts on the basis of objective criteria** and be field accountable for performance.
- If civil servants are given **tenure and targets and the political executive respects neutrality, integrity and hierarchy of the service,** the civil service can be expected to play its proper role in our parliamentary democracy.

A careful analysis of various recommendations on the reforms of administration structure is somewhat shaped by **competing claims of new public management philosophy and democratic strivings** evident in the concern for efficiency, effectiveness, autonomy and citizen-centricity. The **21st century civil servant has to imbibe professional ethos, be dynamic to excel in delivery of service to the common citizen**.

H144- Civil Service Board

At present the civil servants do not have stability of tenure, particularly in the State governments. The **transfers and postings are made frequently at the whims and fancies of the executive** based on political considerations, rather than 'public interest'.

- The Hota committee and the Santhanam Committee highlighted various lacunae in the present system of postings & transfers and called for serious attention.
- In 2013 Supreme Court directed State Govt/UTs to **establish 'Civil Services Board' to regulate transfer and posting** of civil servants and ensuring minimum fixed tenure. Several states have complied with the order while many of them not.
- In March 2022, the Bengaluru HC directed the state government to **submit a status report regarding the constitution of the 'Civil Services Board'** and framing of 'minimum tenure policy' for civil servants.

What is 'Civil Service Board'?

CSB **guides and advises the State government** on all service matters, especially on transfers, postings and disciplinary action, etc., though their views also **could be overruled, by the political executive, but by recording reasons**.

- CSB is responsible for the entry-level recruitment and subsequent job promotions below the rank of Joint Secretary.
- They **cannot be transferred before a 2-year tenure** and if anyone recommends their transfer then the board will examine and affect it.
  - Still, the final authority remains the Chief Minister.
- **Composition:** CSB consists of high-ranking service officers, who are experts in their respective fields, with the Cabinet Secretary at the Centre and Chief Secretary at the State level
  - **E.g.,** in 2020, Punjab CSB was headed by Chief Secretary, with Personnel Secretary, and either Financial Commissioner (Revenue) or Home Secretary (who so ever is senior in the pecking order) as its members.

What is the role played by CSB?

CSB makes recommendations to the Government on the following service matters:

- Posting / Allocation of subject in respect of the **All-India Service Officers** posted in a State/Union Territory.
- Transfers and postings of **State Civil Service Officers and Heads of Departments** who are non-PCS Officers.
- While making recommendations, the requirement of a **minimum tenure of service** as prescribed by the Government shall be kept in view by the Board.
- It **may consider transfer of Officers before the tenure fixed** by the Government based on the necessity and circumstances, which the Civil Services Board shall satisfy itself.
- CSB **may recommend the names of Officers to the Competent Authority for transfer** before completion of minimum tenure with reasons to be recorded in writing.

What is the significance of CSB in improving administration of a country?

- It aims to **provide stability in tenure** of civil servants, prevent them from extraneous political pressure and improve public confidence in administration.
  - Enables the civil servants to achieve their professional targets, but also help them to function as effective instruments of public policy.
- Ensures **good governance, transparency and accountability** in governmental functions leading to **efficient service delivery**.
- It **curbs corruption, nepotism and favouritism** in the transfer of civil servants since it is being made frequently purely on influence and political consideration, ignoring the public interest at large.
- They can also **prioritize various social and economic measures** intended to implement for the poor and marginalized sections of society.

What are the issues with frequent transfers and fixed tenure of civil servants?

A. Issues with Frequent transfers:

- **Lack of focused orientation towards development:** needs of the area => influencing the motivation levels of the officers.
  - E.g., The **Shopian district** (J&K) had **13 Deputy Commissioners in 14 years**. So, the public servants were not able to frame proper long-term developmental policies.
- It affects the **efficient functioning and continuity in public administration** and **demoralize the bureaucracy.**
- **Hota Committee (2004)** observed:
  - Frequent transfers create a **lag in the implementation of government** policies as the new public official face challenges in a particular area etc.
  - It can also result in the **wastage of public resources** due to inadequate supervision of the program and large-scale corruption.
- Above all, transfers can **create administrative favoritism and divisions among the public servants.**

B. Issues with Fixed tenure:

- The bureaucracy becomes much **less answerable and accountable** to elected representatives.
- It may **create functional and administrative** problems - The officers may **overstep the authority and jurisdiction** of the state government.
- With the fixed tenure rule, the political **executives feel their influence has been reduced** to nothing, since all the powers to examine a recommendation for a transfer lies with the CSB.
- Fixing tenure would **render the Ministers and MLAs helpless** in raking up neglected issues of public importance and timely planning and execution of development works.

What are the various recommendations made by various committees regarding transfer and posting of civil servants?

- **Central Staffing Scheme (1996):**, highlighted the necessity of a **fixed tenure to provide a certain degree of stability** to the administration.
- **Hota Committee:** The CSBs in different States have failed to inspire confidence as more often than not they have **merely formalized the wishes of their CM in matters of transfer** of officials.
- **2nd ARC:** An **independent 'Authority'** should deal with matters of assignment of domains, preparing panels for posting of officers, fixing tenures for various posts, deciding on posts which could be **advertised for lateral entry** etc.

What are the supreme court directions given under 'T S R Subramanian and others v. Union of India case 2013' regarding CSB?

- **CSB could be a better alternative (till the Parliament enacts a law)**, to guide and advise the State Government on **all service matters**, especially on transfers, postings and disciplinary action, etc.
- Though their views also could be overruled by the political executive, **recording reasons can ensure good governance, transparency and accountability** in governmental functions.
- Under **Article 309**, Parliament can also enact a **Civil Service Act**, setting up a CSB, which can guide and advise the political executive transfer and postings, disciplinary action, etc.
- The court **directed the Centre, States / UTs to constitute CSBs** with high ranking serving officers, who are specialists in their respective fields, **within 3 months**.
- **Note**: The **IAS (Cadre) Rules 1954** were **amended by the GoI in 2014**, to give effect to apex court's direction to set up the CSB and fix minimum tenure for IAS officers.

CSB consisting of experts in various fields like administration, management, science, technology, could **bring in more professionalism, expertise and efficiency** in governmental functioning. An efficient transfer policy will **preserve the fundamental principles of civil services such as neutrality, impartiality, and anonymity**. It will also ensure healthy working relationships between Ministers, MPs, MLAs and civil servants is critical for good governance.

H145- Schemes- Types and Need

"Power has only one duty – to secure the social welfare of the people" - Benjamin Disraeli

All governments from time to time announce welfare measures for a cross section of society. As India started its **transformation from Police state during British empire to welfare state after independence,** government schemes acted as a tool to ensure the welfare of the vulnerable sections.

Such schemes could be either Central or State specific or a joint collaboration between them. It is the **success of all such schemes that India has achieved greater strides** in various aspects like poverty alleviation, improvement in health etc.

What is meant by Government scheme? Why are they needed? (purpose/ significance)

- Government schemes can be defined as a **plan, design or program** formulated by the government with the aim of **ensuring the social and economic welfare of the citizens** of this nation.
- They **are designed with specific objectives and majority of them aim to help the economically deprived, rural, and vulnerable section** of the society such as SC/ST, disabled persons, women, old age people etc.

What is the need for government schemes?

- **Improve the socio-economic indicators:**
  - **Poverty:** Some 220 million Indians sustained on an **expenditure level of less than Rs 32 / day**—the poverty line for rural India—by the last headcount of the poor in India in 2013. (WEF study, 2020)
  - **Hunger:** India slipped to **101st position in the Global Hunger Index (GHI) 2021** of 116 countries, from its 2020 position of 94th.
  - **Malnutrition:** According to the NFHS-4, the percentage of wasted, stunted and malnourished children in 2015-16 stood at 21, 38.4 and 35.7 respectively.
  - **Health:** As a share of total health expenditure, **out of pocket expenditure still remains to 48.8% in 2017-18** though down from 64.2% in 2013-14 of total health expenditure.
- **Upliftment of vulnerable sections**: of the society, improve quality of life, development of rural and backward areas, provide financial security, education, training to the vulnerable section of the nation etc.
- **Employment led development**: The government schemes are beneficial to individuals for obtaining training and employment opportunities => leading to Socio-economic development of the nation. (E.g., MNREGA)
- **Financial security:** Some schemes help in availing loans at minimum rate of interest, opening a bank account for individuals, availing financial assistance to meet expenses of an individual, obtaining insurance and enrolling for pension by paying a minimum amount. (E.g., Atal pension yojana)
- **Women empowerment:** Schemes empowers the women through providing basic education to the women, maternity benefits, rehabilitation facilities, provide financial assistance to the woman for starting their own business. (E.g., Stand-Up India)
- **Provide basic amenities:** Some schemes for the individuals concentrate on providing basic necessities to the individuals such as LED lights, drinking water, distribution of food grains, housing, clean environment etc. (E.g., UJALA)
- **To promote business and entrepreneurship:** and helps them by providing financial assistance and technical assistance for their growth, ultimately strengthening the economy. (E.g., Start-Up India)

What is the classification of government schemes, presently in India?

A. Centrally Sponsored Schemes:

- These schemes are **funded jointly by the Central and State government** in different ratios (90:10, 75:25, 50:50 etc.) and **executed/implemented by the state governments**.
- CSS is basically **the way through which the central government helps the states run their plan financially**. The amount of state participation varies from state to state.
- These schemes are launched **specially for those areas that are covered by the state government under state list and concurrent list.**
- **Centrally Sponsored Schemes are further divided into: I) Core of the Core schemes; II) Core Schemes; III) Optional schemes.**

i. Core of the Core schemes:	• These are mostly **government flagship schemes.** • Presently there are **six umbrella schemes** which are considered under this category. • Most of these schemes prescribed **specific financial participation by States**. For example, in the case of MGNREGA, state governments have to incur 25% material expenditure. • The six of the core schemes are: 1. National Social Assistance Programme. 2. MGNREGA or the Mahatma Gandhi National Rural Employment Guarantee Act. 3. Umbrella Scheme for Development of Scheduled Castes. 4. Umbrella Programme for Development of Scheduled Tribes. 5. Umbrella Scheme for Development of Minorities. 6. Umbrella Scheme for Development of Other Vulnerable Groups.
ii. Core Schemes:	• For core schemes, the funding pattern follows a **60:40** ratio where most of the funding comes from the central government. • In the case of states like North Eastern States, Jammu and Kashmir and some special category states, the funding pattern followed is of **90:10.** • Presently there are **20 centrally sponsored core schemes.** • There are 20 schemes, which are listed under core schemes: 1. Green Revolution. 2. White Revolution. 3. Blue Revolution. 4. Pradhan Mantri Krishi Sinchai Yojna (PMKSY). 5. Pradhan Mantri Gram Sadak Yojna. 6. Pradhan Mantri Awas Yojna (PMAY). 7. Rural Drinking Water Mission. 8. Swachch Bharat Mission (SBM). 9. National Health Mission. 10. Mid-Day meal in schools. 11. National Livelihood Mission – Ajeevika. 12. Rashtriya Gram Swaraj Abhiyan (RGSA). 13. Rasthriya Swasthya Bima Yojana. 14. National Education Mission. 15. Umbrella ICDS. 16. Mission for Protection and Empowerment of Women.

	17. Jobs and Skill Development. 18. Environment Forestry and Wildlife. 19. Urban Rejuvenation Mission: AMRUT and Smart Cities Mission. 20. Modernisation of Police Forces.
iii. Optional:	• In the case of optional schemes, **normally state governments plan the schemes and request the central government to fund some portion** of the total outlay. • The general funding pattern of the optional schemes is **50:50.** However, the union government funds up to 80% of the expenditure in the case of North Eastern and Himalayan states. • It includes: 1. Border Area Development Programme. 2. Shyama Prasad Mukherjee Rurban Mission

B. Central Sector Schemes:

- These schemes are **funded and executed directly by the Centre government only**.
- They consist of **mostly schemes that are of common agenda of central government**.
- Based on subjects from the **union list**, the schemes are formulated by the Centre.
- **Major central sector schemes include:**
  1. Crop insurance scheme.
  2. Interest subsidy for short term credit to farmers.
  3. Market intervention scheme and price support system (MIS-PSS).
  4. Pradhan Mantri Anna data Aay Sankarshan Yojna (PM-AASHA).
  5. Pradhan Mantri Kisan Sampada Yojna.
  6. Family Welfare Schemes.
  7. Pradhan Mantri Swasthya Suraksha Yojna.
  8. Higher Education Financing Agency (HEFA).
  9. Prime Minister Employment Generation Programme.
  10. Skill Development and Livelihoods.
  11. Deen Dayal Upadhyay Gram Jyoti Yojna.
  12. Sagarmala.
  13. MPLAD, etc.

Centrally Sponsored Scheme	Central Sector Scheme
They are jointly **funded by the Centre and State**.	They are **funded entirely by the Union Government**.
These are **impended by the States.**	These are **implemented by the Centre directly.**
They mainly cover items listed in the **state list.**	Central sector schemes are mainly formulated on subjects from the **Union List.**

C. State Government Schemes: are planned, funded and executed by the State government only. For Example, **CM's Krishi Rinn Yojana**, CM's Adarsh Gram Yojana etc.

What are the different challenges faced by government schemes in their implementation?

- **Lack of scrutiny:** Government schemes are meant to be implemented at the local level.
  - Lack of effective scrutiny through timely inspections, audits lead to unaccountability and gross mismanagement of funds.
- **Lack of awareness:** Due to illiteracy and unawareness of various government schemes and their provisions, this **leads to poor coverage and genuine beneficiaries are left out.**
- **Corruption:** False beneficiaries and fake documents are used to misuse funds meant for the benefit of schemes.

- **Centralized administration:** The welfare bureaucracy is deeply centralized, which comes at the cost of a local government which is genuinely responsive to citizen needs.
- **Lack of flexibility**: The local conditions vary in different parts of the country. The schemes make uniform provisions and guidelines without considering this factor.
    - The norms prescribed under the scheme require a change to be applied meaningfully to a state. This flexibility has been missing in central schemes.
- **Weak local governance:** Local governance is a must for the effective implementation of welfare programmes.
    - Due to the absence of strong Panchayats and lack of effective local scrutiny the programmes are used as an opportunity for corruption.

What are the concerns of states with respect to centrally sponsored schemes (CSS)? What steps have been taken by the government to resolve those issues?

A. **Concerns of states with respect to the CSS**:
- **Fiscal autonomy:** CSSs limit the fiscal autonomy of States as
    - **The funding provided is tied to a particular scheme** and
    - **States also need to spend a certain percentage of funds on these schemes** irrespective of whether these schemes are needed for a particular state or not.
- **Uniformity vs specificity:** The local conditions vary in different parts of the country. However, the schemes make uniform provisions and guidelines.
- **No involvement of states in formation of schemes** despite the fact that most Centrally sponsored schemes relate to subjects falling in the legislative competence of the states.
- **Mis-allocation of funds**:
    - Richer states with **better administrative capacities** have been able to capture a larger share of CSS funds, resulting in misallocation of resources.
    - Analysis by the **Economic Survey 2016-17** of the six top CSS found that under no scheme did the poorest district receive even 40 per cent of the total resources.
- **Planning and design failures:** Budgets for CSS are determined based on incremental plans prepared by the respective state governments and approved by a central committee.
    - This has given **individual ministries significant discretion in determining scheme design and approving state-specific plans and budgets**.
    - There is often an **inherent tension between central government priorities and state-perceived needs**.
- **Bureaucratic red tape, Rigid guidelines, complex paperwork, and numerous conditionality's for fund release** under CSS has also created a lot of administrative red tape, resulting in inefficiencies in approvals and fund flow.
    - A **study conducted by Accountability Initiative of NHM** in Uttar Pradesh found that **it took a minimum of 22 desks** through which a had to pass for the release of funds from the Centre to the state level implementation body.

B. Reforms taken with respect to the CSS:

Recognizing the above limitations, a few attempts have been made to restructure schemes and restore them to their rightful place – the states. These include:

- **Rationalization of CSS:** The rationalization plan has **reduced the existing 66 CSSs to 28,** and then further divided them into three categories:
    - 6 'core of the core' schemes,
    - 20 core schemes, and
    - 2 optional schemes.

- **GOI accepted 14th Finance Commission recommendations to increase** the devolution from the Centre to the state governments from **32% to 42%**.
    - This provided **state governments with a greater measure of flexibility** in financing their own priority development schemes.

What further reforms are needed with respect to CSS?

- **Schematic to sectoral approach**: The first step is to **limit the number of schemes**. One way of doing this is to **link finances to 'national goals**.
    - Instead of creating 28 umbrella programmes, **funds could be released specifically for priority areas rather than multiple sub-schemes**.
- **Towards block grants**: Instead of **allocations linked to detailed and cumbersome planning** and budgeting processes with centralized guidelines, block grants could be given to states.
    - This would allow for prioritization of different inputs and secure **greater ownership by state governments**.
- **Equitable inter-state distribution:** Also, district-wise analysis should be done to ensure adequate funds are released as per the backwardness of the district.
- **Reforming public finance management system:** by building Expenditure Information Network (EIN), which brings all expenditure units under one system to streamline inefficiencies in the approval and fund flow process.
- **Augmenting capacity of evaluation office:** Instead of focusing on monitoring the nuts and bolts of implementation, the Centre must build its capacity to develop a credible database on **monitoring outcome indicators on a real-time basis**.
- **The 15th Finance Commission has** called for **discontinuing schemes that are small or no longer necessary,** and instead putting in place a **minimum budget threshold allocation for a CSS**.

Schemes without effective machinery for implementation and monitoring remain hollow in achieving their objectives. Therefore, there is a need to take more proactive reforms with respect to formation and implementation of schemes for the long due upliftment of vulnerable.

H146- MGNREGA

"MGNREGA is a stellar example of rural development" - World Bank

In his famous **talisman,** Mahatma Gandhi urged us, **in our moments of doubt, to recall the face of the poorest person we may have seen and ask ourselves whether the step we are contemplating is likely to be of any use to him or her.** It is in this spirit that the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA) was launched.

According to Government data, **over 11 crore people worked under the MGNREGA during the financial year 2020-21**. The Union government has allocated only ₹25,000 crores for MGNREGA scheme in 2022-23.

What is MGNREGA scheme?

The **MGNREGA scheme was launched to target causes of chronic poverty** through the 'works' (projects) that are undertaken, and thus ensuring sustainable development for all. It is one of the world's largest **employment guarantee programs.**

- **Launch:** It was initially launched in the 200 most backward rural districts of the country in 2006-07. It was later extended to an additional 130 districts during 2007-08 and to the entire country from 2008-09 onward.
- **Implementation:** MGREGA is implemented by the **Ministry of Rural Development** in association with state governments that monitor the implementation of the scheme.
- **Objective:**
  - **Ensuring social protection and livelihood security:** for the most vulnerable people living in rural India through providing **employment opportunities.**
  - Strengthening **drought-proofing and flood management** in rural India through creation of durable assets, improved water security, soil conservation and higher land productivity
  - **Aiding in the empowerment of the marginalised communities,** especially women, Scheduled Castes (SCs) and Scheduled Tribes (STs), through the processes of a **rights-based legislation.**
  - **Strengthening decentralized, participatory planning** through convergence of various anti-poverty and livelihoods initiatives.
  - **Deepening democracy** at the grass-roots by strengthening the Panchayati Raj Institutions (PRIs).

What are the key features of the MGNREGS?

- **Beneficiary:** Under the scheme, **every 'rural' household** whose **'adult' member 'volunteers'** to do '**unskilled manual work'** is entitled to get **'at least 100 days' of wage employment** in a financial year.
- **Demand-driven scheme**: Worker will get the work whenever he demands and not when the Government has work available.
- **Employment Allowance:** Gram Panchayat has the mandate to **provide employment within 15 days of a work** application. If it fails, the worker will get an unemployment allowance.
- **Timely Payment:** Payment of wages within 15 days of completion of work. In case of failure, the worker will get delay compensation of 0.05% per day of wages earned.
- **Women empowerment:** Minimum **one-third of the workers should be women.**
- **Equal payment** for men and women; **Worksite facilities** such as creche, drinking water and shade have to be provided.
- **Minimum wages:** Wage payment should be according to the Minimum Wages Act 1948 for agricultural laborers in the State.
- If the **work provided is beyond 5 Kms**, the job seekers shall be given **10% of the minimum wages as the additional amount.**

What is the significance of MGNREGA?

- **Curtailing Distress Migration**: The scheme provides **support in times of distress** and individuals are not forced to migrate into cities.
  - E.g., for instance, distress migration has stopped in Bandlapalli village in Andhra Pradesh's Ananthapuramu district and the village is drought-proof today.
- **Women Empowerment**: For example, MGNREGA has led to the formation of the country's largest group of trained women well-diggers in Pookkottukavu village of Kerala's Palakkad district.
- **Battling Uncertainties:** The program provided a sigh of relief to millions of migrants and other people who lost their **livelihood in the pandemic times**.
  - The scheme ensured that the vulnerable get access to basic income thereby decreasing suicide rates in the country.
- **Common community Assets:** The scheme has led to the creation of common community assets.
  - These assets are built by communities on common lands thereby **creating a sense of responsibility** towards the structure which results in better care.
- **Inclusive growth:** MGNREGA has **become a powerful instrument for inclusive growth in rural India** through its impact on social protection, livelihood security and **democratic governance.**

What are the achievements of the MGNRGA scheme?

- **In tackling climate change:** As per a **study by IISc Bangalore**, the MGNREGA Scheme can help India meet its target to create an **additional carbon sink to the extent of 2.5-3 billion tones equivalent of carbon dioxide by 2030 through improved forest and tree cover**.
- **Empowerment of Women:** In FY2015-16 out of the total employment through MGNREGA, 56% was generated for women.
- **Reduction in distressed rural to urban migration** and also seasonal migration by providing work closer to home and decent working conditions.
- **Upliftment of SCs and STs:** The percentage of Scheduled Caste workers has consistently been about 20% and Scheduled Tribe workers has been about 17%.
- **Sustainable assets:** have been created linked to conservation of natural resources and have helped in overall development of Gram Panchayats.
- **Financial Inclusion:** Payment of wages through bank accounts/ post office has led to large financial inclusion of the poor.

What are the issues/challenges faced by MGNREGA scheme?

- **Lack of adequate data to ascertain the impact of productive assets:** The government does not monitor whether a structure has actually helped water conservation.
  - Further, there is **no government data on the impact on groundwater levels**, improvements in livelihoods etc. post the creation of assets.
- **Poor maintenance:** Many structures created under MGNREGA become defunct due to poor maintenance. This simply implies the wastage of time, energy, and resources.
- **Inadequate Funds:** A huge surge in demand for MGNREGA works has been witnessed in pandemic times. But the government hasn't duly allocated funding in a similar proportion.
- **Corruption in MGNREGA:**
  - Often, **middlemen add ghost workers** to the roster, pocket wages, or keep workers' job cards or ATM cards with them to withdraw their payments.
  - Other corruption-related issues are to do with **arbitrary works being sanctioned**. For example, **lakes being renovated and then dug up again.**
  - **Poor quality of material** being used etc
- **Insufficient support**: With the unemployment rate reaching a 45-year high at 6%, giving merely 100 days of employment is not sufficient.
- **Delay in wages:** The Union Ministry of Rural Development withholds wage payments for workers of states that do not meet administrative requirements within the stipulated time period.

- **Lack of adequate capital formation:** Successive governments have spent an estimated **3.1 trillion on MGNREGA schemes over the past decade**.
  - However, according to critics, capital formation is nowhere near the amount spent, instead if the same money had been spent via other schemes the impact would have been far higher.
- **Inflation:** MGNREGA pushed up rural wages without having much of an impact on rural productivity. It led to inflation as nominal wages rose faster than productivity.
  - **Impact on agriculture:** increased wages due to MGNREGA led to increased cost of production in agriculture, thus reducing income of small and marginal farmers.
- **Low Budget allocation:** The government has allocated Rs 73,000 crore for 2022-23, which is 25 per cent lower than the Rs 98,000 crore provided in the revised estimate (RE) for the current fiscal.
- **Technology related issues:**
  - **Discrepancies in the details of bank accounts and Aadhaar numbers:** The bank accounts mapped with the Aadhaar numbers are leading to **non-payment of wages** to many workers across the state.
  - The **MIS's inability to cope with the vast amount of data** is also becoming a serious issue. Instances of fund transfer orders not getting generated, and reports not opening etc., in the MIS due to **"hardware and server issues"** are becoming increasingly common.
- **Other issues:**
  - A common complaint is about **machines being used to get work done**, something that is not allowed under the scheme.
  - **Finding work that is suited to an individual's skills**: However, despite skill mapping by the central government for migrant workers, many end up doing tasks they are overqualified for.

Discuss the performance of MGNREGA during Covid-19 Pandemic:

- According to the government data, **over 11 crore people worked under MGNREGS during the financial year 2020-21 alone**. A few other achievements of the Scheme last year are:
  - Further, the 11-crore mark is also higher by about 41.75% if we compare 2019-20 data (about 7.88 crores worked).
  - In 2020-21, the total expenditure was 62.31% higher than in 2019-20.
  - As part of the economic package during the Covid-19 pandemic, the government announced **additional funding of Rs 40,000 crore** for the MGNREGS over and above the budgetary allocation of 2020-21.
- **Achievements:** Between April and September 2020, 8.3 million new NREGA job cards were issued, the highest annual increase in seven years. (Study by **People's Action of Employment Guarantee (PAEG)**)
- **Issues:**
  - 17% of those who asked for NREGA jobs did not get them;
  - Only around 60 percent of workers received the job cards—the other 40 percent were still waiting for them;
  - 22% of the respondents did not receive wages even after three weeks of completing their work.

What steps have been taken to resolve issues in MGNREGA?

A. Initiatives by central government:

- **Increased use of information technology:**
  - **Transaction-based MIS** in all states.
  - The **New geospatial planning portal** named '**Yuktdhara'.** It is a geospatial planning portal under Bhuvan. It will help in facilitating new MGNREGA assets **using remote sensing and geographic information system-based data**.
  - The **Mobile Monitoring System:** for real-time monitoring of the progress of projects**.** This also

regulates attendance and work environment in these work sites.
    - The MIS needs to be treated as a reporting tool rather than an application for implementing MGNREGA.
- **Holistic and durable asset creation to ensure all round development of rural India:**
    - **Rural sanitation projects,** such as the first-time toilet building, soak pits and solid and liquid waste management have been included under MGNREGA.
    - **Construction of AWC building** has been included as an approved activity under the MGNREG Act. 'Guidelines for construction of Anganwadi Centres' under MGNREGS have been issued.
- **Notification of the Social Audit Rules** in 2011 **to make it mandatory to have a social audit** conducted by the Gram Sabha (GS) according to a prescribed procedure twice a year.
- **Asking the Comptroller and Auditor General (CAG)** to conduct a **performance audit** of MGNREGA.
- **Making certification of MGNREGA accounts at the Gram Panchayat (GP) level by chartered accountants compulsory** over time, starting with 20 per cent GPs this year.

B. Initiatives by state governments:

- **Andhra Pradesh:** Chittoor demonstrates an example of **effective convergence of MGNREGA with horticulture**. For example, cumulative area under mango horticulture plantations gradually increased in the district.
- **Madhya Pradesh: The Kapildhara Scheme** is a convergence between MGNREGA, agriculture and horticulture departments. The Scheme provides farm ponds, dug wells, tanks for increasing water availability on the lands of farmers.
- **Assam's** Bongaigaon district authorities have launched a **project under the MGNREGA to plant guava, mango, blackberry and other fruit trees** to ensure that the resident golden langurs of the Kakoijana Reserve Forest do not have to risk their lives to find food.
    - Further, this will be the **first time MGNREGA will have non-human beneficiaries.**

C. Initiatives by civil society organisation:

- **Jharkhand:** Vikas Sahyog Kendra (VSK), a Civil Society Organisation (CSO), has set up **'MGNREGA Help Centres',** at the panchayat and block levels in the state.
    - The help centres are playing a key role in creating awareness of basic entitlements, processes and procedures for accessing entitlements under MGNREGA.
- **Nari Sangh, CSO:** In UP, Nari Sanghs has been working on grassroots mobilisation for securing the rights of MGNREGA workers.

Successful Case studies:

- **Sikkim:** The scheme MGNREGA was successful:
    - Exemplary coverage: **Over 90% rural households have been provided Job cards** while 70% have been provided employment at an **average of 66-person days per annum.**
    - MGNREGA has generated 326.31 lakh person days of employment, with an average of **40.7 lakh person days of employment per year**.
    - **Enhancing wage earnings** and impact on minimum wage; **Increasing outreach** to the poor and marginalized.

- **Spring Shed "Dhara Vikas" Initiative:** In order to enhance rural water security a new Spring-shed development programme was initiated by the Development.

- **Maharashtra:**
  - The MGNREGA **notified wages have increased** across States since 2006, **Maharashtra observing the highest increase of over 200 per cent**.
  - The wage effect is equal for both men and women and is in favour of unskilled labour.
- **Andhra Pradesh:**
  - In Vizianagram, Andhra Pradesh, a **farm pond on the 2-acre land of an SC farmer, constructed under the MGNREGA Scheme, provided a perennial supply of water** which led to an increase in his farm yield (up to 10 bags for paddy and 6 bags for ragi).
  - This **increase in farm yield helped him switch from being a casual labourer to an agriculturist**.

What reforms are needed to further strengthen MGNREGA scheme?

- **Timely payment:** The government should ensure timely payment with reduced delays. Also, the MGNREGA payment procedures should be simplified to ensure transparency and accountability.
- **Increasing wage rates:** Wages must be increased as more income means more economic empowerment of rural poor. This will enable social welfare in the form of increased spending on health and education.
- **Increase in wage days:** The government can enhance the number of days to 150-200 days depending on the vulnerability in a particular state.
- **Adequate funds:** The government should provide greater funds for the proper implementation of the scheme. It currently provides 0.47% of GDP while **the World Bank recommends 1.7 %** for the optimal functioning of the program.
- **Social audits:** There is a need to carry out social audits as per the rules and effective implementation of the delay compensation system.

To realize the **Gandhian dream of making villages truly vibrant units** and foundations of socio- economic transformation of India, MGNREGA needs to be viewed not just as lifeline of rural India but a scheme that provides dignified life to millions of unskilled in India. Thus, the **government must fill the lacunas in MGNREGA on priority basis** to ensure multitude of benefits to the rural areas, **where the 'real India lives'**.

H147- NATIONAL SOCIAL ASSITANCE PROGRAMME

"Poverty is the worst form of violence." - Mahatma Gandhi
"Power has only one duty - to secure the social welfare of the People." - Benjamin Disraeli

National Social Assistance Programme (NSAP) has been at the center of many public policy debates in India. It was, in 2014, declared a "core of the core" scheme under the Ministry of Rural Development.

According to a 2021 report by the 'Parliamentary Standing Committee on Rural Development', the Centre must increase the "**meagre" pensions provided for poor citizens, widows, and disabled people**.

What is the National Social Assistance Programme (NSAP)?

NSAP is a **social security and welfare programme** to provide support to aged persons, widows, disabled persons and bereaved families on death of primary bread winner, belonging to BPL households.

- NSAP represents a significant step towards the fulfilment of the Directive Principles in **Article 41 and 42** of the Constitution which direct states **to provide public assistance to its citizens in case of unemployment, old age, sickness, and disablement**.
- NSAP is administered by the **Ministry of Rural Development** and is being implemented **in rural as well as urban areas**.
- The programme was first **launched on 15 August 1995 as a Centrally Sponsored Scheme** targeting the destitute to be identified by States/UTs with the objective of providing financial support.
- **Components of NSAP:** It comprises of **five schemes**:
  1. Indira Gandhi National Old Age Pension Scheme (IGNOAPS).
  2. Indira Gandhi National Widow Pension Scheme (IGNWPS).
  3. Indira Gandhi National Disability Pension Scheme (IGNDPS).
  4. National Family Benefit Scheme (NFBS).
  5. Annapurna Scheme.

What are the features of various schemes covered under NSAP?

Scheme Name	Features & Eligibility Criteria
1. Indira Gandhi National Old Age Pension Scheme (IGNOAPS)	• A monthly pension of **Rs. 200** is provided to all **persons of 60 and above years** from the **BPL families**. • For persons above the age of 80 years, the pension amount is Rs. 500. • It is a **non-contribution pension scheme** => the beneficiary is not required to make any contributions in order to get the pension.
2. Indira Gandhi National Widow Pension Scheme (IGNWPS)	• In this scheme, **BPL widows aged 40-59 years** are entitled to a monthly pension of Rs. 300, which is enhanced to **Rs. 500 for widows over 80 years.**
3. Indira Gandhi National Disability Pension Scheme (IGNDPS)	• The people with severe and multiple disabilities (including dwarfs) with 80% and above disability from BPL families in the age group of **18-59 years** are provided a monthly pension of Rs. **300, which is enhanced to Rs. 500 to the age group of 80 years and above**.

4. National Family Benefit Scheme (NFBS)	• Bereaved households that have lost the bread-winner of the family falling in the **BPL category** are given **one-time lumpsum assistance of Rs. 20,000**. ○ **Bread-winner**: either a male or female adult on whose income family subsistence is dependent. • The family benefit is paid to the surviving member of the household of the deceased poor, who after local inquiry, is found to be the head of the household. • It is conditional that the death of the bread-winner should have occurred whilst he/she is more than 18 years of age and less than 60 years of age

5. Annapurna	• The program was introduced by the Ministry of Rural Development in 2000–2001.
	• Under this program, **10 kg of food grains are given away each month to the elderly** (above 65 years of age) **and indigent who are poor and live on little to no income**.
	  ○ The food grains are distributed to the State Governments in accordance with the regulations at BPL rates.
	  ○ The **Gram Sabha** chooses the program's **beneficiaries,** and the Gram Panchayat gives the beneficiaries their entitlement cards.
	• **Aim:** to provide **food security to satisfy the needs of elderly** people who are qualified but have not received benefits from the National Old Age Pension Scheme (NOAPS).
	• **Implementing agency**: At the state level the **State Departments of Food & Civil Supplies (F&CS**) and at the district level, the District Collector/ Chief Executive Officer and Zila Panchayat are responsible for the implementation of this scheme.
	• **Eligibility criteria for Annapurna Scheme:**
	  ○ The applicant must be at least **65 years old**.
	  ○ The **applicant should have no regular source of sustenance** from his own income and be in extreme poverty.
	  ○ A **NOAPS or State Pension Scheme pensioner is not eligible to apply**.

What is the significance of NSAP in ensuring welfare of vulnerable sections of society?

- **Social assistance:** The scheme provides social assistance benefits to the poor households in the case of death, maternity or old age of the breadwinner.
- **Social protection**: Ensure uniform social protection for the beneficiaries across the country without interruption.
- Regular monthly disbursement of pensions and benefits.
- **IT-based Management Information System (MIS)** helps in delivery of services to the beneficiary in a time bound manner.
- **Wide coverage**: NSAP aims to cover every eligible individual on the basis of the Below Poverty Line (BPL) population of every State.
- **Eliminating chronic poverty**: through regular cash transfers to the elderly, widows and disabled persons, the most vulnerable among the poor.

What are the issues /challenges faced by various schemes covered under NSAP?

Scheme	Issues/Challenges involved
1. **National Old Age Pension Scheme (NOAPS)**	• **Financial Burden:** The government has to bear a significant economic burden for giving pension amounts to the beneficiaries. • **Delay in implementation:** Delays were noticed in the issue of **Permanent Retirement Account Number (PRAN)** and the first deduction of NPS contributions. • **Issues in Monitoring:** Various ministries implementing pension schemes **fail to constitute the Monitoring and Overseeing Committees**. This will also result in **poor implementation of pension schemes.** • The present **technique still uses the 2001 census and poverty rates from 2004-05 to identify beneficiaries.** • There has been **severe criticism of the Government of India for not increasing the monthly pension**.
2. **National Family Benefit Scheme (NFBS)**	• The **absence of any form of life insurance** appropriate for poor households is a gaping hole in India's budding social security system. • **Low Budget:** The budget allocation of Rs. 862 crores in 2014 has been dropped to Rs. 623 crores in 2021-22. • **Restricted coverage**, administrative hurdles, **implementation hurdles** include **frequent delays in payments** etc. • **Delay in obtaining a death certificate** for the deceased family member. • Gram panchayat officials, public institutions and public libraries could **not contribute much to the dissemination of information** about the scheme. • **Corruption:** Elected representatives and panchayat officials favour their kith and kin for inclusion in the scheme. • The **inadequacy of formal government institutions** in providing reliable information excludes many poor families from accessing the benefits of NFBS.
3. **National Maternity Benefit Scheme (NMBS)**	• The **lack of coordination** between various departments involved in the programme, has also contributed to their poor involvement. • **Lack of awareness**, on the part of focus group of households. • **Inclusion and exclusion errors:** lead to depriving genuine beneficiaries from participating and **encouraging room for 'nongenuine' beneficiaries.**
4. **Indira Gandhi National Disability Pension Scheme (IGNDPS)**	• **Inefficient funds management** due to parking of unutilized funds across administrative levels and **lack of accurate/real time information on such unproductive funds**. • **Lack of formal systems** for intimation on **credit to beneficiary accounts** or disbursement of pensions => lack of information on effective usage of funds as well as timely recovery of undisbursed funds.
5. **Annapurna Scheme**	• There has been an **ongoing debate in India over the use of BPL status for identifying beneficiaries** for social programs. • Social pensions where many poor elderly, widows and persons with disability are excluded from the NSAP as their names are not on the BPL list.

What steps are required to address the issues in NSAP?

A. Planning and implementation:

- **Creating awareness** about the scheme and providing wide publicity.

- **Regular activity mapping:** Compilation of information about the implementation and furnishing it to the state authorities on a quarterly basis.
- **Selection:** The Gram Panchayat/Municipalities should play an active role in the identification of the beneficiaries.
- **Disbursement:** Apart from the disbursal of benefits through the accounts of the beneficiaries in Banks or in Post Office Savings Banks or through Postal Money Order the assistance under the Old Age Pension Scheme may also be disbursed in public meetings.

B. Strengthen the administrative structure for implementing NSAP:

- All NSAP pensions **need to be implemented by "one Department and Directorate"** at the State level.
- The State shall **designate the Collector or CEO of Zilla Parishad as the District NSAP Coordinator** with an Additional District Coordinator, to guide and monitor NSAP at the District level.
- **At the sub-district level, one NSAP program manager and an assistant** may be provided as dedicated staff for managing pensions.

C. Monitoring system:

- **Identification and enrollment camps:** should be used for confirming the eligibility of beneficiaries.
- **A strong grievance management system** is a key component of any program monitoring framework.
- **Annual financial audits** have to be completed within 3 months of closing of financial year should be a mandatory requirement. There is a need to redefine the scope for objective and effective audit.
- **Social audit** should be established as a part of the monitoring tool for NSAP.

D. Other suggestions:

- **Universal coverage:** The implementing agency should ensure coverage on special priority for the vulnerable groups like persons affected by leprosy, AIDS, Cancer, TB and families affected due to natural and man-made disaster etc.
- **Transparent and people friendly process:** States may device methods for certification by local government, if documents are not available with the eligible persons.
- **Regular disbursement of pensions**: This should be achieved in the shortest possible period to the beneficiaries.
- **Electronic transfer**: The mode of disbursement may be decided on the basis of choice and convenience of the beneficiaries.
- **Regular confirmation of the existing beneficiaries**:
  - There is a need for annual verification of the existing beneficiaries under NSAP.
  - The states may constitute special Verification Teams for the purpose under an authorized officer.
  - The team should include NGOs and Pressure groups.
- **Ensure Transparency:** The **list of beneficiaries** should be **displayed at the Gram Panchayat Ward and Municipal Office** and updated frequently.

Parliamentary committee recommendation:

The Estimates Committee submitted its report on NSAP in 2014. Key recommendations of the committee:

- **Increase the amount of Pension:** The amount should be indexed to inflation and raised regularly in a phased manner.
- **Cover all widows, single women:**
  - At present, widows over 40 years are covered by the IGNWPS.
  - The Committee recommended that IGNWPS cover all widows and that the pension amount be increased from Rs 300 to Rs 1,000 per month.

- It also recommended that single women above 40 years and divorced women (unemployed, without alimony) be covered under the NSAP.

- **Assistance to disabled:**
  - The IGNDPS defines a disabled person as anyone with more than 80% disability.
  - However, the **Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995** defines a disabled person as anyone with more than 40% disability. This discrepancy needs to be corrected.
- The Committee recommended that **IGNDPS be extended to cover dwarves born with physical infirmities**.
- **Selection of beneficiaries:** the selection of beneficiaries be done using the Socio-Economic Caste Census (SECC) from 2014-15.
- **Social Audit:** The Ministry of Rural Development is developing a social audit system for NSAP through which social audits will be conducted every six months. The Committee recommended that this system be established in all states at the earliest.
- **Beggary:** The Committee recommended that a study be undertaken to examine why beggary persists despite the existence of NSAP.
  - Appropriate action should be taken to address this issue, based on the findings of the study.

Despite the rising chorus for changes in the, the scheme remains stagnant both in terms of coverage and benefits. In addition to this, it is largely underfunded. Hence, there is an urgent need to expand financing for the scheme as well as revise the scheme guidelines in order to promote a more inclusive and appropriate public assistance programme.

H148- Aadhar – an evaluation

Aadhaar has now become the **bedrock for welfare schemes, ensuring faster benefit transfers and savings** to the government by eliminating fake and duplicate identities. Presently, 315 Central Schemes and 500 state schemes are leveraging Aadhaar to ensure effective delivery of services. Recently, in August 2022 the **ECI launched a drive to link voter identity cards with Aadhaar cards**.

What is Aadhar? Discuss its purpose and key features.

Aadhaar is a **12-digit individual identification number issued by UIDAI** (Unique Identification Authority of India) on behalf of the GoI. Aadhaar ID number is **unique for each individual** and will remain valid for life time.

- **Purpose of introducing Aadhar:**
  - Establishes **identification for every 'resident Indian'** based on uniqueness of every individual on the basis of **demographic and biometric information**
  - It is a '**voluntary' service that every resident can avail**, irrespective of present documentation.
  - Aadhaar number serves as a **proof of identity and address,** which can be used by any identity-based application (like ration card, passport, etc.)
- **Key features of Aadhaar:**
  - **Uniqueness:** An individual need to enroll for Aadhaar only once and after de-duplication only one Aadhaar shall be generated. In case, the resident enrols more than once, the subsequent enrolments will be rejected.
  - **Portability:** Aadhaar gives nationwide portability as it can be authenticated anywhere on-line. This is critical as millions of Indians migrate from one state to another or from rural area to urban centers etc.
  - **Random number:** Aadhaar number is a random number **devoid of any intelligence**. Only minimal demographic along with biometric information is required. The Aadhaar enrolment process does **not capture details like caste, religion, income, health, geography, etc**.
  - **Scalable technology architecture:** The UID architecture is **open and scalable**. Resident's data is stored centrally and authentication can be done online from anywhere in the country.

UIDAI:

- It is a **statutory authority established in 2016** to issue Aadhaar to all residents of the country.
- UIDAI gives **Yes/No answers to any identity authentication** queries
- As of October 31, 2021, UIDAI had issued 131.68 crore Aadhaar numbers.

How did Aadhar help the government in ensuring effective service delivery?

Aadhaar and its platform offer a unique opportunity to the government to streamline their welfare delivery mechanism and thereby ensuring transparency and good governance.

A. For Governments & Service Agencies:

- **Elimination of duplicate identities:** by Aadhaar authentication under various schemes => plugging leakages and higher substantial savings for the exchequer.
  - The government has **saved Rs. 2.25 lakh crore by DBT** to the genuine beneficiaries.
- **Data accuracy:** has been achieved by Aadhar in listing beneficiaries => **enabling DBT** and allowing the service providers to coordinate and **optimize various schemes**.
- **Targeted delivery:** Aadhaar enables implementing agencies to verify beneficiaries to ensure targeted delivery of benefits.

B. Curbing Leakages:

- Aadhar helps welfare **programs where beneficiaries are required to be confirmed** before the service delivery =>

curbing leakages and ensuring delivery to the intended beneficiaries only.
    - E.g., Subsidized food and kerosene delivery to PDS beneficiaries, worksite attendance of MGNREGS beneficiaries, etc.
- Nearly **3 crore fake and duplicate ration cards** have been cancelled => ensured that food grains are being delivered to the rightful person.

C. Improving Efficiency and Efficacy:
- With the Aadhaar platform providing accurate and transparent information about the service delivery mechanism, the government can use scarce development funds more effectively and efficiently in the disbursement.

D. For Residents:
- It provides **single source online identity verification** across the country for the residents. Once residents enroll, they can use the Aadhaar number to **authenticate and establish their identity** using electronic means.
- It **eliminates the hassle of repeatedly providing supporting identity documents** each time a resident wishes to access services such as opening a bank account, obtaining driving license, etc.
- **Financial inclusion** with Aadhaar enabled **micropayment infrastructure**, provides access to financial services for the marginalized sections of society.
    - Nearly **44 crore accounts integrated with JAM trinity**, benefits are going directly to the right section of people.
- Aadhaar system **enables mobility to millions of migrants** by providing a **portable proof of identity** => verified through on-line authentication.

Should Aadhar be made compulsory?

A. Yes: should be made compulsory
- Identity of a citizen in the wake of **infiltrations from neighboring countries** may be described as the "missing link" in India's efforts to rise as a superpower. Aadhaar may be termed as the **technology linked identity drive** in right direction.
- The Aadhaar project has two different dimensions – a) It is **linked to "national security"** b) it is also **linked to "developmental" concern**. Both the factors are equally important.
- An **Aadhaar enabled bank account** can be used as a **tool for financial inclusion** by the beneficiary to receive multiple welfare payments as opposed to the 'one scheme, one bank approach'.
- An **Aadhaar enabled DBT** ensures **timely payment** directly to intended beneficiaries, reduce transaction costs and leakages.
- Aadhaar number helps to **eliminate the duplicate cards and fake cards** for non-existent beneficiaries in the schemes.
- Aadhaar would **qualitatively restructure the role of the state in the social sector**. The UID project is aimed to expand India's social security system and to ensure targeting with precision.
    - The UIDAI claims that UID would help the government **shift from a number of indirect benefits into direct benefits**.

B. No: should not be made compulsory
- Aadhar contains **biometric and demographic data**. Making Aadhar mandatory for all authentication purposes will impinge upon our fundamental **right to privacy**.
- Making Aadhar mandatory **without any data protection legislation** will lead to misuse of collected data by private organizations.
- Usage of Aadhar everywhere **leaves a digital trail** => can be **used for surveillance purposes**.

- Making it mandatory will lead to **exclusion of legitimate persons** from essential govt services since it is not a full proof system yet.

What are the issues associated with Aadhar?

A. **Problems faced by Citizens:**
   - **Application:** The registration camps have not been set up in many villages, and all residents had to go to the nearest districts. (a fair 13 km walk over hilly and rocky terrain)
   - **Biometric issues:** Labourers and poor people often do not have clearly defined fingerprints because of excessive manual labour. Even old people with "dry hands" have faced difficulties. Weak iris scans of people with cataract have also posed problems.
   - **Authentication:** There have been numerous reports about people's fingerprints not getting confirmed by the e-PoS device at the ration shop, iris scanners not being there as backup, and a poor Internet connection forcing people to spend on another trip to the shop.
   - **Addition and Deletion:** As most villagers are unable to operate computers or make changes online, this has resulted in a parallel economy of "technical middlemen" who charge a "small fee" to "assist" the villagers in the process to update their details.
   - **Enrolling kids:** A peculiar case is also that of young kids under the age of 5. Previous research has indicated the futility of enrolling infants in the Aadhaar database, given how their fingerprints are still developing.

B. **Problems on the side of UIDAI:**
   - UIDAI it did **not have a data archiving policy**, which is considered "a vital storage management best practice".
   - UIDAI provided Authentication services **free of charge till March 2019**, contrary to the provisions of their own Regulations, **depriving revenue** to the Government.
   - 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 **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.

C. **Privacy issues:** The main privacy concerns with Aadhaar are:
   - **Identity theft:** Possible leakage of biometric and demographic data, either from the central Aadhaar repository or from a point-of-sale or an enrollment device, adds to the risk.
   - **Identification without consent using Aadhaar data:** There may be unauthorized use of biometrics to identify people illegally.
   - **Correlation of identities across domains:** It may become possible to track an individual's activities across multiple domains of service using their global Aadhaar IDs.
   - **Illegal tracking of individuals:** Individuals may be tracked or put under surveillance without proper authorization or legal sanction using the authentication and identification records and trails in the Aadhaar database.
   - **Authentication issues:** Also, Aadhaar does not record the purpose of authentication. Authentication without authorization and accounting puts users at serious risks of fraud because authentication or KYC meant for one purpose may be used for another.

Highlight the observations of the Supreme court in various cases related to Aadhar:

- **Aadhar Judgement:**
  - While **upholding the constitutional validity** of Aadhaar scheme, the Supreme Court has ruled that Aadhaar Act **doesn't violate your right to privacy**

when you agree to share biometric data.
    - **Private entities have been barred from using Aadhaar card for KYC** authentication purposes but you will still need Aadhaar for various other purposes including PAN card and ITR filing.
    - **Struck down the national security exception under the Aadhaar Act**. This will indirectly ensure greater privacy of individual's Aadhaar data while restricting the government accessibility to it.
- **Puttaswamy case:**
    - Petitioners challenged the collection of biometric data by the government of India under the Aadhaar scheme as being in violation of right to privacy.
    - Government argued that Constitution does give Indians right to privacy. The court has held that "the **right to privacy is protected as intrinsic part of the right to life and personal liberty under Article 21** and as a part of the freedoms guaranteed by Part III of the Constitution".
- **Proportionality test:** Court noted that any invasion of life or personal liberty must meet the three requirements of:
    - **Legality**, i.e. there must be a law in existence
    - **Legitimate aim/State interest**, including goals like national security, proper deployment of national resources, and protection of revenue, social welfare; and
    - **Proportionality of the legitimate** aims with the object sought to be achieved. There should be a rational nexus between the objects and the means adopted to achieve them.

What is debate associated with the linking of Aadhar and Voter IDs?

ECI, in August 2022, launched a drive to link voter identity cards with Aadhaar cards. However, linking the voter ID with the Aadhaar card is **not mandatory**. The **Election Laws (Amendment) Act 2021** amends the RPA for allowing the **linking of voter IDs with Aadhaar.**

A. Arguments for: (Need for linking voter ID with Aadhar)

- As per the ECI, the aim of the exercise is to establish the **identity of electors and authenticate entries in the electoral roll** as well as to identify if the same person is registered in more than one constituency or more than once in the same constituency.
- Linking databases will allow the ECI to **track migrant workers and improve election participation**. Migrants will participate in elections in their home states.
- **Prevent voter fraud** since Aadhaar information is authenticated using biometrics, which cannot be replicated, and in turn, the **duplication of voter ID cards is prevented**.

B. Arguments against: (Challenges associated with linking)

- In the **absence of a Personal Data Protection Law**, linking can result in abuse and undermine the integrity of the voter roll.
- The **use of demographic information, such as a caste certificate** or driving license, when used to obtain an Aadhaar card could be harnessed by the EPIC database. This information could be **used for targeted political advertising** and, possibly, disenfranchisement.
- The **scope for fraud increases** when these databases are interlinked => Specific **concerns emerge for EPIC - Aadhaar integration:**
    - Authenticity of Aadhaar will determine the **authenticity of the voter rolls** and this could lead to

fraudulent identities being legitimised.
    - UIDAI, in multiple court cases, has **admitted that it has no information about the enrolment operator, agency, or even their location** while enrolling someone in Aadhaar.
    - Redressing issues of **dubious enrolment practices** thus become difficult. In the case of EPIC integration, oversight mechanisms and other checks and balances to ensure the integrity of individual data is unclear.
- A **World Bank study** has shown that having a **single form of identification actually disenfranchises citizens** and removes them from the welfare and electoral system.
- The linking of voter IDs and Aadhaar potentially **violates the fundamental right to privacy** as defined by the Supreme Court in the judgment.
- Another issue is the government would be able to **use voter identity details for profiling the citizens**.

Aadhaar has been **one of the "most successful" biometric based identity programs** in the world. It has prompted deliberations and discussions with international multilateral agencies, like the World Bank and UN, to explore how the **Aadhar architecture may be adopted in other countries**.

Aadhaar has touched the life of almost every Indian resident. If there is one learning from Aadhar experience, it is that the **best way to deliver on the promise of Aadhaar is to focus on improving the user experience**, making it easier for everyone to use Aadhaar safely every day.

H149- Digital India Campaign

With the **emergence of technologies such as artificial intelligence, the Internet of things (IoT), cloud computing, blockchains and robotics**, the governments across the world are utilizing new avenues to enable digitalization and technology growth. As per a McKinsey report, a **digital economy is likely to create 60-65 million jobs by 2025**.

What is Digital India Campaign?

Digital India is a flagship programme of the Government of India with a vision to **transform India into a digitally empowered society and knowledge economy**. It is centered on 3 key vision areas:

1. Creating **digital Infrastructure** as a utility to every citizen,
2. **Governance & services** on demand and
3. **Digital empowerment** of citizens.

Vision Areas of Digital India Campaign		
1. Digital Infrastructure as a core utility to every citizen	**2. Governance and Services on Demand**	**3. Digital Empowerment of Citizens**
• Availability of **high-speed internet** as a core utility for delivery of services to citizens • Cradle to grave **digital identity** that is unique, lifelong, online and authenticable to every citizen • **Mobile phone & bank account** enabling citizen participation in digital & financial space • Easy access to a **Common Service Centre** • Shareable **private space on a public cloud** • Safe and **secure cyber-space**	• **Seamlessly integrated services** across departments or jurisdictions • Availability of **services in real time** from online & mobile platforms • All citizen entitlements to be **portable** and available on the cloud • Digitally transformed services for improving **ease of doing business** • Making financial **transactions electronic & cashless** • **Leveraging GIS** for decision support systems & development	• Universal **digital literacy** • Universally accessible **digital resources** • Availability of digital resources / **services in Indian languages** • **Collaborative digital platforms** for participative governance • Citizens **not required to physically submit Govt. documents** / certificates

What are the 9 pillars of digital India Programme?

Digital India aims to provide the much-needed thrust to the nine pillars of growth areas. Each of these areas is a complex programme in itself and cuts across multiple Ministries and Departments.

What is e-Kranti initiative?

Considering the critical need for transforming e-Governance and promoting mobile Governance and Good Governance in the country, the **e-Kranti initiative was launched in 2015.**

- **Vision:** "Transforming e-Governance for Transforming Governance".
- There are 44 Mission Mode Projects (MMPs) under e-Kranti programme, which are grouped into Central, State and Integrated projects.
- **Key principles:**
  - **Transformation (not Translation):** All projects must involve substantial transformation in the quality, quantity and manner of delivery of services and significant enhancement in productivity and competitiveness.
  - **Integrated Services (not Individual Services):** A common middleware and integration of the back-end processes and processing systems is required to facilitate integrated service delivery to citizens.
  - **Government Process Reengineering (GPR) to be mandatory in every MMP:** To mandate GPR as the essential first step in all new MMPs without which a project may not be sanctioned. The degree of GPR should be assessed and enhanced for the existing MMPs.
  - **ICT Infrastructure on Demand:** Government departments should be provided with ICT infrastructure, such as connectivity, cloud and mobile platform on demand. In this regard, **National Information Infrastructure (NII)**, which is at an advanced stage of project formulation, would be fast-tracked by DeitY.
  - **Cloud by Default:** The flexibility, agility and cost effectiveness offered by cloud technologies would be fully leveraged while designing and hosting applications.
  - **Mobile First:** All applications are designed/ redesigned to enable delivery of services through mobile.
  - **Fast Tracking Approvals:** To establish a fast-track approval mechanism for MMPs, once the Detailed Project Report (DPR) of a project is approved by the Competent Authority, Empowered Committees may be constituted with delegated powers to take all subsequent decisions.
  - **Mandating Standards and Protocols:** Use of e-Governance standards and

protocols as notified by DeitY be mandated in all e-governance projects.
    - **Language Localization:** is imperative to make all information and services in e-Governance projects available and accessible.
    - **National GIS System (NGIS):** to be leveraged as a platform and as a service in e-Governance projects.
    - **Security and Electronic Data Preservation -** All online applications and e-services should adhere to prescribed security measures including cyber security. The National Cyber Security Policy 2013 notified by DeitY must be followed.

What is the significance of Digital India Programme?

- **Infrastructure as a utility to each citizen:**
    - Under **Bharat Net**, high-speed internet will be made available in all the gram panchayats**;**
    - **Mobile and Bank account** would allow participation in digital and financial space at an individual level**;**
    - **Access to the public service center** within their locality will be made easy
- **Governance and services on demand:** Single window access to each and every person by integrating departments or jurisdictions, in mobile and online platforms
- **Digital Empowerment of citizens;** Universal digital literacy; easy access of govt documents; participation in governance.
- **Removal of the black economy:** monitoring online transaction; impossible to evade taxes; no illegal transactions; clean money in the system
- **Increase in Revenue:** Monitoring the sales and taxes has become much more comfortable**;** Merchants cannot escape from paying tax to the government**;** Growth of the overall economic status of the country.
- **Empowerment to the people;** The government can transfer the subsidies to the Aadhaar-linked bank accounts of people directly**;** People do not have to wait to receive the incentives that they are bound to obtain from the government
- **Paves the way to E-governance:** The National e-Governance Plan is an initiative to make all government services possible to India's citizens through electronic media.
- **Creation of new jobs:** With the initiative of Digital India, there have been various ways to enhance job opportunities in new markets and to increase employment opportunities in current markets.

What are the various initiatives launched by government to promote Digital India Mission?

- **e-Health:** was introduced to provide timely and effective healthcare services such as online registrations, payments, reports and claims. As of February 2021, 420 e-Hospitals have been established across India.
- **e-Education:** It was started to provide online education in remote and urban areas using technologies such as smartphones, apps and Internet services.
    - **PM e-VIDYA:** was launched In May 2020, a **programme for multimode access** to digital/online education.
    - **NISHTHA - Phase II:** was launched at the secondary level to customize modules for online delivery. Under Budget 2021-22, over 5 million teachers will be trained under this programme.
    - **Swayam:** free online courses from school education to post-graduate education.
    - **National Knowledge Network:** is a state-of-art network and a revolutionary step towards creating a knowledge society without boundaries
- **PM-GDISHA (Pradhan Mantri Gramin Digital Saksharta Abhiyaan):** was launched in 2017 to help people in rural areas become digitally literate.
    - It aims to cover 6 crore rural citizens by targeting one member from every eligible household.
- **India Stack:** aims to develop payment-enabled applications, using *Aadhaar* as the base for authentication. The government uses JAM's (*Jan Dhan-Aadhaar*-Mobile) direct benefit transfers for ~317 services.

- In FY21, it conducted 2.6 billion transactions, transferring >US$ 46 billion to beneficiaries.

- **Common Service Centers (CSCs):** Under the Digital India programme, CSC 2.0 aims to establish a self-sustaining network of 2.5 lakh CSC centers in *Gram Panchayats*.
  - It was implemented by DeiTY.
- **Bharat Net:** It was introduced in 2012 (renamed in 2015) to c**onnect all 250,000 *Gram Panchayats*** in the country and provide **100 Mbps internet connectivity**.
  - As of November 2020, there were ~146,872 service-ready GPs.
- **MyGov:** is the world's largest digital democracy platform. Launched in 2014 to bring the government closer to the people by providing an interface (online forum) for exchange of ideas.
  - As of April 2021, there are >171.51 lakh registered members on MyGov.
- **Digi Locker:** It was launched in 2015 to create a cloud-based platform to issue, exchange and verify essential documents or certificates. As of April 2021, there are ~60.09 million registered Digi Locker users in India.
  - e-KYC, Digi Locker and e-Sign were introduced to help businesses streamline their operations.
- **Creation of Aadhaar database** which is the world's largest biometric-based digital identity. Aadhar-based DBT has helped save Rs 2.22 lakh crore rupees to the government by eliminating fake and duplicate identities.
  - 315 Central Schemes and 500 state schemes are leveraging Digital India and Aadhar platform to ensure effective delivery of services.
- Significant progress was also made in the work of e-government bringing together an electronic procurement platform, an extensive resource of government data and a one-stop-store system for accessing more than 300 public services.
- **BHIM App and UPI:** In 2021 alone, Indians have made 37.90 billion digital transactions, an increase of 27.9 billion from 2016.

What are the challenges faced in the implementation of Digital India Mission?

- **Ensuring last mile connectivity:** Internet connectivity is a huge issue particularly in far-flung areas of the North East or in the Union Territories of Jammu and Kashmir and Ladakh.
  - Although the issue has been addressed to a large extent, there are still many areas where a proper internet connection is still a luxury.
- **Digital Illiteracy:** Digital illiteracy is still high in the country which became very apparent during the ongoing COVID-19 vaccination programme.
  - The government was forced to make offline arrangements as many people were not digitally literate enough to get themselves registered on the Cowin app for scheduling jab appointments.
- **High rate of cybercrime:** With people still learning to protect themselves against cyber frauds, there is another section that is looking to steal data through dishonest means.
- **Inequality in digitization:** As many processes and departments remain to be completely digitized, there is a huge gap developing among departments.
  - Moreover, the different levels of orientation among employees to embrace digital technology is also another obstacle to surmount.

What reforms are needed to address those challenges and make Digital India Mission a success?

- **Digital Infrastructure:** Many villages in India remain outside the ambit of digital connectivity. Bharat Net is running much behind schedule. Thus, to ensure effective service delivery digital connectivity needs to be expedited.
- **Data Protection:** Parliament needs to come up with data protection law to protect the data of Indians and to enhance their trust in it.
- **Inclusive:** Authorities have to ensure that digitization of services does not lead to exclusion of legitimate beneficiaries as often happens in the case of PDS.
- **Digital Literacy:** A large section of Indians continue to live in analog phase. Women and old

age people need to be educated how to use digital platforms.

The Digital India brand remains compelling, as it is to the aspirations of hundreds of millions of young Indians - technologists and entrepreneurs **who truly believe in the transformative impact of digitalization**. With the 'Digital India' mission, the government is well-**aligned to tap this opportunity and create an economic value of US$ 1 trillion by 2025** from the digital economy.

H150- [2nd ARC Recommendations Summary – II]

8th REPORT

COMBATTING TERRORISM:

PROTECTING BY RIGHTEOUSNESS

- **"Democracies provide legitimate means for expressing dissent. They provide the right to engage in political activity, and must continue to do so. However, for this very reason, they cannot afford to be soft on terror. Terrorism exploits the freedom our open societies provide to destroy our freedoms". Manmohan Singh.**

#	Different Areas	Reforms recommended
1.	**Need for a Comprehensive Anti-Terrorist Legislation**	• A **comprehensive and effective legal framework to deal with all aspects** of terrorism needs to be enacted. • The law should have **adequate safeguards to prevent its misuse**. • The legal provisions to deal with terrorism could be incorporated in a separate chapter in the **National Security Act, 1980.**
2.	**Definition of Terrorism**	• There is need to **define more clearly** those criminal acts which can be construed as being terrorist in nature.
3.	**Bail Provisions**	• **A Review Committee should review the case of all detenus periodically** and advise the prosecution about the release of the accused on bail and the prosecution shall be bound by such advice.
4.	**Special Courts**	• Provisions for the constitution of **Special Fast Track Courts exclusively for trial of terrorism** related cases may be incorporated in the law on terrorism.
5.	**A Federal Agency to Investigate Terrorist Offences**	• The **creation of a specialized Division in the CBI** to investigate terror offences. (The government created NIA for the same purpose in 2008) • It should be **staffed by personnel of proven integrity** and who are professionally competent and have developed the required expertise in investigation of terrorism-related offences.

		• The **autonomy and independence** of this agency may be ensured through a laid-down procedure of appointment and assured fixed tenure for its personnel.
6.	**Measures against the Financing of Terrorism –Anti-money Laundering Measures**	• **Amend PMLA** to expand the list of predicate offences to **widen its scope and outreach**. • **Institutional coordination** mechanisms between the Directorate of Enforcement and other intelligence collecting and investigating agencies need to be strengthened. • The financial transaction reporting regime under the **Financial Intelligence Unit (FIU-IND)** may be extended to cover high risk sectors such as real-estate. • **Utilize the platform provided by the Regional Economic Intelligence Councils (REICs)** for increased coordination among various investigation agencies in cases which are suspected to be linked with money laundering.
7.	**Measures against Financing of Terrorism – Measures to Block the flow of Funds for Financing Terrorist Activities**	• The **new legal framework on terrorism may incorporate provisions regarding freezing of assets, funds, bank accounts, deposits, cash etc**. when there is reasonable suspicion of their intended use in terrorist activities. • **Such actions may be undertaken by the investigating officer with the prior approval** of a designated authority, subject to adequate safeguards. • **These provisions may be incorporated in a separate chapter in the National Security Act, 1980**. • A **specialized cell may be created in the proposed National Counterterrorism Centre** for taking concerted action on the financial trails.
8.	**Role of Education**	• NCERT has proposed a scheme to **encourage and support institutions, voluntary agencies and NGOs etc. engaged with school education for promotion of Education for Peace** within the country. • The **feasibility of extending the scheme to religious schools also needs to be examined**.
9.	**Role of Media**	• **The potential of media in spreading education and awareness needs to be tapped** to build the capacity of citizens in dealing with any public disorder, particularly terrorist violence.

		• **Media should be encouraged to evolve a self-regulating code of conduct** to ensure that publicity arising out of terrorist attacks does not help the terrorist in their anti-national designs.

9th REPORT

Social capital - A shared destiny

#	Different Areas	Reforms recommended
1.	**Corporate Social Responsibility**	• There should be **mutual consultation between the company and the local government** so that there is no unnecessary overlap with other similar development programmes in the area. • **Government should act as a facilitator and create an environment** which encourages business and industry to take up projects and activities which are likely to have an impact on the quality of life of the local community.
2.	**Accreditation of Voluntary Organizations**	• There should be a **system of accreditation / certification of voluntary organizations** which seek funding from government agencies. • The government should **enact a law to set up** an independent Body – **National Accreditation Council** – to take up this work.
3.	**Regulation of Foreign Contribution**	• There should be a **fine balance** between the purpose of the legislation on one side and smooth functioning of the voluntary sector on the other. • **Transparent guidelines** should be prescribed in respect of the minimum amount of donation which would require inter-agency consultation, the level of the Authority which would authorize it, and setting up time limits for such procedures. • To **facilitate speedy disposal of registration** / prior permission petitions received from organisations, **effective monitoring of their activities, and proper scrutiny of returns filed by them**. • **Some of the functions under the Foreign Contribution Regulation Act should be decentralised and delegated to State Governments/ District Administration**. • **Organisations receiving an annual FC equivalent to less than Rs.10.00 lakh in a year should be exempted from registration** and other reporting requirements of the law. • They should be asked, instead, to file an annual return of the FC received by them and its utilisation at the end of the year.

4.	**Issues of Self-Help Group Movement**	• A **major thrust on the expansion of the SHG movement in NE States and Central Eastern parts** should be facilitated since these areas do not have access for formal sources of credit. • **The SHG movement needs to be extended to urban and peri-urban areas**. • State Govts, NABARD and commercial Banks should join together to prepare a directory of activities and financial products relevant to such areas. • **Rashtriya Mahila Kosh's scale of operation and geographical reach should be expanded to help quick processing of loan applications** and effective monitoring of the sanctioned projects in far off areas.
5.	**Integrated Social Policy.**	• Government should craft an **integrated social policy** which will ensure priority State action on the key issues relating to social justice and empowerment.

6.	**Separating Professional Education from Self-Regulatory Authorities**	• **Professional education should be taken away from the domain of the existing Regulatory Bodies and handed over to specially created agencies** – one for each of the streams of higher/professional education.
		• **These Bodies may be called National Standards and Quality Council** for Medicine, National Standards and Quality Council for Management etc.
		• After this bifurcation, **the work of the existing Regulatory Bodies would remain confined to issues concerning registration, skill upgradation and management of professional standards and ethics**.
		• **On the creation of these separate Councils, the AICTE will stand abolished.**
		• **Such Councils should be created by law** and their role should be to lay down norms, standards and parameters on issues concerning growth and development of their stream viz.
		  ○ Setting up new institutions,
		  ○ Designing/ updating curriculum,
		  ○ Faculty improvement,
		  ○ Carrying out research / innovation, and
		  ○ Other key issues concerning the stream.
		• Such Councils should have full autonomy with effective grievance redressal mechanisms.

		• The **Councils should be accountable to Parliament** and their Report should be placed before the House annually. • The **recommendations of the National Knowledge Commission** regarding reforms in the structure, governance and functioning of universities **should be examined and implemented as a priority**. • **The process of appointment of Vice Chancellors should be free from direct or indirect interference** of the government. • Vice Chancellors should be given a fixed tenure and they should have adequate authority and flexibility to govern the Universities with the advice and consent of the Executive Council. • There should be **stronger ties between educational institutions in the public and private sectors through mechanisms such as exchange of faculty**.
7.	**Ethical Education and Training**	• After separation of professional education, the agenda of the Professional Regulatory Authorities should be to focus on matters concerning professional ethics, standards and behavior.

10th REPORT

REFURBISHING OF PERSONNEL ADMINISTRATION

In the context of the Civil Services, as Shri L.K. Jha has pointed out "administrators are not born but made"

2nd ARC recommendations:

#	Different Areas	Reforms Suggested
1	**Stage of Entry into the Civil Services**	• India should create **National Institutes of Public Administration to provide bachelor's degrees in public administration/governance/management.** • Selected Central and other Universities should provide **graduate-level programs** in **public administration/governance/public management**. • These universities should include Core subjects like the constitution of India, the Indian legal system, administrative law, polity, economics, History, etc should be included. • Graduates in other fields may also take the Civil Services Exam if they finish a "**Bridge Course"** in the main areas. • **Liberal need-based scholarships** should be provided to students. • The government should form a "**Expert Committee**" to design the curriculum and admission policies for these institutes/universities in cooperation with UPSC. **This Committee's mandate should include the following:** • **Identify universities and institutes** that will offer the courses. • Create **the public administration course curriculum.** • Prescribe the **admissions requirements**. • Prescribe the **modalities and design of the bridge courses.** • The **bridge courses and their effectiveness should be reviewed** based on the experience of five years. • **High-level oversight/coordination council** with the Prime Minister as Chairman may be formed to convene every **three months** and **guide implementing agencies and institutions.** • Exam and Recruitment reforms should be taken immediately steps such as:

		○ **Establishment of public administration/governance** management as a full-fledged degree subject at NIPA and selected universities. ○ **Graduates of the above-mentioned course may pursue any public or private vocation** of their choosing.
2	**Age of Entry and number of Attempts**	• **Permissible age:** 21 to 25 years for general applicants, 21 to 28 for OBC, and 21 to 29 for SC/ST and physically challenged. • **Attempts:** General applicants, OBC candidates, SC/ST candidates, and physically challenged candidates should be allowed **3, 5, 6, and 6** Civil Service Exam tries, respectively. • The current age cut-off date (**1 August in the test year**) may remain.
3	**Structure of the Civil Service Examination**	• **Exam Structure**: Either of the following **two models** may be considered for the exam cycle: ○ The Preliminary and Main Civil Service Exams will be held on two or three successive days. ○ Only applicants with a minimum score in the Preliminary Exam should have their Main Exam papers evaluated. ○ Personality test followed. **OR** • **Candidates qualifying for the main exam and personality test will be shortlisted based on their Preliminary Exam ranks**. ○ Only the shortlisted applicants may take the Main Exam two months after the Preliminary Exam. ○ The shortlist would be two to three times the available positions. So, the Personality Test and Main Exam might begin virtually simultaneously.
4	**Other Modes of Induction into the Civil Services**	• UPSC should use **a standard test to admit state civil servants to the IAS.** • **UPSC should test State Civil Service personnel with 8 to 10 years of Grade 'A' service yearly.** • Eligibility requirements should include a **40-year age restriction**, etc. • The UPSC should provide state governments an **eligibility list** based on this test. • State governments should fill their **IAS quotas** using this list. • A qualified applicant may take this test **twice.** o Above mechanisms should also be used for **State-level All-India Services**.

		o **Promotion into Group 'A' Central Services** should be based on the aforementioned criteria. o The type of the test, the promotion ratio, etc. should be established by the departments in cooperation with the UPSC.
5	**The Union Public Service Commission**	• Departments may delegate **promotion of officers via DPC up to Selection Grade.** The UPSC should **evaluate and audit these DPCs periodically.** • Only in circumstances of impending dismissal or removal may the UPSC be consulted during disciplinary procedures.
6	**Capacity Building**	• Every government employee should get **induction and frequent training.** o Before assigning Group D workers, **mandatory induction training** should be required. • The **National Training Policy (1996)** should be monitored. • Continue offering a **"Common Foundation Course"** for all Group "A" Services, generalist, specialist, and technical. • **Institute of Secretarial Training and Management (ISTM)** may be created and provide standard Foundation Courses for Group B and C Services. • **Each federal worker should be reviewed after each training session** and before each advancement. Promotions should require training completion. • **Mid-career training** should improve domain knowledge and competency for the officer's evolving work profile. o **Mid-career learning opportunities** should be accessible for officers in certain sectors or specialities. • Public employees should get **advanced degrees** and publish in reputable publications. • To teach government workers, a **broad network of Union and State-level institutions is needed.** • **Eminent specialists** should be added to the boards of **LBSNAA, SVPNPA, IGNFA**, and State Administrative Training Institutes. • **Upgrading an existing national/state institution** may create a national institute of good governance. This institution would record, distribute, and train excellent practices.
7	**Recruitment at Graduate Level (Group 'B' non-**	• **All posts (Group 'B' non-gazetted and Group 'C') requiring a graduate degree** shall have an **age restriction of 20-25 years for general applicants, with three-year and five-year relaxations** for OBC, SC/ST, and physically challenged candidates, respectively.

	gazetted and Group 'C')	• The test should **be objective type question paper.** • **No additional exams** are needed for graduate-degree-required Group 'B' and Group 'C' postings. • With a **uniform exam result,** individuals should be able to apply for numerous positions.
8	**Group 'B' and 'C' Employees: Performance Appraisal**	• The **Confidential Reports of Group B and C positions** may contain a column indicating the official's area/field of interest (i.e., Health, IT, Finance, Transport, Defense, etc.) for future postings.
9	**Placement at Middle Management Level**	• **The Central Civil Services Authority** shall award domains to All India Services and Central Civil Services officials after 13 years of service. • The **Central Civil Services Authority** should set tenure for all civil service posts, and its decision should be obligatory. • In the first 8-10 years of their careers, organized services officers should not be assigned 'non-field' responsibilities. • State governments should form **State Civil Services Authorities** like the CCSA.
10	**Placement at Top Management Level**	• Current shortlisting method for posting officers a. The current empanelment mechanism for SAG and above postings should be replaced with a more open and impartial approach. • **Senior government posts** should be available to all Services (attached and subordinate offices). • The Central Civil Services Authority would specify eligibility, subject competence, credentials, seniority, and work experience. • The proposed **Civil Services Bill** should create a CCSA. The CCSA has a chairperson and four members (including the member-secretary). • The Authority needs **a full-time Secretary-level member.** • The Chairperson and Authority members should be **eminent public figures and recognized professionals.** • **Intelligence services should explore deploying armed forces officers and CPOs** with intelligence expertise at higher levels.
11	**Deputation of Civil Servants to Organizations Outside Government**	• The government should **only deputize public workers to non-profit organisations**.

12	**Performance Management System**	• **Performance appraisal systems** for all Services should be changed like the All-India Services' PAR.
		• The **public servant performance assessment format should contain three components:**
		  ○ a **general component** that fits the officer's service's standards,
		  ○ **a section based on the department's** aims and requirements, and
		  ○ a **final section** that captures the officer's post's unique needs and targets.
		• **Performance appraisal should be year-round.**
		• **Guidelines need to be formulated for assigning numerical rating:**
		  ○ DOPT should provide rules for grading subordinates to help reporting and assessing officers.
		• Civil officials should **be trained in implementing performance management systems.**
		• Government should extend its current **performance evaluation system** to a **performance management system (PMS).**
		• The **Central Public Services Authority** should **review real performance based on the yearly performance agreement.**
		• The **Performance Budget/Outcome Budget** should include information of yearly performance agreements and third-party assessments.

13	**Motivating Civil Servants**	• **Outstanding governmental workers** should get **national honours**.
		  o **State and district awards** should recognize excellent achievement.
		  o The significance of such prizes should not be undermined by subjectivity or lack of openness.
		  o **All companies should develop their own system for recognizing excellent performance** beyond simply verbal and written praise.
		• Central Civil Services Authority should propose abroad postings.
		  o The **Authority shall invite applications from qualified individuals** and prepare a panel of appropriate officials.
		• The **head of the office should assess each employee's job content** to ensure that it is relevant and difficult so that the employee is satisfied with his/her work.
		• Each office head should establish **a pleasant workplace.** This should be part of his/her **performance evaluation**.

14	**Accountability**	• All **government employees should undergo comprehensive evaluations** after 14 and 20 years of service. • **First evaluation at 14 years** informs public servant of strengths and weaknesses for future progress. • The **second assessment at 20 years** would analyze the officer's suitability for government service. The government must determine the evaluation system's details.
15	**Disciplinary Proceedings**	• In the proposed Civil Services legislation, the **minimal disciplinary and dismissal processes** necessary to meet natural justice should be stated forth. • The **existing oral inquiry process should be changed** into a disciplinary meeting or **interview to be conducted by a senior officer** in a concise way. • This would necessitate that the **CCS (CCA) Rules, 1965 be abolished and superseded by relevant rules**. • **No punishment of removal and dismissal should be enforced** except by a **three-level higher Authority**. • An Authority at least two levels above the government servant's existing office may impose further sanctions than dismissal and expulsion.

16	**Relations between the Political Executive and Civil Servants**	• Civil service **neutrality and impartiality** must be protected. Political executive and civil services share responsibility. This should be in the **Ministerial Code of Ethics** and the **Public Service Code of Conduct**.
		• To prevent favouritism, nepotism, corruption, and power abuse, government recruiting must follow specific rules. These norms are:
		  • **Well-defined government employment recruiting process**.
		  • **Publicity and competitiveness** for all jobs.
		  • **Reduce or eliminate hiring discretion.**
		  • **Written test** or previous public/board/university exam result with little interview weight.
		• The Commission suggested include these concepts in the "**Civil Services Bill**".

17	**Civil Service Code**	• The proposed Civil Services Bill should include '**Civil Services Values'** and '**Code of Ethics'**. • **Code of Conduct for Civil servant rules must be rewritten based on ethics and values.**
18	**Civil Services Law**	The proposed bill may contain the following significant provisions:

		• **Civil Service Values**: The Civil Services and the Civil Servants shall be guided by the following values:
		  ○ Absolute integrity at all times
		  ○ Impartiality and non-partisanship
		  ○ Objectivity
		  ○ Dedication to public service
		  ○ Empathy towards weaker sections
		• The Central Civil Services Authority may **periodically assess the adoption, observance, and implementation** of the **Civil Service Values** in departments or organizations under the Union's jurisdiction.
		• **Code of Ethics:** The following should be included in the **Code of Ethics for civil servants:**
		  ○ **Integrity: Civil servants should be guided solely by public interest** in their official decision making.
		  ○ **Impartiality**: Civil servants in carrying out their official work should take **decisions based on merit and free from any partisan consideration.**
		  ○ **Commitment to public service**: Civil servants should deliver services in a fair, effective, impartial and courteous manner.
		  ○ **Open accountability**: civil servants are accountable for their decisions and actions and should be willing to subject themselves to appropriate scrutiny for this purpose.
		  ○ **Devotion to duty**: civil servants should **maintain absolute** and **unstinting devotion** to their duties and responsibilities at all times.
		  ○ **Exemplary behaviour**: civil servants should **treat all members of the public with respect and courtesy** and at all times should behave in a manner that upholds the rich traditions of the civil services.
		• **Recruitment and Conditions of Service:** For persons appointed to the 'Public Services' shall be governed by Rules made under this act.
		• The **following principles of recruitment** should be included for all appointments not routed through the UPSC or SSC:
		  ○ **Well-defined merit-based procedure** for recruitment.
		  ○ **Wide publicity and open competition** for recruitment to all posts.
		  ○ **Minimization, if not elimination**, of discretion in the recruitment process.

		○ **Selection primarily on the basis of written examination** or on the basis of performance in existing public/board/university examination with minimum weightage to interview. • An **independent agency should audit the recruitments made outside the UPSC and SSC systems and advise the government suitably.** This audit should be conducted under the supervision of the UPSC. • **New Conditions of Appointment**: ○ **Appointment to Senior Positions in Government**: All positions in Government (including in the attached and subordinate offices) at the level of Joint Secretary and above would constitute the '**Senior Management Pool'**. ○ **Fixation of Tenures**: All senior posts should have a specified tenure. The task of fixing tenures for various posts may also be assigned to this independent agency - Central Civil Services Authority. ○ **Widening the Pool of Candidates for Selection to Senior Positions**: Candidates outside the government system should be allowed to compete for certain posts at senior levels (Additional Secretary and above). ○ **Dismissal, Removal etc. of Civil Servants**: After the repeal **of Articles 310 and 311** (as recommended in the Report on 'Ethics in Governance'), **safeguards against arbitrary action against government servants should** be provided in the new law. These safeguards should include: o **No penalty of removal and dismissal should be imposed**, except by an authority, which is at least three levels above the post which the government servant is holding. o **Other penalties** – apart from dismissal and removal - may be imposed by an authority which is at least two levels above the current post of the government servant. o The **Head of an organization should have the power to lay down the details of the enquiry procedure**, subject to the general guidelines which may be issued by the Government from time to time. • **Constitution of the Central Civil Services Authority**:

		○ The **Central Government** shall, by notification in the Official Gazette, constitute a body to be known as the **Central Civil Services Authority** to exercise the powers conferred on, and to perform the functions assigned to it, under this Act. ○ The Central Civil Services Authority shall be a five-member body consisting of the Chairperson and four members. • **Functions of the Central Civil Services Authority**: The **Central Authority shall discharge the following functions:** ○ **Review the adoption, adherence to and implementation of the Civil Service Values.** ○ **Assign domains to all officers of the All-India Services** and the Central Civil Services on completion of 13 years of service. ○ **Formulate norms and guidelines** for appointments at 'Senior Management Level' in the Government of India. ○ **Evaluate and recommend names of officers for posting at the 'Senior Management Level' in Government of India.** ○ **Identify the posts at 'Senior Management Level' in** Government of India which could be thrown open for recruitment from all sources. ○ Fix the tenure for posts at the **'Senior Management Level' in Government of India.** ○ Submit an annual report to Parliament. • **Creation of Executive Agencies in Government.** • **The role of the Ministries should primarily be on policy formulation** while implementation should be left to the Executive Agencies.

11th Report

Promoting e-Governance

- ***"Act as to treat humanity, whether in their own person or in that of any other, in every case as an end withal, never as means only". Kant's observation is even more valid today. The citizens are ends in themselves, rather than as means to other ends" - Immanual Kant.***

e-Governance: is in essence, the application of Information and Communications Technology to government functioning in order to create **'Simple, Moral, Accountable, Responsive and Transparent' (SMART) governance.**

2nd ARC recommendations:

#	Areas of Governance	Recommendations
1	**Building a Congenial Environment**	• **Building a congenial environment** is a **sine qua non for successful implementation of e-Governance initiatives.** This should be achieved by: ○ **Creating and displaying** a will to change within the government. ○ **Providing political support** at the highest level. ○ **Incentivising e-Governance** and overcoming the resistance to change within government. ○ **Creating awareness** in the public with a view to generating a demand for change.
2	**Identification of e-Governance Projects and Prioritisation**	• **Government organizations/departments at Union and State Government levels need to identify e-Governance initiatives,** Such initiatives may be categorized as follows: ○ Initiatives which would **provide timely and useful information to the citizens**. ○ Initiatives **which would not require the creation of a database** for providing useful services to the citizens. ○ Initiatives **which allow for making elementary online transactions i**ncluding payment for services. ○ Initiatives **which require verification of information/data submitted online.** ○ Initiatives **which require creation and integration of complex databases.**

		○ **Respective Departments of Information Technology** at the Union and State **Government levels should coordinate between organizations and provide technical support if needed.**
3	**Business Process Re-engineering**	• **Step-by-step analysis** of each process to ensure its **rationality and simplicity.** • **Such analysis should incorporate the viewpoints of all stakeholders**, while maintaining the citizen-centricity of the exercise. • **Identify steps which require simplification and which are adaptable to e-Governance.** • **Governmental forms, processes and structures should be re-designed** to make them **adaptable to e-Governance, backed by procedural, institutional and legal changes.**
4	**Capacity Building and Creating Awareness**	• **Include** both the **organizational capacity** building as also the **professional and skills upgradation of individuals.** • Each government organization must **conduct a capacity assessment** which should form the basis for training their personnel. • A **network of training institutions needs to be created in the States** with the **Administrative Training Institutes** at the apex. • The **Administrative Training Institutes** in various States should take up capacity building programmes **in e-Governance, by establishing strong e-Governance** wings. • ATIs need to be strengthened under the NeGP. • **State Governments should operationalize the Capacity Building Roadmap (CBRM**s), under the overall guidance and support of the DIT, Government of India. • **Lessons learnt from previous successful e-Governance initiatives** should be incorporated in training programmes. • The recommendations made by the Commission in its **Second Report entitled 'Unlocking Human Capital'** should be adopted for creating awareness among people with regard to e-Governance initiatives.
5	**Developing Technological Solutions**	• There is a need to: ○ **Develop a national e-Governance 'enterprise architecture' framework** as has been done in some countries. ○ **Promote the use of 'enterprise architecture'.**

		○ **Building capacity of top-level** managers in all government organizations
6	**Implementation**	• All organizations should carry out a **periodic independent evaluation** of the information **available on their websites from the citizens' perspective**. • This could be done by **updating the websites at regular intervals**. • **Re-engineering the back-end processes** and putting them on computer networks. • All the **back-end processes should be computerized.** • **Complex e-Governance projects should be planned and implemented.** • **Implementation of e-Governance projects would involve a detailed 'project management' exercise** which would consist of the following activities: ○ **Breaking up entire e-Governance projects into components/ activities.** ○ **Planning** each activity in detail. ○ **Allocating resources, both human and financial.** ○ **Commencement of activities as per the plan and continuous tracking.** ○ **Need-based mid-course correction.**
7	**Monitoring and Evaluation**	• **Monitoring of e-Governance projects should be done by the implementing organization** during implementation. • **Constant monitoring** would be required to ensure that each component is functioning as per the design. • **Evaluation of success or failure of e-Governance projects may be done by independent agencies** on the basis of parameters fixed beforehand.
8	**Institutional Framework for Coordination and Sharing of Resources/ Information**	• The Department of IT should focus on the following: ○ **Conducting an e-preparedness audit** for each organization. ○ **Enforcing standardization.** ○ **Assisting in co-ordination** when e-Governance projects transcend an organisation's functional domain. ○ **Carrying out evaluation of e-Governance projects.** ○ Acting as a **repository of best practices** and **encouraging horizontal replication of successful projects.** ○ Helping in **selection of technological solutions.**

9	**Public-Private Partnership (PPP)**	• **PPP should be preferred mode** in e-Governance Projects. • The private partner should be **selected through a transparent process.** • **The roles and responsibilities of government as well as the private partner should be clearly laid down** in the initial stage itself.
10	**Protecting Critical Information Infrastructure Assets**	• Need to develop a **critical information infrastructure assets protection strategy.** • This should be supplemented with **improved analysis and warning capabilities** as well as **improved information sharing on threats and vulnerabilities.**
11	**The Common Support Infrastructure**	• As recommended by the **Standing Committee on Information Technology in its 58th Report**, the **State Data Centers** (SDCs) should be maintained by Government agencies such as NIC as it involves handling of sovereign data. • The implementation of **SDCs, SWANs and CSCs** should be coordinated **to prevent significant time-lag between their operationalization.** • Gram Panchayats should be involved in monitoring the operation of the **Common Services Centers** in the first four years of their operation. • **Proactively engage in making citizens aware of the services** provided through the CSCs and encourage them to make use of them. • State Governments should make available a large bouquet of **G2C services through the CSCs.** • **The Mission Mode Project** on **Gram Panchayats should be finalized and implemented in a time-bound manner**.
12	**Mission Mode Project on Computerisation of Land Records**	• **Surveys and measurements** need to be carried out in a mission **mode utilizing modern technology.** • The **dispute resolution mechanism** with **regard to land titles needs to be strengthened** in order to be compatible with the demands made on it. • In **the case of urban areas**, a **similar exercise needs to be undertaken** especially since record of titles is not available in most cities.
13	**Passport & Visa MMP**	• The **entire passport issue process needs to be put on an e-Governance** mode in phases. • The process **of police verification should be streamlined** and made time bound.

14	**Legal Framework for e-Governance**	• A **clear road map with a set of milestones should be outlined by the Government.**
		• This may be **enshrined in a legal framework.**
		• The legal framework should, inter alia, include provisions regarding:
		  ○ Definition of e-Governance, its objectives and role in the Indian context;
		  ○ Parliamentary oversight mechanism;
		  ○ Mechanism for co-ordination between government organizations at Union and State levels;
		  ○ Role, functions and responsibilities of government organizations with regard to e-Governance initiatives, especially business process re-engineering;
		  ○ Financial arrangements;
		  ○ Specifying the requirements of a strategic control framework for e-Government projects dealing with the statutory and sovereign functions of government;
		  ○ **Framework for digital security** and data protection; and
		  ○ Responsibility for selection and adoption of standards and interoperability framework.

15	**Knowledge Management**	• Union and State Governments should take proactive measures for **establishing Knowledge Management system for e-governance and administrative reforms.**

12th Report

CITIZEN CENTRIC ADMINISTRATION

The concepts of **good governance and citizen centric administration are intimately connected**. Following are the pre-requisites of citizen centric governance:

- Sound legal framework.
- Robust institutional mechanism for proper implementation of laws and their effective functioning.
- Competent personnel staffing these institutions; and sound personnel management policies.
- Right policies for decentralization, delegation and accountability

#	Areas of Governance	Recommendations
1	**Functions of Government**	• Government agencies should introduce the **Single Window Agency** concept within their organizations to minimize delays. • -The **principle of subsidiarity** should be followed while deciding on the implementation machinery for any programme. • **Citizens should be actively involved** in all stages of these programmes(planning, implementation and monitoring) • **Mandatory social audit** should be carried out. • **Impact assessment** should be carried out for all programmes at **periodic intervals**.
2	**Making Citizens' Charters Effective – An Agenda for Reform**	• **Citizens' Charters** should be made effective by adopting the following principles: ○ Citizens' Charter should be prepared for each independent unit under the overall umbrella of the organisations' charter. ○ **Wide consultation** which includes Civil Society in the process. ○ Firm commitments to be made. ○ **Internal processes and structure should be reformed** to meet the commitments given in the Charter. ○ **Redressal mechanism** in case of default. ○ **Periodic evaluation** of Citizens' Charters. ○ **Benchmark using end-user feedback.**

		○ Hold officers accountable for the result.
3	**-The ARC Seven-Step Model for Citizen Centricity**	• -The Union and State Governments should make the **seven-step model outlined mandatory for all organizations having public interface**
4	**Citizen's Participation in Administration**	• It should be **mandatory for all government organizations to develop a suitable mechanism for receipt of suggestions from citizens**, for example, **'Suggestion Box'.** • Heads of the concerned organizations should ensure rigorous **follow-up action on the suggestions received** so that these become a meaningful exercise. • **A system of incentives** and **rewards should be introduced.** • Every government organization must ensure the following: ○ **Fool-proof system for registration of all complaints**. ○ A **prescribed time schedule for response** and resolution. ○ A **monitoring and evaluation mechanism** to ensure that the norms prescribed are complied with. ○ **Regular citizens' feedback** and survey and citizens' report cards should be evolved by all government organisations. • There is a need to create **institutionalized mechanisms** for encouraging their participation in governance for which the following steps are necessary: ○ A **comprehensive review of policy and practice** in each department/ public agency. ○ **Modifying administrative procedures** where necessary. ○ Entrustment of the function of **institutionalizing citizens' participation** in governance to a senior level officer. ○ **Performance management reviews** to incorporate effectiveness in ensuring citizens' participation in governance. ○ **Active and cooperative participation** by government agencies in civil society initiatives in **the area of citizens' participation in grievance redressal.**
5	**Participation of Women and the Physically Challenged**	• Government may constitute **an expert committee to identify the areas where special provisions for the physically challenged should be made mandatory**. • **More proactive approach** for detection and registration of **the physically challenged persons.**

		• Responsibility should be cast on the **Primary Health Centres (PHCs)** to identify all such cases in their jurisdiction and to get the evaluation of the disabilities done. • **The organization of camps at PHC level,** attended by the concerned medical personnel, would greatly help in issuing certificates of disability on the spot. • **Create a database for all the Disabilities Certificate holders** with integration at District, State and National levels.
6	**Delegation**	• Based on the **principle of subsidiarity**, each government organization should carry out an **exercise to assess whether adequate delegation of authority has been done.**
7	**Evolving an Effective Public Grievances Redressal System**	• -The Union and State Governments should issue directions asking all public authorities to **designate public grievance officers** on the lines of the **Public Information Officers under the RTI Act**. • **All grievance petitions received should be satisfactorily disposed** of by these officers **within thirty days.** Non-adherence to the time limit should invite **financial penalties.** • **Each organization should designate an appellate authority** and **devolve adequate powers** upon them including the power to impose fines on the defaulting officers.
8	**Analysis and Identification of Grievance Prone Areas**	• **Government organizations should analyse the complaints received** and **identify the areas wherein interventions would be required** so as to eliminate the underlying causes that lead to public grievances.
9	**Special Institutional Mechanisms**	• A **common format for making complaints before various statutory Commissions should be devised** in consultation with each other. • **Each statutory Commission** should **create an electronic database prospectively** and **each database should be networked with each other to facilitate comparison of data.** • The **Human Rights Commission should lay down norms** to deal with complaints by the most appropriate Commission. • **Nodal officers** may be appointed in each Commission to identify and coordinate action over such cases. • **Internal mechanisms** should be evolved within each statutory Commission to facilitate the handling of such cases in a coordinated manner.

		• The **Union and State Governments should take proactive steps in dealing with serious offences** like custodial deaths/rapes etc on priority. • In the smaller States, a **single 'multi-role' Commission may be constituted** which would carry out the specific functions of all the constitutional and statutory Commissions at the State level.
10	**Simplifying Internal Procedures**	• All Ministries/Departments should **prepare a roadmap for carrying out a process simplification exercise.** This should involve **changes in Rules, Regulations and Laws wherever necessary.** • This **elaborate exercise would involve the following steps for any organization**: ○ Constitution of an **in-house core team of persons** well versed with internal procedures. ○ **Engaging external experts.** ○ **Getting feedback** from citizens. ○ Analyzing all processes from the point of necessity, simplicity, rationality and citizen centricity. ○ **Redesigning processes** and forms. ○ Doing a **pilot study** and getting it evaluated. ○ Creating an **incentive mechanism** for sustaining the change. ○ **Structural change** should be an integral part of any process simplification exercise.
11	**Monitoring and Evaluation**	• **Feedback from citizens** should be used to monitor the performance of government officers. • Each government office which has public interface should have an **external evaluation** conducted annually in addition to those conducted by the organization itself.
12	**Registration of Births and Deaths**	• The emphasis under the **Registration of Births and Deaths Act** should shift from compliance to prescribed procedures to **achieving 100% registration.** • **Registrars would need to adopt a more proactive approach**. • **Registration could be done based on information from any source or even suo-motu** by the Registrar. • **Each Registrar would need to be empowered under the law to seek and obtain information from any person.** • The **powers to levy fines should be given to the District Registrar**. • There should be **no fees for delayed registration.**

13	**Building Licenses and Completion Certificates**	• **Simplified procedures** for the grant of building permits on the basis of **self-certification by owners / registered architects** should be adopted by all State Governments and local bodies.

13th Report

Organisational Structure of Government of India

2nd ARC recommendations:

#	Different Areas	Reforms recommended
1	**Focus on Policy Analysis.**	• These principles may stipulate that the Ministries/Departments should concentrate on the following: o Policy analysis, planning, policy making and strategic decisions. o Budgeting and Parliamentary work. o Monitoring of implementation through systems and procedures. o Appointments of key personnel. o Coordination. o Evaluation.
2	**Policy Evaluation.**	• **Each Department should introduce a system of policy evaluation** to be carried out at the end of prescribed periods. **All relevant policies should be updated in the light of the findings of such evaluations**.
3	**Creation of Effective Executive Agencies.**	• Each Union Government Ministry should **scrutinize the functions/activities of the ministry to confirm whether these activities/functions are critical to the mission of the Department** and can only be carried out by government agencies. • **The right balance between autonomy and accountability needs to be struck** while designing the institutional framework of executive agencies. o **This could be achieved through well designed performance agreements, Memorandum of Understanding (MOU), contracts** etc
4	**Reorganisation of Ministries**	• **Each Department should lay down a detailed scheme of delegation at all levels** so that the decision making takes place at the most appropriate level. • **The number of levels through which a file passes for a decision should not exceed three**. • The Departments should **build an electronic database of decisions that are likely to be used as precedents**.

5	**Creating an Effective Regulatory Framework**	• **Parliamentary oversight of regulators** should be ensured through the respective Departmentally Related Standing Parliamentary Committees. • **A body of reputed outside experts should propose guidelines for periodic evaluation of the independent Regulators.** Based on these guidelines, the government in consultation with respective Departmentally related Standing Committee of Parliament should fix the principles on which the Regulators should be evaluated. • **The annual reports of the regulators should include a report on their performance** in the context of these principles. **This report should be referred to the respective Parliamentary Committee** for discussion. • Each statute creating a regulator should include a provision for an **impact assessment periodically by an external agency**. • There is **a need to achieve greater uniformity in the structure of Regulators**.

14th Report

Strengthening Financial Management Systems

#	Different Areas	Reforms recommended
1	**Unrealistic Budget Estimates**	• **The assumptions made while formulating estimates must be realistic**. • At the end of each year **the reasons for the gap between the 'estimates' and 'actuals' must be ascertained** and efforts made to minimize them. • **These assumptions should also be subject to audit**. • The **method of formulation of the annual budget by getting details from different organizations/agencies** and fitting them into a pre-determined aggregate amount leads to unrealistic budget estimates. • **This method should be given up** along with the method of budgeting on the basis of 'analysis of trends. • **This should be replaced by a 'top-down' method** by indicating aggregate limits to expenditure to each organization/agency. • **Internal capacity for making realistic estimates needs to be developed**.
2	**Skewed Expenditure Pattern – Rush of Expenditure towards the end of the Financial Year.**	• The Modified Cash Management System should be strictly adhered to.
3	**Inadequate Adherance to the Multi-year Perspective and Missing Line of Sight between Plan and Budget.**	• A **High-Powered Committee may be constituted to examine and recommend the need and ways for having medium-term expenditure limits** for Ministries/ Departments through the Five-Year Plans and linking them to annual budgets with carry forward facility.
4	**Adhoc Project Announcements.**	• **The practice of announcing projects and schemes on an ad-hoc basis in budgets and on important National Days, and during visits of dignitaries'** functionaries to States **needs to be stopped**. Projects/schemes which are considered absolutely essential may be considered in **the annual plans or at the time of mid-term appraisal**.

5	**Emphasis on Meeting Budgetary Financial Targets rather than on Outputs and Outcomes.**	• **Outcome budgeting is a complex process** and a number of steps are involved before it can be attempted with any degree of usefulness**. A beginning may be made with proper preparation and training in case of the Flagship Schemes and certain national priorities**.
6	**Flow of Funds relating to Centrally Sponsored Schemes.**	• **The Controller General of Accounts, in consultation with the C&AG, should lay down the principles for implementing the system of flow of sanctions/approvals** from the Union Ministries/Departments to implementing agencies in the States to facilitate release of fund at the time of payment.
7	**Internal Audit.**	• An **Office of the Chief Internal Auditor (CIA)** should be established in select Ministries/departments to carry out the functions related to internal audit. • **Its independence, duties, functions, mechanism of coordination with the CAG etc. should be provided by a statute**. • The **modalities for ensuring non-duplication of work vis-à-vis the C&AG should be formalized**. • **Standards for internal audit should be prescribed by the Office of the C&AG**. • **The Accounting functions should be completely separated from Internal Audit**. • The functioning and effectiveness of this new system may be examined after allowing a suitable period of operation. • **An Audit Committee should be constituted in each Ministry/Department**.
8	**Relationship between Audit and the Government/Government Agencies.**	• There **is a need for better understanding and synergy between the audit and auditees** for enhanced public accountability and consequently better audit impact. • There should be **balanced reporting** by the audit**. Audit reports should not focus on criticism alone** but contain a fair assessment or evaluation, which would mean that **good performance is also acknowledged**. • There should be **regular and meaningful meetings between the executive and auditors where important issues could be discussed and conclusions reached** on what needs to be done arising out of the recommendations made by the audit.

9	**Timeliness of Audit**	• **External audits need to be timely** in inspecting and reporting so that their reports can be used for timely corrective action.

15th Report

State and District Administration

2nd ARC recommendations:

#	Different Areas	Reforms needed
1	**Size of the Council of Ministers.**	• The **size of the Council of Ministers in the States needs to be reduced further** considering the needs of an efficient government. • For this purpose, the maximum size of the Council of Ministers may be fixed in a range **between 10% to 15% of the strength of their Legislative Assemblies**.
2	**Rationalising the Number of Secretarial Departments.**	• The **number of Secretariat Departments in the States should be further rationalized** on the following basis: o The existing departments covering interrelated subjects, activities and functions should be merged; o Need for synergy between the activities of various departments; o Devolution of a large number of functions to the PRIs/ULBs;
3	**Appointment and Security of Tenure at the Senior Levels in the State Government.**	• There should be a **collegium** to recommend a panel of names to the Chief Minister/Cabinet for these two posts – o For the post of Chief Secretary, this collegium may consist of (a) a Minister nominated by the Chief Minister, (b) the Leader of the Opposition in the State Legislative Assembly and (c) the incumbent Chief Secretary. • For the selection to the post of **Principal Chief Conservator of Forests** the **collegiums** may consist of (a) The Minister In-charge of Forests, (b) the leader of Opposition in the State Legislative Assembly and (c) the Chief Secretary. • There should be a **fixed tenure of at least two years** for both these posts
4	**Human Resource Development, Capacity Building and Training.**	• Every State should formulate a **comprehensive Human Resource Development Policy** with training as an important component on the lines of the National Training Policy, 1996. • **Simultaneously, a suitable monitoring mechanism to supervise the implementation of such a policy** may also be set up.

		• In addition to **the apex level training body called the Administrative Training Institute (ATI),** adequate numbers of Regional Training Institutes should also be established at different places across the State.
5	**Redefining the Collector's Role.**	• Officers may be posted as District Magistrates early in their career, **but in complex and problem-prone districts an IAS officer should be posted as DM only on completion of 10-12 years of service**.
6	**Modernisation of the office of District collector.**	The following steps should be taken to modernize the office of the District Collector: - • **The Management Information System (MIS)** should be set up in the office of the Collector **for effective monitoring and evaluation of programmes/ projects** under his direct control. • A **computerized District Grievance Cell** should also be set up in the Collectorate. • **An exclusive Vigilance Cell should be set up at the district level** under overall supervision of the District Collector. This Cell should also maintain appropriate liaison with the office of the State Vigilance Commission/ Commissioner. • **A forum should be established at the district level to interact with civil society groups and media** on important public issues. • Immediate steps should be taken to **introduce process re-engineering** and **increased use of information technology.** • **Innovations and best practices initiated by officers should be documented adequately and institutionalized** through changes in rules/laws wherever required.
7	**Ad-hoc Transfer of Subjects/Activities to Autonomous Councils.**	• **The power of the Councils to make laws, as permitted by the Schedule, should be respected in its true spirit and draft legislations should not be stalled at the State level** for years, while ensuring that they are not inconsistent with the provisions of the Constitution and relevant Union and State Laws. • The **States should undertake comprehensive activity mapping** with regard to all the subjects mentioned in the Sixth Schedule.
8	**Predominance of non-elected Customary Heads/Bodies at the Village Level; Issue of Village**	• **Autonomous Councils should be encouraged to pass suitable legislation for establishment of elected bodies at the village level with well-defined powers** and a transparent system of allocation of resources.

	Self Governance in the Sixth Schedule Areas.	
9	**Absence of Linkage between the Sixth Schedule and the 73rd Amendment.**	• **Autonomous Districts/Councils in Sixth Schedule Areas should also be covered by the State Finance Commission and the State Election Commission**.
10	**Special Powers of the Governors of Assam, Meghalaya, Tripura and Mizoram with respect to Schedule 6 Areas.**	• **The Governors of Assam, Tripura and Mizoram should be empowered to exercise discretionary powers in respect of all the provisions pertaining to the Autonomous Councils under the Sixth Schedule** in consultation with the Council of Ministers and if necessary, in consultation with these Councils. A Constitutional amendment will be required for this purpose. • The Sixth Schedule should be suitably amended to enable the Union Government **to appoint a common Commission to review the working of all autonomous districts of the North-East** and to make recommendations. • **A high-level Review Committee headed by the Governor and consisting of representatives of both the State Government and the District Councils** should be formed in each State **to review the functioning of these bodies**. This Committee should submit its report to the Union Government.
11	**Issue of Tribal Areas Lying outside the Sixth Schedule.**	• For tribal areas which lie outside the Sixth Schedule as well as the Seventy Third Constitutional Amendment **the State Government should take steps to create specially at the district level bodies** which should consist of both elected as well as traditionally selected representatives. • The **States which show initiative and take a lead in this matter should be given incentives**. • The **District Rural Development Authority of the district should work as a body accountable to this District Level Body.**
12	**Issues of Recruitment in the Sixth Schedule Areas.**	• **Immediate steps should be taken to constitute District cadres for all Groups 'C' and 'D' posts** (Classes III and IV) for performance of all 'transferred functions.
13	**Expenditure Management.**	• The States should conduct **a zero-base review of programmes and schemes which are more than five years old** and which involve large sums of public money.

14	**Prudent Budget formulation.**	• There should be **interaction between the State Government and stakeholders including industry associations, think tanks** etc. in budget formulation. • In order to make such consultations effective and meaningful, steps should be taken to: o **provide information-access to citizens and educate citizens and leaders of society on budget making and its implications**. • State Governments should **shift to multi-year budgeting** and give the estimates of revenue and expenditure for a period of four years in addition to the year which the budget pertains. • **The States should follow the practice of preparation and implementation of the MTFP**.
15	**Revenue Forecast and Need for a Tax Research Unit.**	• The **State Governments should initiate steps to set up dedicated cells within its Finance Department to provide input on the revenue forecast** with the reasons thereof.
16	**Mechanism for Internal Control.**	• The State Governments should take steps to **set up internal audit committees in each of its departments**.