



Polity

Classroom Study Material 2020

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POLITY AND CONSTITUTION

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1. CENTRE STATE RELATIONS

1.1. CENTRE-STATE RELATIONS DURING COVID-19

Why in news?

COVID-19 has brought to the fore the friction between Centre and States with respect to the current legal framework in managing a crisis.

Centre state issues during COVID-19

- **One size fits all approach:** During the course of pandemic, Centre issued a top-down, homogeneous set of guidelines to states under Disaster Management Act, 2005 (DM Act). For instance, when Kerala decided to open restaurants, buses and private vehicles in specific zones, the Central government considered these steps as dilution of its guidelines.
- **Non-consultative decision making:** Central Government neither drew up any plan, nor did it consult the State Governments before it imposed the lockdown. Thus, states had no time or manoeuvring room to work the logistics vis-à-vis the migrant labourers.
- **Micromanaging: Inter-Ministerial Central Teams were sent to places where COVID-19 spread was considered serious,** for assessments and suggesting additional mitigation measures. However, it was done **without clarifying the criteria for the basis of selection of districts** which was seen as violative of the spirit of federalism.
- **Impacting States' financial autonomy:**
 - While on the one hand the states' revenue stream has been drying up (on account of the ban of alcohol sale, fall in the real estate market, etc), on the other, Centres' steps **further crippled the financial autonomy of the States**, which were at the forefront of the war against the pandemic.
 - Central government **enhanced the borrowing limit of state governments from 3 per cent to 5 per cent of their gross state domestic product.** However, only the first 0.5 per cent of this increase is unconditional and remaining was linked to specific reforms such as debt sustainability, job creation, power sector reforms etc.
 - Centre has declared that **corporations donating to PM-CARES can avail CSR exemptions**, but those donating towards any Chief Minister's Relief Fund cannot. This disincentivised donations to any Chief Minister's Relief Fund and makes the States largely dependent upon the Centre.

Factors which caused such ambiguities

- **Issues with Constitutional provisions:**
 - The **Seventh Schedule to the Constitution does not have an explicit entry on disaster management.** Hence, **Parliament had to resort to Concurrent List entry 23** on "Social security and social insurance; employment and unemployment" to trigger provisions of the DM Act.
 - **Public order and public health are subjects** that lie with the States as per the Constitution. So, **various states invoked the Epidemic Diseases Act, 1897** to pass orders and guidelines on social distancing measures etc. But there was **lack of clarity in how the Centre and States have interpreted their roles** under the Constitution.

Other legal and institutional gaps observed in dealing with COVID-19

- The **definition of 'lethal' or 'infectious' or 'contagious diseases'** has not been defined by any legislation. There is **no elaboration on the rules and procedures** for declaring a particular disease as an epidemic.
- There **were no specific provisions** on the sequestering and the sequencing required for dissemination of drugs/vaccines, and the quarantine measures and other preventive steps that need to be taken.
- The management of a health crisis has **become an issue of law and order.** Major notifications and guidelines relating to COVID-19 were issued by the MHA and not the Ministry of Health and Family Welfare. The language used was one of law and order: "lockdowns," "curfews," "fines" and "surveillance."
- A consolidated, pro-active policy approach was absent. In fact, there has been **ad hoc and reactive rulemaking**, as seen in the way migrant workers have been treated.
- **EDA contains no provisions on the isolation and the sequencing required** for dissemination of drugs/vaccines, and the quarantine measures and other preventive steps that need to be taken. Thus, IPC provision were invoked for enforcing quarantine etc.

- **Issues with DM Act**
 - While enforcing the provisions of the DM Act, the Centre declared the pandemic a ‘notified disaster’ to remedy the situation. The DM Act states the Centre can **“take all such measures as it deems necessary”**, which leaves room for it to have almost sweeping powers.
 - DM Act is **not specifically aimed at targeting epidemics**, the Centre couldn’t use this provision to enact the law. So, it used another entry — “social security and social insurance; employment and unemployment” — in the List to trigger provisions of the Act.
- **Issues with Epidemic Diseases Act (EDA) 1897:**
 - It empowers both the central and state governments to regulate the spread of epidemic diseases. However, the Act **emphasises only the powers of the central and state governments** during the epidemic, but it **does not describe the government’s duties** in preventing and controlling the epidemic.

Way forward

One of the major advantages of having a **multi-level federal system** is the presence of governance structures at the most local levels, which are best placed to deal with emergent crises. For responsive and efficient governance that is tailored to meet local exigencies, State and third-tier governments should be taking the lead in tackling public health crises. Role of Centre shall be to ensure coordination between States, rather than directing States.

ARC had recommended the addition of a new entry in the Concurrent List for “Management of Disasters and Emergencies, Natural or Man-made. It was reiterated by National Commission to Review the Working of the Constitution and later by a Ministry of Home Affairs Task Force set up to review the DM Act.

Howe other federal governments handled COVID-19

- **Canada:** Emergency measures and emergency management at the federal level are governed by the Emergency Act, 1988, and the Emergency Management Act, 2007.
 - Most provinces also have their own health Acts that delineate measures that are to be implemented in case of a health emergency.
 - Hence, most health crises in Canada are handled at the provincial level in coordination with the central government.
- **Australia:** National Health Security Act, 2007, puts in place processes and structures to pre-empt, prevent and, deal with national health emergencies, with designated entities providing coordination and oversight at the national level and the provinces applying their own laws, jurisdictional responses and coordination processes.

1.2. DEMAND FOR SIXTH SCHEDULE STATUS

Why in news?

Arunachal Pradesh assembly unanimously passed a resolution for the entire state to be included in the Sixth Schedule of the Constitution.

Permit for foreigners: Every foreigner, except a citizen of Bhutan, who desires to enter and stay in a Protected or Restricted Area, is required to obtain a special permit called Protected Area Permit/Restricted Area Permit from a competent authority.

Background

- State government had demanded to put State under the Sixth Schedule **to protect and safeguard the customary rights of tribal people** regarding ownership and transfer of land and forest products of the state.
- Earlier, state government had also **demand to amend the Constitution and waive Article 371(H) and put Arunachal Pradesh under the provisions of Article 371(A) and 371(G)** in line with Nagaland and Mizoram.
 - Article 371(A) and 371(G) provides special protection with respect to religious and social practices, customary laws and rights to ownership and transfer of land to the tribal people of the state of Nagaland and Mizoram respectively
 - Under Article 371 (H), the state governor has special responsibility with respect to law and order in the state and in the discharge of his functions in relation thereto.
- Though, at present Arunachal Pradesh has **Bengal Eastern Frontier Regulation (BEFR) Act of 1873** which prohibits all citizens of India from entering Arunachal without a valid **Inner Line Permit**.

Sixth schedule

- Sixth schedule to the constitution provides power to tribal communities to administer the tribal areas in Assam, Meghalaya, Tripura and Mizoram under the provision of article 244(2) and 275(1) of the constitution

- **Article 244** provides special system of administration for certain areas designated as 'scheduled areas' and 'tribal areas'.
- **Article 275** makes provisions for statutory grants to be charged on Consolidated Fund of India. Such grants also include specific grants for promoting the welfare of the scheduled tribes or for raising the level of administration of the scheduled areas in a state.

Advantages of inclusion in 6th schedule

Sixth schedule benefits in democratic devolution of powers, preserve and promote the distinct culture of the region, protect agrarian rights including rights on land and enhance transfer of funds for speedy development through following features:

- **Autonomous District Councils (ADC):** ADCs are bodies representing a district to which the Constitution has given varying degrees of autonomy within the state legislature. Each autonomous district council consisting of 30 members, including nominated and elected members.
- **Autonomous region:** If there are different Scheduled Tribes in an autonomous district, it can be divided into autonomous regions.
- **Legislative Power:** ADCs are empowered to make legislative laws with due approval from the governor.
- **Limitation to power of Parliamentary or state legislature over autonomous regions:** Acts passed by Parliament and state legislatures may or may not be levied in these regions unless the President and the governor gives her or his approval.
- **Judicial powers:** councils can constitute village courts within their jurisdiction to hear trial of cases involving the tribes.
- **Regulatory power:** The district council can establish, construct or manage primary schools, dispensaries, markets, ferries, fisheries, roads and so on in the district. It can also make regulations for the control of money lending and trading by non-tribal. But such regulations require the assent of the governor.
- **Tax revenue collection:** - The district and regional councils are empowered to assess and collect land revenue and to impose certain specified taxes. They can also receive grants-in-aids from the Consolidated Fund of India to meet the costs of schemes for development, health care, education, roads and regulatory powers to state control.

More to know

- To include Arunachal Pradesh in Sixth schedule requires constitutional amendment (outside Article 368).
- National Commission for Scheduled Tribes (Art 338A) has recommended **Union Territory of Ladakh to be declared as a 'tribal area' under the Sixth Schedule of the Constitution.**
- **Citizenship Amendment Act (CAA) exempts** the sixth schedule areas and Inner Line permit areas.

Fifth schedule of the constitution

- Fifth Schedule of the Constitution deals with the administration and control of scheduled areas and scheduled tribes in any state except the four states of Assam, Meghalaya, Tripura and Mizoram.
 - Ten states have Fifth Schedule Areas: Andhra Pradesh, Telangana, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha and Rajasthan.
- **President is empowered to declare** an area to be a scheduled area and **governor is empowered to direct** for application of Parliament or state legislature acts with specified modifications and exceptions.
- Normal administrative machinery operating in a state is not extended to the fifth schedule areas.
- **Panchayats (Extension to Scheduled Areas) Act, 1996 (PESA)** was enacted to extend Panchayat Raj provisions in fifth schedule areas with exceptions and modifications.

How are 6th schedule areas different from 5th schedule?

- It provides **greater autonomy**.
 - Greater powers are devolved and power to make legislation on numerous subjects. In 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.
- The council in 5th schedule is **creation of state legislature while in 6th schedule it is the product of constitution.**
- It has financial power to prepare budget for themselves unlike council in 5th areas.
- They also **receive funds from consolidated fund of India** to finance schemes for development, health, education, roads.

Issues with Sixth Schedule

- **No Decentralization of powers and administration:** For example, in Bodo Territorial Area districts, there is only district council which elects few people who enjoy unbridled power. Thus, units should be created that will represent people at all strata.
- **Legislative power of state over councils:** The laws made by the councils

require the assent of governor. This process has no time limits which delayed the legislations for years. Also, Para 12 (A) of the Sixth Schedule clearly states that, whenever there is a conflict of interest between the District Councils and the state legislature, the latter would prevail.

- **Conflict in discretionary powers of governor:** There are differing views over the discretionary power of governors with respect to the administration of these areas. Thus, conflict is there on requirement of consultation of governor with council of ministers.
- **Lack of codification of customary law:** Customary laws need to be codified and brought into practical use to ensure protection of tribal cultural identity.
- **Lack of skilled professionals:** Almost all Councils do not have access to planning professionals which results in ad-hoc conceiving of development projects without proper technical and financial consideration.
- **Financial dependency:** Autonomous councils are dependent on their respective state governments for funds in addition to the occasional special package from the Centre. There is no State Finance Commission for recommending ways to devolve funds to District Councils and Regional Councils.
- **Lack of development:** Although 6th schedule was enacted to give more benefit to the people and bring fast paced development, yet due to no panchayats or parishad at people level, they have no power and money which non-6th schedule areas have for implementation of various schemes like MGNREGA etc.
- **Corruption:** Financial mismanagement and rampant corruption have often been detected in the functioning of different Councils under the Sixth Schedule provision.

Way Forward

- **Creation of elected village councils** in all areas and ensuring accountability of Village Councils to Gram Sabha.
- Ensure **regular election** conducted by the State Election Commission.
- Recognize Gram Sabha under law and specify its powers & functions.
- Ensure **women and other ethnic minorities** are not excluded from representation in council.
- **Bring transparency** in planning, implementation and monitoring of developmental programmes.

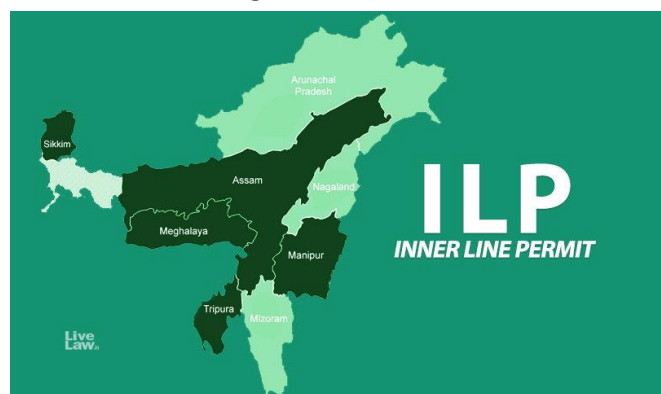
1.3. INNER LINE PERMIT

Why in news?

Recently, Manipur has launched an online portal for the travellers to seek Inner Line Permits.

About ILP

- It is a **travel document** that allows an Indian citizen to visit or stay in a state that is protected under the ILP system.
 - Foreigners need a **Protected Area Permit (PAP)** to visit tourist places which are different from Inner Line Permits needed by domestic tourists.
- The system is in force today in four North eastern states — **Arunachal Pradesh, Nagaland and Manipur, Mizoram.**
- No Indian citizen can visit any of these states unless he or she belongs to that state, nor can he or she overstay beyond the period specified in the ILP.
- The concept stems from the **Bengal Eastern Frontier Regulation Act, 1873**, where the British framed regulations restricting the entry and regulating the stay of outsiders in designated areas.
- This was to protect the Crown's own commercial interests by preventing "**British subjects**" (Indians) from trading within these regions.
- In 1950, the Indian government replaced "British subjects" with "**Citizen of India**".
 - This was to address local concerns about protecting the interests of the indigenous people from outsiders belonging to other Indian states.
- An ILP is issued by the **state government** concerned.



- Also, the **provisions of Citizenship Amendment Act would not be applicable to ILP areas.**

Status of ILP in different states

- **Meghalaya-** It has adopted a resolution for implementing the Inner Line Permit (ILP) regime in the state.
 - In November 2019, the Meghalaya Cabinet approved amendments to the **Meghalaya Residents Safety and Security Act (MRSSA), 2016**, which will lead to laws that require non-resident visitors to register themselves.
 - While Meghalaya has amended the law, it is not yet clear what exact rules, visitors to the state would be subjected too. Officially, it has not been said to be a replication of the ILP regime.
- **Assam-** In Assam too, there have been demands by certain sections for the introduction of ILP.
 - Groups like the **Asom Jatiyatabadi Yuba Chatra Parishad**, a youth organisation, has been organising protest demonstrations seeking ILP throughout the state.
 - Recently, the Assam finance minister has remarked that Assam will not have the ILP.
- **Manipur-** The ILP system came into effect in the state of Manipur from January 1, 2020 and is issuing four types of permits — **temporary, regular, special, and labour permits.**
 - Last year, the **Manipur People Bill, 2018** was passed unanimously by the state Assembly.
 - The Bill had undergone series of negotiations regarding defining the “Manipuri” people, after which a consensus was reached regarding 1951 as cut-off year for the definition.

Impacts of ILP

- **Economic Impact-** By imposing restrictions on the entry of ‘outsiders’ into these hill states, there are apprehensions that **tourism** gets affected and the local economy is not able to achieve its potential.
- **Scope of error-** in issuing these documents has been observed due to human intervention, which causes **inconvenience** to the visitors.
- **Fears of marginalisation-** such as in Meghalaya, where a sizable chunk of **non-tribal population** also resides. There is fear psychosis among the non-tribals that their interests will be overlooked, if the ILP is implemented.
 - This is further accentuated as the **definition of indigenous person** of the state remains unclear. E.g. The All Naga Student Association Manipur (ANSAM) is of the opinion that the definition of **who is a migrant** and who is not is not reflected in the ILP guidelines in **Manipur.**

1.4. ARTICLE 370

Why in news?

August marks one year since the abrogation of Articles 370 and 35A and the administrative reorganization of Jammu and Kashmir.

Background

- In 1948, Indian Government signed Treaty of Accession with ruler of Kashmir to provide Kashmir protection from Pakistan’s aggression. Post signing of Treaty of Accession, Article 370 was inserted in the **part XXI of the Constitution** that proclaimed it to be **"Temporary, Transitional and Special Provision"** and provided for a special status to Jammu and Kashmir (J&K).
- As per the Article, the centre needed the state government's concurrence to apply laws — **except in defence, foreign affairs, finance and communications.**
- Also, the state's residents lived under a separate set of laws, **such as those related to citizenship, ownership of property, separate penal code and fundamental rights**, as compared to other Indian citizens.
 - **Article 35A** of the Indian Constitution gave powers to the Jammu and Kashmir Assembly to define permanent residents of the state, their special rights and privileges.

Petitions related to Article 370 revocation in Supreme Court (SC)

- **Challenge to abrogation of Article 370**
 - Petitions challenging the abrogation of Article 370 of the Constitution, are pending in the SC.
 - Any significant hearing is yet to take place.
- **Petitions against lockdown and for restoring 4G services:**
 - Petitions were filed in the Supreme Court against restrictions imposed on internet services and communication lines.
 - SC declared access to internet a fundamental right and asked the government to review such restrictions and look into restoration of 4G services.

- In August 2019, President of India promulgated **Constitution (Application to Jammu and Kashmir) Order, 2019** which stated that provisions of the Indian Constitution were applicable in the State.
- This effectively meant that all the provisions that formed the basis of a separate Constitution for Jammu and Kashmir stand abrogated. With this, Article 35A was scrapped automatically.
- Also, **Jammu and Kashmir Reorganization Act, 2019** was passed by the Parliament, which re-organized J&K into two Union Territories (UTs)-
 - **J&K division** with a legislative assembly
 - UT of **Ladakh** without a legislative assembly.

Analyzing developments since abrogation of Article 370

Developments	Analysis
<p>Measures were taken by the Central government for transformational development in the J&K region:</p> <ul style="list-style-type: none"> • In January 2020, Central government granted a package of Rs 80,000 crore for development works in J&K. 	<p>Development in the region has the potential to increase investments in the region, boost industrial growth, create job opportunities, decrease militancy and strengthen its economy.</p>
<p>Legislative changes: Many of 354 State laws in the erstwhile Jammu and Kashmir have been repealed, modified while around 170 central laws have been made applicable.</p>	<p>Several Critical legislations passed by the Government of India are now applicable in J&K like Right to Information Act, 2005, Whistle Blowers Protection Act, 2014 etc.</p>
<p>Government introduced an array of Central schemes in the region</p>	<ul style="list-style-type: none"> • Citizens residing in J&K can now reap benefits of central schemes such as Ayushman Bharat scheme, Atal Pension Yojana, PM-KISAN, Pradhan Mantri Jan Dhan Yojana and Stand-Up India. • Under the National Saffron Mission, more than 3,500 hectares of land in J&K is being rejuvenated for saffron cultivation.
<p>Administrative changes in J&K and Ladakh after them being declared as a Union Territories</p>	<ul style="list-style-type: none"> • Structural reforms have been carried out in various departments where overlapping functions have been merged or downsized.
<p>Dilution in Domicile laws after Article 35A was repealed:</p> <ul style="list-style-type: none"> • Parliament has redefined the domiciles in J&K as those who have been a resident for a period of 15 years in the UT or have studied for a period of seven years and appeared in Class X/XII exam in a registered educational institute in J&K. • The domiciles now also include children of central government or central government aided organizations, PSU who have served in J&K for a period of 10 years. • Over 4 lakh people in Jammu and Kashmir have been issued new domicile certificates. 	<ul style="list-style-type: none"> • The ease in procurement of land will draw more investors in the state boosting the economic structure of J&K. • Central government employees posted in J&K can now reap same benefits as in the rest of the country.
<p>Several measures were taken to contain violent protests and maintain peace in the J&K region like extended Curfews , Continued detention of political prisoners etc.</p>	<ul style="list-style-type: none"> • Impact of strict security measures like lockdown and communication and internet blockade include Job losses, closure of schools and colleges etc.
<p>Diplomatic and international developments:</p> <ul style="list-style-type: none"> • Pakistan portrayed the changes in Kashmir as a “humanitarian crisis” that threatened the stability of the region. • Countries such as Turkey and Malaysia criticized the restrictions imposed in the J&K valley in the UN General Assembly. • Concerns regarding human rights violations in Kashmir were also raised by some sections in the US, the UK and other European countries. 	<ul style="list-style-type: none"> • While Pakistan tried to internationalize the Kashmir issue through the UNSC consultation, the meeting was closed, informal and did not yield any outcome. • Almost all countries underlined that J&K was bilateral issue & did not deserve time and attention of Council.

Conclusion

Revocation of the special status granted to the state of Jammu & Kashmir under Article 370 of the Indian Constitution has unfolded an ambitious roadmap of peace and progress ushering in a new era of inclusive development and transparent governance in the entire region.

Development of decentralized local bodies, confidence building measures among youth and restoration of internet services in a phased manner can further aid in participatory socio-economic development of the region.

1.5. SPECIFIC PROVISIONS FOR OTHER STATES- INDIA'S ASYMMETRIC FEDERALISM

Why in news?

Alteration of special status of Jammu and Kashmir brought to the focus special provisions enjoyed by other states.

What is Asymmetric federalism?

- In a federal arrangement, the constituent units are identified on the basis of region or ethnicity, and conferred varying forms of autonomy or some level of administrative and legislative powers.
- “Asymmetric federalism” is understood to mean federalism based on unequal powers and relationships in political, administrative and fiscal arrangements spheres between the units constituting a federation.

Asymmetric Federalism in practice in India

- **Special provisions to some states:** Special provisions applicable to States are mainly in the form of empowering the Governors to discharge some special responsibilities. E.g. Articles 371 to 371J
- **Union Territories:** These are directly administered by Centre. Also, there are Union Territories with a legislature, and Union Territories without a legislature.
- **Tribal areas and scheduled areas** under 5th and 6th schedule.
- **Economic asymmetry:** E.g. Finance Commission Grants, providing funds to local bodies, state disaster relief funds and compensates for any revenue loss to states after devolution of taxes.

Reasons for India's asymmetric federalism

- **Economic reasons:** Motivation for special status may be purely for expanding economic opportunities and securing freedom from exploitation by larger and more powerful members of the federation. E.g. The erstwhile distinction of special category and non-special category status states.
- **Political factors and preserving group identities:** 5th and 6th schedules provide for special governance measures in regions inhabited by ‘Scheduled Tribes’ and ‘tribal areas’ in the country. They aim to protect the Scheduled Tribes in the country by enabling them to **develop autonomy and preserve their land, economy, and community.**
- **Cultural factors:** There are various clauses in Articles 371 to 371J which accord special powers to various states. These special provisions include respect for **customary laws, religious and social practices, and restrictions on the migration non-residents to the State.** E.g. Article 371G contains special provisions to preserve the religious and social practices of Mizos in Mizoram and their customary law and procedure.
- **Historical:** Asymmetric arrangement is also shaped by how British unified the country under their rule and later the way in which the territories were integrated in the Indian Union. E.g. erstwhile Article 370 for Jammu & Kashmir.
- **Administrative and other factors:** Union territories were created because they were too small to become independent states or they could not be joined with their neighbouring countries on the account of cultural differences.

Criticism of Asymmetric federalism

- **Arbitrariness:** Special arrangements instituted to **meet short term political expediency or administrative discretion can cause degradation of institutions.** Such arrangements can result in arbitrary conferring of special favours and in the long run can contribute to greater disharmony and instability in a federation.
- **Shaped by political dynamics:** In a centralized federation, the **central government has considerable scope to discriminate among the units.** The potential for discrimination will be particularly strong when the government at the center is weak and states wield significant control over the center. E.g. coalition government with strong regional political party.
- **Source of tensions:** Use of such devices **increases the possibilities of new forms of tension emerging between regions** which are not addressed through asymmetrical devices. For example, the use of asymmetrical principles in the north-eastern states has led into cascading claims of autonomy raised by groups which fall outside the purview of state recognised regions.

- **Difficult to rollback:** E.g. Article 370 was simply a temporary provision designed to expedite the peaceful relation between India and the state before the resolution of the military conflicts. However, it continued for 7 decades, when it was abrogated finally.

Conclusion

India's experience shows that, asymmetrical federalism that is transparent and rule based is a prerequisite for the protection of culturally diverse groups like India. Transparent and rule-based asymmetry is associated with democratic consolidation in multinational federations. It may simply be a means of accommodating diverse group interests within a unified framework.

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2. ISSUES RELATED TO CONSTITUTIONAL PROVISIONS

2.1. RIGHTS

2.1.1. INTERNET AS BASIC RIGHT

Why in News?

Recently, in *Faheema Shirin v. State of Kerala*, the Kerala High Court declared the right to Internet access as a fundamental right.

Right to Internet as human right

- The right to Internet access is the view that **all people must be able to access the Internet in order to exercise and enjoy their rights to freedom of expression and opinion and other fundamental human rights.**
- The United Nations Human Rights Commission has passed a **non-binding resolution that effectively makes internet access a basic human right.**
- This has been **acknowledged in the Sustainable Development Goals.** SDG 9 target significant increase in access to information and communications technology and strive to provide universal and affordable access to the Internet in least developed countries by 2020.
- It was in the case of *Sabu Mathew George v. Union of India and Ors.* (2018) that **the Supreme Court declared that the Right to Access Internet is a basic fundamental right**, which could not be curtailed at any cost, except for when it "encroaches into the boundary of illegality."

How right to internet linked to other right?

- **Right to education:** Internet provided an avenue for the students to gather knowledge.
- **Right to freedom of speech:** Internet has become a powerful medium of expression.
- **Right to development:** The **right to development is a third generation right** recognized by the UN General Assembly.
- **Right to freedom of assembly:** Internet has become a useful tool in the organization of protest movements and demonstrations e.g. Arab Spring.

Issues with the right to Internet access as human right

- **Not qualify as human right:** Many critics argue that Technology is an enabler of rights, not a right itself.

Three generations of Human Rights

- First-generation, "civil-political" rights deal with liberty and participation in political life.
- Second-generation, "socio-economic" human rights guarantee equal conditions and treatment.
- Third-generation, "collective developmental" rights of peoples and groups held against their respective states aligns with the final tenet of "fraternity."

SC's view on Curbing Internet Services

- **Freedom of speech and expression through the medium of internet** is a fundamental right under Article 19(1)(a) of the Constitution.
- **Freedom of trade and commerce through internet** is also a constitutionally protected right under Article 19(1)(g).
- The restrictions on internet have to follow the **principles of proportionality under Article 19(2).**
 - Doctrine of proportionality is a principle that is prominently used as a ground for judicial review in cases of administrative action.
- Suspension of internet for indefinite period not permissible. It can only be for a reasonable duration and periodic review should be done.
- The power under Section 144, **cannot be used to suppress legitimate expression of opinion or grievance or exercise of any democratic rights.**

Legislative provisions on Internet shutdowns

- Suspension of Internet services are dealt with under the **Information Technology Act, 2000, the Criminal Procedure Code (CrPC), 1973 and the Telegraph Act, 1885.**
- **Before 2017**, Internet suspension orders were issued under **Section 144 of the CrPC.** In 2017, the central government notified the **Temporary Suspension of Telecom Services (Public Emergency or Public Service) Rules** under the Telegraph Act to govern suspension of Internet.

UN Resolution on Internet shutdown

- In 2016, the United Nations Human Rights Council released a **non-binding resolution** that reaffirmed "the same rights people have offline must also be protected online".

- **Feasibility for developing nation:** There is a debate about considering the right to internet access a necessity given other priorities that developing and least developed countries face.
- **Issue of digital divide:** In India, there exists a huge digital divide. Thus, making internet as a right may not be a feasible idea due to infrastructural gaps, lack of digital literacy and accessibility.
- **Protecting free expression while fostering tolerance and civility:** Online, everyone has a voice. Hateful or defamatory words can inflame hostilities, deepen divisions, and provoke violence.
- Issues have also been raised due to **potential for misuse of internet.** For instance, terrorists and extremist groups use the internet to recruit members, and plot and carry out attacks. Additionally, there are issues related to data theft and privacy related concerns.

Conclusion

With the world increasingly moving into a digital space, the marginalised will be further left behind if they are unable to afford access to the internet. Therefore, government should take immediate measures to ensure free and equal access of internet.

2.1.2. RIGHT TO BE FORGOTTEN

Why in News?

Recently, the Court of Justice of the European Union ruled that **EU regulations (General Data Protection Regulation- GDPR) on the right to be forgotten do not apply** beyond its boundaries.

About Right to be Forgotten (RTF)

- It refers to the **ability of individuals to limit, de-link, delete, or correct the disclosure of personal information on the internet** that is misleading, embarrassing, irrelevant, or outdated.
- Such disclosure, **may or may not be a consequence of unlawful processing** by the data fiduciary.
- RTF traces its origin to the '**right to oblivion**' in the French jurisprudence.
 - The right was utilized by former offenders, who had served their sentence, to object to publication of materials regarding their offense and consequent conviction.

GDPR and Right to be Forgotten

- GDPR states that individual shall have the **right to obtain from the controller the erasure (deletion) of personal data concerning him or her without undue delay** and the controller shall have the obligation to erase personal data.
- It has outlined the **circumstances under which EU citizens can exercise this right under six conditions, including withdrawal of consent to use data, or if data is no longer relevant for the purpose it was collected.**

Right to be forgotten (RTF) in India

- At present, **the right to be forgotten is not well-established in India.**
- The draft Personal Data Protection Bill, 2018 provides a limited right to be forgotten.
 - Unlike the GDPR, the Personal Data Protection Bill, 2018 only provides for prevention of continuing disclosure of personal data and not the deletion of personal data.
 - ✓ The grounds for exercising this right include cases where the disclosure of the personal data has served the purpose for which it was made or is no longer necessary; this **determination has to first be made by an Adjudicating Officer.**
 - ✓ The Adjudicating Officer also has to be **satisfied that the right to be forgotten overrides the right to freedom of speech and expression, and the right to information of any citizen.**
- In 2017, two separate Indian High Courts gave contrasting **judgments on this issue.**
 - In the first case, **Gujarat HC dismissed** a petition that sought restraint on the online publication of an unreportable judgment in a case where the petitioner had been acquitted of culpable homicide amounting to murder.
 - **Karnataka High Court** ordered the removal of personal details from the judgment, while referring to the "right to be forgotten" in sensitive cases involving women in general.

Issues with right to be forgotten

- **Conflict in situation where in public interest, information is more important.** E.g. In serious crimes such as sexual harassment.
- **Against freedom of speech and expression** of the journalism etc.

- **Implementation challenges** in banning or removing pornographic websites or torrent sites from the Internet.
- **Cumbersome process:** With the growing recognition of the right to be forgotten, the number of requests for taking down is only likely to increase.
- **Misuse of the right:** Search engines are also likely to tread on the side of caution and accept such requests rather than face expensive legal challenges across jurisdictions for non-compliance.

Way forward

- For now, there is no way to pin down how the right to be forgotten would be molded by the Indian courts; currently, it is a **nascent judicial concept** that will take some amount of debate and deconstruction to make sense.
- Despite these difficulties, experts think such a provision in India would make companies that **use personal data accountable** and they may need to review how they gather, use, and share such information.

Right to be Forgotten vs Right to information

- The biggest challenge in implementing this right is the **trade-off between defamation and freedom of expression**.
- The right to be forgotten cannot be an absolute right and would be **objected to reasonable restrictions**.
- The right to be forgotten comes **within the purview of the right to privacy**, which would be at odds with Article 19(1)(a) — freedom of speech and expression.
- If the **information is of public interest**, the right to information of the public prevails over privacy rights.
- While implementing the right to be forgotten, a very **fine balance has to be struck between the right to freedom of speech and expression, public interest and personal privacy**.
- To balance these conflicting rights, the judiciary may consider implementing a system where personal information like names, addresses etc. of the litigants are redacted from reportable judgments/orders especially in personal disputes.
- The courts have, in the past, refrained from divulging the identities of parties in order to respect their privacy in many rape or medico-legal cases.

2.1.3. RIGHT TO PROPERTY

Why in News?

Recently, the Supreme Court has reiterated that forcible dispossession of a person of his private property without due process of law is a human right violation.

Evolution of Right to Property in India

- The Constitution originally provided for the **Right to Property** as a fundamental right (F.R.) under Articles 19 and 31.
 - **Art. 19(1) (f)** guaranteed to the Indian citizens a right to acquire, hold and dispose of property.
 - **Article 31** of Indian Constitution stated that no person can be deprived of his property without the consent of a proper authority.
 - Also, **Article 31(2)** had put two limitations on State power of acquisition of land viz.
 - ✓ Firstly, the compulsory acquisition or requisitioning of land should be for public purpose.
 - ✓ Secondly, the law enacted in that behalf should provide for compensation.
- However, after independence, it resulted in numerous litigations between the government and citizens. Major contentious issues were:
 - laws enacted by government in relation to land reform
 - measures to provide housing to the people in the urban area
 - regulation of private enterprises
 - nationalization of some commercial undertakings.
- To narrow its scope it was modified several times by the constitutional amendments namely **1st, 4th, 17th, 25th and 42nd Constitutional Amendment Acts**.

Right to Property as a Human Right

- In several cases, the Supreme Court of India has held that the right to property is not just a statutory right but is also a human right.
- **Universal Declaration of Human Rights 1948** under Section 17(i) and (ii) also recognizes right to property. It states that-
 - Everyone has the right to own property alone as well as in association with others,
 - No-one shall be arbitrarily deprived of his property.
- **Significance:**
 - provides safeguards against arbitrariness of state
 - gives due importance to property as a tool of self-protection
 - allows people to be entrepreneurial

- However, it was continued to be seen as a roadblock in socio-economic development of the country.
- Finally, **44th Constitutional Amendment Act repealed the entire Article 31 and Article 19(1)(f) & inserted Article 300A.**

Right to Property under Article 300A

- Article 300-A states that no person shall be deprived of his property save by authority of law. This means that-
 - Property is no longer a Fundamental Right, i.e. the aggrieved individual would not be competent to move to Supreme Court under Article 32, for any violation of Art 300A.
 - Also, a law will be necessary to deprive a person of his property.

Arguments in favour of Right to property to be reinstated as Fundamental Right

- **It would protect citizens from unwarranted state action in the name of acquisition:** Compulsory land acquisition and mass displacement in the name of development have given rise to certain socio-economic issues.
- **It will provide support to the judiciary:** As of now the development of the Supreme Court's doctrinal jurisprudence is only safeguard against the fear of arbitrariness of State action. For example- **The Fair Balance test.**
 - The elevated status of Right to Property will aid Judiciary for effective delivery of justice.
- **Tackling manipulative practices in calculating fair compensation:** Land owners are at times deprived of a fair compensation due to vagueness in laws relating to land acquisitions.
- **Insecure Titles and Poor Land Records and Administration:** Many citizens lack a clear title to their land and it is accompanied by poor maintenance of land records by state organizations. For instance, the land rights of indigenous tribes were not recognized by the state, despite these people living in the land for generations.

Arguments in favour of Right to property remaining a legal right

- **It leads to smoother Land Acquisition:** India is developing country and for this purpose land acquisition should become swifter which is facilitated by Article 300A.
- **It has eased up judicial burden:** Previously, the judiciary was burdened with litigations related to property rights. However, it has come down significantly.
- **It aids government in its welfare objectives:** Given the government provides a fair compensation, land acquisition is necessary for fulfilling welfare purposes such as ensuring road connectivity, making electricity accessible to all etc.

Fair Balance Test

- According to it taking of property without payment of an amount reasonably related its value would normally constitute a disproportionate interference which could not be considered as justiciable.

Conclusion

There is a need to balance the right to property with the development of the society and the country as a whole. Few steps that can be taken in this regard are:

- Land records should be computerized.
- There is a need to develop institutions and processes that are easily accessible and provide mechanisms to the people to definitely establish their land titles.
- Government must follow guidelines prescribed by the Supreme Court whilst calculating fair compensation. LARR Act can be reformed in this regard.
- Large scale displacements must be avoided. But if necessary, then appropriate rehabilitation must be provided and the compensation should cover the social cost of displacement as well.

2.1.4. SEDITION

Why in news?

The recent arrests in Bengaluru and Kashmir, on the grounds of protesting against the Citizenship Amendment Act and raising pro-Pakistan Slogans have reignited the **debate around India's sedition law.**

Understanding Sedition Law in India

- Sedition, which falls under **Section 124A of the Indian Penal Code**, is defined as any action that brings or attempts to bring hatred or contempt towards the government of India.
- **Origin and evolution** - It was added through Special Act XVII of 1870 to suppress freedom of speech and expression during colonial rule. **Mahatma Gandhi called Section 124A** "the prince among the political sections of the IPC designed to suppress the liberty of the citizen".
- **Recent statistics on Sedition Law:**
 - Compared to other offences, **sedition remains a rare crime** (it accounts for less than 0.01% of all IPC crimes).
 - But within India, **some parts are emerging as sedition hotspots**. Assam and Jharkhand, for instance, with 37 sedition cases each, account for 32% of all sedition cases between 2014-2018.
 - As per **National Crime Records Bureau (NCRB)**, there were 47 cases of sedition in 2014 but that number increased to 70 in 2018.
- **Significance of Section 124A:** The continued existence of the government established by law is an essential condition of the stability of the State.
 - Section 124A of the IPC has its utility in combating anti-national, secessionist and terrorist elements such as, many districts in different states face a Maoist insurgency and rebel groups virtually run a parallel administration.

About Section 124A of Indian Penal Code (IPC)

- It was drafted by **Thomas Babington Macaulay** and included in the IPC in 1870.
- It states that, "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 in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may extend to three years, to which fine may be added, or with fine."
- Punishment under Section 124A Sedition is a **non-bailable offence**.
- A person charged under this law **can't apply for a government job**. They have to live without their passport and must present themselves in the court as and when required.

Criticism of Sedition

- **Colonial Era law:** It is a colonial relic and a preventive provision that should only be read as an emergency measure.
- **Right to Freedom of expression:** Use of Section 124A by the government might go beyond the reasonable restrictions provided under fundamental right to freedom of speech and expression as per Article 19 of the Constitution.
- **Democratic foundation:** Dissent and criticism of the government are essential ingredients of robust public debate in a vibrant democracy and therefore, should not be constructed as sedition. The sedition law is being misused as a tool to persecute political dissent.
- **Lower Conviction Rate:** Though police are charging more people with sedition, few cases actually result in a conviction. Since 2016, only four sedition cases have seen a conviction in court which indicates that sedition as an offence has no solid legal grounding in India.
- **Vague provision of sedition laws:** The terms used under **Section 124A** like 'disaffection' are vague and subject to different interpretation to the whims and fancies of the investigating officers.
- **Other legal measure for offences against the state:** Indian Penal Code and Unlawful Activities Prevention Act (1967), have provisions that penalize "disrupting the public order" or "overthrowing the government with violence and illegal means". These are sufficient for protecting the national integrity.
 - Similarly, **the Prevention of Damage to Public Property Act** is also there for offences against the state.
- **Perception of law:** Globally, sedition is increasingly viewed as a draconian law and was revoked in the United Kingdom in 2010. In Australia, following the recommendations of the Australian Law Reform Commission (ALRC) the term sedition was removed.
 - Even in India, in **August 2018, the Law Commission published a consultation paper** recommending that it is time to re-think or **repeal the Section 124A**.

Sedition: Views of Judiciary

- The constitutionality of sedition was challenged in the Supreme Court in **Kedar Nath Vs State of Bihar (1962)**. The Court upheld the law on the basis that this power was required by the state to protect itself.

- However, it had added a vital caveat that "a person could be prosecuted for sedition **only if his acts caused incitement to violence or intention or tendency to create public disorder or cause disturbance of public peace**".
- The court held that "a citizen has a right to say or write whatever he likes about the Government, or its measures, by way of criticism or comment, so long as he does not incite people to violence against the Government established by law or with the intention of creating public disorder".
- In the **1995 Balwant Singh case** verdict, the Apex Court said, 'The casual raising of slogans once or twice by two individuals alone cannot be said to be aimed at exciting or attempt to excite hatred or disaffection towards the government'.
- In **September 2016**, the Supreme Court had reiterated these necessary safeguards and held that they should be followed by all authorities.
- **Essential ingredients for a seditious act:** Various verdicts in **Romesh Thappar case, Kedar Nath Singh case, Kanahiya Kumar case** re-defined a seditious act only if it had essential ingredients as
 - Disruption of public order
 - Attempt to violently overthrow a lawful government
 - Threatening the security of State or of public.

Conclusion

It is abundantly clear that freedom of speech and expression within the Indian legal tradition includes within its ambit any form of criticism, dissent and protest. Dissent acts as a safety valve in a vibrant democracy and every restriction on free speech and liberty must be carefully imposed weighing its reasonableness. Therefore, as **suggested by the Law commission of India**, invoking 124A should be **restricted only** to criminalize acts committed with the intention to disrupt public order or to overthrow the Government with **explicit violence and illegal means**.

2.1.5. SABARIMALA TEMPLE ISSUE

Why in news?

Recently, the Supreme Court has deferred its decision on review of "**2018 Sabarimala verdict**" until a Seven Judges' Bench examines broader issues such as **essentiality of religious practices** and **constitutional morality**.

Background of the issue

- Sabarimala temple's age-old practice **barred** women in their reproductive phases (when they were at the menstruating phase) from entering the temple on the ground that the **presiding deity** was a complete **celibate**.
- In the "**Indian Young Lawyers Association & Others vs The State of Kerala & Others**" case, 2018, a five-judge bench had delivered a landmark 4:1 ruling setting aside the decades-old restrictions on the entry of women of reproductive age inside Sabarimala Temple.
 - The judgment remarked that ban on the entry of women in Sabarimala is **a kind of untouchability, and thus violative of Article 17**.
 - **Justice Indu Malhotra also had dissented against the majority verdict** on the ground that courts should not sit on judgement over harmless religious beliefs unless they were pernicious practices such as sati.
- Recently, review pleas were filed against above order. The petitioners contended that the 2018 judgments suffered from an error apparent since **constitutional morality** is a **vague concept** which cannot be utilised to undermine belief and faith.
- Now, the larger Bench would also consider the entry of women into mosques and the practice of female genital mutilation, prevalent among the Dawoodi Bohras Sect.

Implications of the Supreme Court's fresh examination of the Sabarimala Case

- **Will raise various key Constitutional questions:** The seven-judges' Bench will **examine**:
 - Question of balancing the freedom of religion under Articles 25 and 26 of the Constitution with other fundamental rights, particularly the Right to equality (Article 14).
 - Should "**essential religious practices**" or the "**doctrine of essentiality**" be accorded constitutional protection under **Article 26** (freedom to manage religious affairs)?

- What is the “**permissible extent**” of judicial recognition a court should give to PILs filed by people who do not belong to the religion of which practices are under the scanner?
- Whether a court can probe whether a practice is essential to a religion or should the question be left to the respective religious head?
- The **constitutional debate on gender equality** will be reopened with the larger issue of **whether** any religion can bar women from entering places of worship.

Understanding Doctrine of Essentiality and related debates

- **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 in which 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.**
- **Surrounding debates:**
 - **Essentiality vs right to freedom of religion:** The Supreme Court in ‘**Ratilal Gandhi vs the State of Bombay**’ (1954) acknowledged that “every person has a fundamental right to entertain such religious beliefs as may be approved by his judgment or conscience”. However, the Essentiality test impinges on this autonomy.
 - ✓ The apex court has itself emphasised autonomy and choice in its Privacy (2017), 377 (2018), and Adultery (2018) judgments.
 - **Issue of Judicial overreach:** The doctrine has been criticised by several constitutional experts as it has tended to lead the court into an area that is beyond its competence, and given **judges the power** to decide purely religious questions which should be decided by the theologians.
- **Issues with the conception:** The concept of providing constitutional protection only to those elements of religion, which courts consider “essential” is problematic. Such an approach assumes that one element or practice of religion is independent of the others.
- **Arbitrariness in its application:** Over the years, courts have been inconsistent on this question — in some cases they have relied on religious texts to determine essentiality, in others on the empirical behaviour of followers, and in yet others, based on whether the practice existed at the time the religion originated.
- **Group rights vs Individual Rights:** The Supreme Court has itself acknowledged that “every individual has a fundamental right to entertain such religious beliefs”. However, the essential practices test is antithetical to the **individualistic conception of rights**. Under the test, the court privileges certain religious practices over others, thus protecting the group’s rights.

2.1.6. RELIGIOUS EDUCATION AND STATE FUNDING

Why in news?

Recently, Assam government has decided to shut down state-run Madrasas and Sanskrit centres of learning and convert them to schools.

Constitutional Provisions Regarding Religious Education

- **Article 28** distinguishes between four types of educational institutions:
 - **Institutions wholly maintained by the State-** here, religious instruction is completely prohibited.
 - **Institutions administered by the State but established under any endowment or trust-** Here, religious instruction is permitted.
 - **Institutions recognized by the State-** religious instruction is permitted on a voluntary basis i.e. with consent.
 - **Institutions receiving aid from the State-** religious instruction is permitted on a voluntary basis i.e. with consent.

Arguments in favour of religious education

- **To inculcate ethical and moral values:** In Hind Swaraj, Gandhi ji advocated religious instruction to include a study of the tenets of faiths other than one’s own. Also, the values and Indian ideals of devotion, wisdom, and morality can be permeated by the religious spirit.
- **In line with Indian secularism:** Secularism’ in India is not characterised by a no-religion stance (as in the French concept of laïcité, which calls for the separation between State and religion), but by the equal treatment of all religions.

- **Article 30:** It grants all minorities shall have the right to establish and administer educational institutions of their choice. Also, it states, in granting aid, the State shall not discriminate against any educational institution managed by a minority.

Arguments against religious education

- **Education as a public function:** Recently, Kerala High Court held that, a school that gets recognition from the State government under the Right to Education (RTE) Act **does not have the right to impart religious instruction of one religion in preference to other religions** as it is discharging a public function.
- Kerala High Court also held that, the rights of minorities under the Constitution **do not allow them to dilute** override the basic values of the Constitution i.e. **secularism**. It negates neutrality, promotes discrimination, and denies equal treatment.
- Some argue that, **under the guise of religious education, communal ideas are taught and carried forward**. Also, lack of a general understanding of what religious instruction entails makes it difficult to regulate.

Way forward

Kothari Commission in 1964 distinguished between “religious education” and “education about religions”. It recommended for moral and spiritual education in order to develop a secular outlook. Also, as High court highlighted, in a pluralist society like India, which accepts secularism as the basic norm in governing secular activities, including education, there cannot be any difficulty in imparting religious instruction or study based on religious pluralism. What is prohibited is exclusivism.

2.2. RESERVATION

2.2.1. RESERVATION POLICY

Why in news?

The Supreme Court’s five-judge Constitution bench held that providing **100 per cent reservation for Scheduled Tribes in scheduled areas of a State is not permissible**.

Details

- The erstwhile State of **Andhra Pradesh** issued an order in 2000 **providing 100% reservation to the Scheduled Tribe candidates**, out of whom **33% shall be women**, for the post of teachers in schools located in the Scheduled Areas of the State.
- **SC held that 100% reservation is discriminatory and impermissible** as it violated Articles 14 (equality before law), 15 (discrimination against citizens) and 16 (equal opportunity) of the Constitution.
 - A 100% reservation to the Scheduled Tribes also deprives General category, Scheduled Castes and Other Backward Classes also of their due representation. **The court referred to the Indira Sawhney judgment, which caps reservation at 50%.**
 - The judgement further includes that **equality of opportunity and pursuit of choice** cannot be deprived of arbitrarily.

Constitutional Provisions regarding Reservation

- **Article 15 (4)** allows the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes. This provision was extended to **admission in educational institutions by 93rd Amendment Act, 2006 (except minority educational institutions)**
- **Article 16 (4)** allows State to make any provision for the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State.
- **Article 16(4A)**, empowers state to make provisions for reservation in matters of promotion to SC/ST employees.
- **Article 46** states that the State shall promote with special care the educational and economic interests of the weaker sections of the people, and, **in particular, of the Scheduled Castes and the Scheduled Tribes**, and shall protect them from social injustice and all forms of exploitation.
- **Article 243D** provides reservation of seats for SCs and STs in every Panchayat.
- **Article 243T** provides reservation of seats for SCs and STs in every Municipality.
- **Article 330** states that **seats shall be reserved in the Lok Sabha for the Scheduled Caste and Scheduled Tribes**.
- **Article 332** of the Constitution of India **provides for reservation of seats for the Scheduled Castes and the Scheduled Tribes in the Legislative Assemblies of the States**.



- It also said that the power of Governor to make 'modifications and exceptions' to any parliamentary law under **Fifth Schedule of the constitution** does not entitle him to substitute the law or make a new law altogether.

Reservation in the Indian Context

- It is a form of **affirmative action** whereby a **percentage of seats are reserved in the government service and educational institutions** for the socially and educationally backward communities and the Scheduled Castes and Tribes who are inadequately represented in these services and institutions.
- **10% Reservation to Economically Weaker Sections (EWS)** was recently provided by **103rd Constitutional Amendment Act, 2018**. It amended **Articles 15 and 16** to provide reservation to economically weaker section in admission to educational institutions and government posts.
- Reservation 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**.
- **Persons with Disability Act, 1995** provides for reservation for persons with disabilities in India. Under the Act, persons with disabilities got 3% reservation in both government jobs and higher educational institutions.

Judicial pronouncements regarding Reservation

- **State of Madras vs Champakam Dorairajan (1951)**
 - The Supreme Court upheld decision of Madras High Court, which struck down a Government Order of 1927 regarding caste-based reservation in government jobs and educational institutions.
 - ✓ This judgement also made basis of adding **Article 15(4)** by the First Constitutional Amendment Act, 1951.
- **Indra Sawhney vs. Union of India (1992)**
 - The 9 Judge Constitution Bench of the Supreme Court by 6:3 majority held that the decision of the Union Government **to reserve 27% Government jobs for backward classes – with elimination of Creamy Layer- is constitutionally valid**.
 - The reservation of seats shall only confine to initial appointments and not to promotions, and the **total reservations shall not exceed 50 per cent**.
- **M. Nagaraj vs. Union of India (2006)**
 - A five-judge constitution bench of the Supreme Court validated parliament's decision to extend reservations for SCs and STs to include promotions with **three conditions**:
 - ✓ State has to **provide proof for the backwardness** of the class benefitting from the reservation.
 - ✓ State has to collect **quantifiable data showing inadequacy of representation** of that class in public employment.
 - ✓ State has to show **how reservations in promotions would further administrative efficiency**.
- **Jarnail Singh v. Lachhmi Narain Gupta (2018)**
 - The Supreme Court held that the government **need not collect quantifiable data to demonstrate backwardness** of public employees belonging to the Scheduled Castes and the Scheduled Tribes (SC/STs) to provide reservations for them in promotions.
- Recently the Supreme Court upheld **Karnataka Extension of Consequential Seniority to Government Servants Promoted on the Basis of Reservation (to the Posts in the Civil Services of the State) Act, 2018**. The enactment provides for **consequential seniority** to SCs and STs with retrospective effect from 1978.
 - Consequential seniority allows reserved category candidates to retain seniority over general category peers. If a reserved category candidate is promoted before a general category candidate because of reservation in promotion, then for subsequent promotion the reserved candidate retains seniority. In effect, consequential seniority undoes the 'catch-up rule' that allowed general category candidates to catch-up to reserved category candidates.

2.2.2. CREAMY LAYER CRITERIA FOR SC/ST IN PROMOTIONS

Why in News?

The Central Government has demanded for a review of 2018 Supreme Court Verdict in **Jarnail Singh vs Lachhmi Gupta Case, related to reservations in promotions for SC/ST**.

Background

- In **Jarnail Singh vs Lachhmi Gupta Case (2018)** Supreme Court asked the government to examine the possibility of **introducing creamy layer for Scheduled Castes (SCs) and Scheduled Tribes (STs)** by saying that if some sections bag all the coveted jobs, it will leave the rest of the class as backward as they always were.
- The union government has urged the court to reconsider the ruling and refer the issue to a seven-judge Bench.

Creamy Layer

- The concept has its genesis in **the Indira Sawhney Case (1992)**. Supreme Court asked the Government to define the criteria by fixation of **income, property or status**.
- Currently creamy layer criteria is applicable to **Other backward classes (OBCs)** in reservation.
- At present, Group A and Group B officers of both Central and State Government, Employees of Armed Forces and PSUs along with people earning more than 8 lakh per annum come under the purview of Creamy layer.

Arguments for applying the Creamy Layer concept to SCs/STs

- **Improved income and status:** The creamy layer within the SCs and STs has improved socio-economic mobility and by that virtue does not face discrimination of similar intensity.
- **Article 335:** It states that Affirmative action should be subject to the overall efficiency of Public Administration. Reservation in promotions may affect the merit-based culture of the organization.
- **Prioritizing most marginalized:** Supreme Court in Jarnail Singh Case Judgement noted that the benefits, by and large are **snatched away by the top creamy layer** of the backward caste or class, keeping the weakest among the weak always weak and leaving the fortunate layers to consume the whole cake.

Arguments for not applying the Creamy Layer concept to SCs/STs

- **Discrimination within service:** It is argued that there is widespread discrimination within services. For example, there are **about 12,000 cases** lying with the SC/ST Commission, complaining about **discrimination in service**.
- **Not Anti-poverty programme:** Reservation for Dalits is **not to undo economic backwardness** but as a remedy for societal discrimination based on untouchability. Thus, it may not possess a direct correlation with economic status.
- **Difference between OBCs and SCs:** OBCs don't face the kind and extent of discrimination faced by SCs. Generally, if OBCs manage to cross a certain economic threshold, the extent of social discrimination reduces substantially.

Way Forward

- **Consultative Approach:** Reservation is a very sensitive topic, thus any decision on it should be in consultation with all the stakeholders.
- **Strengthening Other tools:** like encouraging Dalit Entrepreneurship, providing loans (E.g. Stand-up India Scheme), Increasing awareness etc. can also indirectly improve the Socio-Economic mobility of Dalits.

2.2.3. SUB-CATEGORIZATION OF OTHER BACKWARD CLASSES (OBCS)

Why in News?

Recently, the Union Cabinet approved the term extension of the commission to examine the issue of sub-categorization of Other Backward Classes (OBCs).

More on News

- The Union Government constituted a four-member commission **headed by Justice G. Rohini in 2017 under Article 340** with an aim to **improve the equitability of sharing of benefits among OBCs**.
 - The **article 340** of the Indian Constitution lays down conditions for the appointment of a Commission to investigate the conditions of backward classes.

Who are OBCs?

- OBC is a collective term used by the Government to classify castes which are **educationally or socially disadvantaged**.
- OBCs are a **vastly heterogeneous group**. There are various jaatis or sub-castes which vary significantly in the societal and economic status.
 - For instance, OBCs include land-owning communities in both north and south India alongside poorer sections of the society living on subsistence labour.

- Mandate of the Commission:
 - Examining the **extent of inequitable distribution** of benefits of reservation (I.e. 27 percent reservation in jobs and education) among the castes or communities with reference to the central OBC list.
 - Work out the mechanism, criteria, norms and parameters in a **scientific approach for sub-categorization of OBCs**.

Background: The Mandal Commission

- In 1990, the then Union government announced that Other Backward Classes (OBCs) would get **27 percent reservation in jobs in central government services and public sector units (under Article 16(4) of the Constitution)**.
- The decision was based on **Mandal Commission Report (1980)**, which was set up in 1979 and chaired by B.P. Mandal. The mandate of the Mandal Commission was to identify **socially or educationally backward classes** to address caste discrimination.
- The recommendation for OBC reservations in central government institutions was implemented in 1992 while the **education quota came into force in 2006 (under Article 15(4) of the Constitution)**.
- To ensure that benefits of the recommendations of the Mandal Commission percolated down to the most backward communities, the **creamy layer criteria** was invoked by Supreme Court in the ruling called the '**Indira Sawhney Judgment**' (1992).
 - A household with an **annual income of Rs 8 lakh or above** is classified as belonging to the 'creamy layer' among OBCs and hence is not eligible for reservations.

Idea of sub-categorization

- The First Backward Class Commission report of 1955 had proposed sub-categorization of OBCs into **backward and extremely backward communities**.
- In the Mandal Commission report of 1979, a **dissent note** by member L R Naik proposed sub-categorization in **intermediate and depressed backward classes**.
- In 2015, the NCBC had proposed that OBCs be divided into the following three categories:
 - a. **Extremely Backward Classes (EBC-Group A)** facing social, educational and economic backwardness even within the OBCs, consisting of aboriginal tribes, nomadic and semi-nomadic tribes who have been carrying on with their traditional occupations;
 - b. **More Backward Classes (MBC-Group B)** consisting of vocational groups carrying on with their traditional occupations; and
 - c. **Backward Classes (BC-Group C)** comprising of those comparatively more forward.
- According to the NCBC, **11 states** (Andhra Pradesh, Telangana, Puducherry, Karnataka, Haryana, Jharkhand, West Bengal, Bihar, Maharashtra, Rajasthan and Tamil Nadu) have **subcategorized OBC for reservations** in state-government-owned institutions.

What is the need for sub-categorization and tentative recommendations of the committee?

- **Benefits of reservations have reached only limited sections:** The Rohini commission highlighted that from about 2,633 central list OBCs, about 1900 castes have not proportionately benefitted.
 - **Half of these 1900 castes have not availed the benefits of reservation at all**, and the other half include those that have availed less than 3 per cent share in the OBC quota.
 - The commission highlighted that **25% of benefits from OBC reservations** have been availed by only **10 sub-castes**.
 - According to the committee, the communities that have got almost no benefits of reservations include profession-based castes such as **Kalaigars**, a community that traditionally polishes tins; and **Sikligars and Saranias**, communities that traditionally sharpen knives; **apart from several other marginalised groups**.
- **Benefits are tilted towards economically stronger sub-sections:** Research suggests that the Mandal Commission recommendations helped the economically better positioned OBCs more than the most backward castes.

Recommendations in this regard

- A **fixed quota of between 8 to 10 percent** within the 27 percent OBC quota for almost 1900 castes from among the central list of 2,633 OBCs.
 - These 1900 castes constitute about 2-3 per cent of the total seats and won't affect other groups significantly but may create substantial opportunities for them.
- Sub-categorization to **be based on relative benefits among the OBCs and not on social backwardness**, this may help deprived sections to be able to avail of their fair share of the quota.

What are the challenges in its implementation?

- **Political sensitivity of the issue:** The move to sub-categorize OBCs may create agitation in some sections of OBCs as the benefits get redistributed.
 - OBC reservations have caused political turmoil in the past and its possible effect on the **upcoming Bihar assembly elections** cannot be denied.
- **Use of older and unreliable estimates:** The commission has based its recommendations on quota within quota on the **population figures from the 1931 Census**, and not on the more recent Socio-Economic Caste Census (SECC) 2011.
 - Since the implementation of the Mandal Commission report, over **500 new castes have been added to the Central list of OBCs**. The 1931 Census does not have the population for these new additions.
 - The 1931 census also **does not have population of princely states** that were **not ruled by the British**.
- **Information unavailability on social and educational status:** There is lack availability of information regarding the social and educational backwardness of various castes.
- It could be a very **difficult exercise statistically** due to following reasons:
 - **Large number of castes:** According to NCBC, there are 2514 OBC castes in the country and scientific sub-categorization by analyzing each caste could be challenging.
 - **Variation from state to state:** There are significant variations within castes from state to state which implies data collection needs to be larger and more robust.

What more can be done to ensure equitability of benefits?

- **Revising the creamy layer ceiling:** National Commission for Backward Classes (NCBC) demanded that the income ceiling be further revised as the current limit is not in up to date with the associated purchasing power.
- **Strengthening NCBC:** Expanding the powers and domain of NCBC as envisaged by providing the Commission with a constitutional status.

National Commission for Backward Classes (NCBC)

- Until now, under **Article 338**, it was the National Commission of Scheduled Castes (NCSC) that addressed the grievances of the OBCs.
- The present NCBC (set up under the National Commission for Backward Classes Act, 1993 as Article 338b of the Constitution) can only **recommend inclusion and exclusion of castes** from the OBC list and the level of income that cuts off the “creamy layer” among these castes from the benefits of reservation.
- The **123rd Constitutional Amendment Bill (102nd Constitutional Amendment Act)** aims to provide constitutional status to NCBC that will give it the powers akin to the Commission of Socially and Economically Backward Classes (SCBCs). The functions performed by NCSC will now get transferred to the new panel.
- The amendment also brings about **changes in Article 342a and Article 366**.
 - Article 342a relates to the Central list of Socially and Educationally backward classes.
 - Article 366 contains the definitions used in the Constitution unless specifically stated otherwise.
- Under the Act, the **NCBC will comprise of five members** appointed by the President. Their tenure and conditions of service will also be decided by the President.
- Key functions performed by the panel:
 - In the case of **grievances** related to non-implementation of reservations, economic grievances, violence, etc. people will be able to move the Commission.
 - Act gives the proposed Commission the power to **inquire into complaints of deprivation of rights and safeguards**.
 - It also gives it the **powers of a civil court** trying a suit and allows it to summon anyone, require documents to be produced, and receive evidence on affidavit.

Related News

Sub-categorisation of Scheduled Castes and Scheduled Tribes

- Recently, a five-judge Constitution Bench of the Supreme Court reopened the legal debate on the issue.
- **Background:**
 - In the **E V Chinnaiah case in 2005**, the court had held that special protection of SCs is based on the premise that “**all Scheduled Castes can and must collectively enjoy the benefits of reservation** regardless of inter-se inequality” because the protection is not based on educational, economic or other such factors but solely on those who **suffered untouchability**.
 - The Bench **ruled in favour of giving preferential treatment to certain Scheduled Castes** over others to ensure equal representation of all Scheduled Castes but it referred the issue to a larger Bench to decide as E V Chinnaiah case was also taken by a five judge bench.

- **Need for sub-categorization:** States have argued that among the Scheduled Castes, there are some that remain grossly under-represented despite reservation in comparison to other Scheduled Castes.
 - For example, in Andhra Pradesh, Punjab, Tamil Nadu and Bihar, special quotas were introduced for the most vulnerable Dalits. In 2007, Bihar set up the Mahadalit Commission to identify the castes within SCs that were left behind.
- **Possible methods to introduce sub-categorization:**
- **Creamy layer:** The concept of a “creamy layer” within SCs was upheld by the court in a 2018 judgment in *Jarnail Singh v Lachhmi Narain Gupta*.
- **Preferential Treatment:** Punjab’s law applies a creamy layer for SCs, STs in reverse — by giving preference to Balmikis and Mazhabi Sikhs.

2.2.4. ISSUE OF LOCAL RESERVATION IN PRIVATE SECTOR JOBS

Why in News?

Haryana Cabinet cleared a draft ordinance that seeks to reserve 75% of the jobs in private enterprises for local residents to address the aspect of unemployment of the local population on a priority basis.

Background

- A survey done by the Centre for the Study of Developing Societies (CSDS) in 2016 showed that nearly **two-third of respondents were in favour that people from the state** should be given priority vis-à-vis employment opportunities.
- Similar demands are being raised in other states like **Andhra Pradesh, Madhya Pradesh, Karnataka, Gujarat, Maharashtra etc.**
 - Earlier, similar 75% job reservation to locals was given in Andhra Pradesh but the matter is sub judice and AP High Court has indicated that it may be unconstitutional.
- Such moves are considered mainly to **promote Inclusive Development**. For example, in Germany, every village has a factory. India could also have industries in villages and provide jobs to the local people for an all-round development.

Reasons behind demand for local jobs

- **Rising unemployment-** With unemployment figures likely to rise drastically in the backdrop of pandemic and lack of access to skills and low employability, these demands are only going to rise in future.
- **Agrarian Distress-** The agrarian sector is under tremendous stress across the country, and young people are desperate to move out of the sector, hence seeking local jobs.
- **Displacement of landowners-** Since most of the land requirement is met by acquiring private agricultural lands, the landowners are being displaced and deprived of their occupation and thereby the associated loss of income generates demand for local level jobs.
- **Lack of participation of all sections in the workforce-** Several reports like, the State of Working India 2018 have shown that discrimination is one of the reasons for under-representation of Dalits and Muslims in the corporate sector. Reservation could help these sections overcome this discrimination.
- **Perception that Central devolution is insufficient-** especially in the southern states, as they feel successive finance commissions accord a high weightage to poverty and population vis-a-vis development thus majority share goes to the northern states. In this context, local reservation provides them a sense of indirect economic justice.
- **Extent of migration:** According to some estimates drawn from 2011 Census, NSSO surveys and Economic Survey suggests that there are a total of about 65 million inter-state migrants, and 33 per cent of these migrants are workers. These migrants increase the labour market competition which fuels the demand for reservation.

Issues with implementation of the ordinance

- **May not pass the legal scrutiny-** It is violative of Article 14 (Right to equality) and Art 16 (Right to equal opportunity). Moreover, Article 16 does not empower the state government but rather the Parliament to provide reservation in jobs on the basis of residence but that too is limited to public sector.
- **Dangerous for unity of the country-** Such moves could lead to a Pandora’s box where other states start implementing such policies, which result in fractures in the unity of India.
- **Concerns of the Industry-** Although, most of the units employ locals only, however, there are certain sectors like chemical technology, textile and biotechnology, where it may be difficult to find locals for the jobs and the units are forced to search outside.

- It will likely facilitate corruption and create **another barrier to ease of doing business**.
- **Difficult to attract investments**- Such a decision may lead to relocation of industries elsewhere and also alienate the potential investors. Lack of investments could further drop the job creation.
- Plan may not impact micro or smaller units as they can still engage localities. However, **medium and large-scale companies and MNCs like** Auto industry which contributes more than 25% of the state GDP of Haryana **will be adversely impacted**.
- Since these industrial units cannot 'import' labourers from elsewhere; the burden of imparting the requisite skills to, and of employing, locals will fall on the units.

Conclusion

Job reservation for locals may not enhance their economic opportunities in the long run. Only, **raising the standard of education and skilling youth** alongside the necessary structural reforms is the only way to increase the size of the economic pie in the absolute sense.

2.2.5. JOB RESERVATIONS, PROMOTION QUOTAS NOT A FUNDAMENTAL RIGHT

Why in news?

The Supreme Court ruled that there is no fundamental right to reservations in appointments and promotions under articles 16(4) and 16(4A) of the Constitution.

More on news

- The case pertains to a decision by the Uttarakhand government in 2012. Back then, the government had decided to fill up posts in public services without providing reservation to members of the Scheduled Caste (SC) and Scheduled Tribe (ST) communities.

About the Judgement

The Court held that

- Article 16 (4) and 16 (4-A) are in the nature of **enabling provisions**, vesting a **discretion on the State Government** to consider providing reservations, if the circumstances so warrant.
- It is settled law that the **state cannot be directed to give reservations for appointment** in public posts. The order further adds that the state is not bound to make a reservation for SCs and STs **in matters of promotions**.
- However, if the **state wishes to exercise its discretion** and make such provision, it **has to collect quantifiable data** showing 'inadequacy of representation of that class in public services.
- If the decision of the state government to provide reservations in promotion is challenged then the state concerned will have to **place before the court the quantifiable data** that reservations became necessary on account of inadequacy of representation of SCs and STs without affecting general efficiency of administration as mandated by Article 335.

Analysis of the judgement

- The fact that reservation cannot be claimed as a fundamental right is a **settled position under the law** and has been pointed out by several judgments in the past.
 - In 1967, a five-judge bench in **C.A. Rajendran v. Union of India** held that the government is under no constitutional duty to provide reservations for SCs and STs, either at the initial stage of recruitment or at the stage of promotion.
 - The position went on to be **reiterated in several other decisions**, including the nine-judge bench ruling in **Indra Sawhney v. Union of India (1992)** and the five-judge bench decision in **M Nagaraj v. Union of India (2006)**.
- Although this position of law is a settled one, it is nonetheless **at odds with certain other principles** at the heart of the **constitutional vision of equality**.
 - In **NM Thomas judgement (1976)**, the Supreme Court held that the Constitution was committed to an **idea of substantive equality**, i.e. it had to take the **actual circumstances of people** into account when determining what constituted "equal treatment".
 - The **principled reason for this position** was that groups of people who face structural and institutional barriers towards being able to compete on "equal terms" with others in society — for reasons that are historical, but whose effects are enduring — must be treated in a way that mitigates those existing conditions of inequality.

- To interpret the obligations of the state **purely from the textual foundations of Article 16** is not an appropriate approach. Fundamental rights are not isolated provisions and ought to be looked into as an interconnected whole.
- As there are **less avenues for the direct appointment in higher posts**, reservations play a major role for the representation of backward classes in higher posts.
 - According to a Parliament reply last year, only one of the 89 secretaries posted at the Centre belonged to the SC, while three belong to the ST. The court order **may go against the substantive equality** in higher posts.

2.2.6. EWS QUOTA IN STATES

Why in news?

The **central government** recently told the **Supreme Court** that **state governments** were free to decide whether to implement the **10% reservation** for the **economically backward** in jobs and admissions.

Reservation to Economically Weaker Section

- The **103rd Constitution Amendment Act 2019** inserted Article 15 (6) and Article 16 (6) in the Constitution to allow reservation for the Economically Weaker Section (EWS) among the general category.
- Article 15 has been amended to enable the government to take **special measures** for the advancement of EWS.
- Up to 10% of seats may be reserved for such sections for admission in educational institutions. Such reservation **will not apply to minority educational institutions**.
- The newly added **Article 16(6)** permits the government to reserve up to **10% of all posts** for the EWS of citizens.
- This reservation of up to 10% for the EWS will be in addition to the existing reservation cap of 50% reservation for SC, ST and OBCs.
- The central government will notify the “economically weaker sections” of citizens on the basis of family income and other indicators of economic disadvantage.

Arguments in favour of reservation based on economic status

- **Need for new deprivation assessment criteria:** While caste still remains a cause of injustice, it is not the sole determinant of backwardness. With modernisation, the symmetry between caste and class has broken down to a certain extent
- In **Ram Singh v. Union of India (2015)**, SC asserted that social deficiencies may exist beyond the concept of caste (e.g. economic status / gender identity as in transgenders). Hence, there is a need to evolve new yardsticks to move away from caste-centric definition of backwardness.
- **Increasing dissatisfaction among various sections:** Politically, the class issues have been **overpowered by caste issues**. This has created a sense of dissatisfaction amongst communities with similar or poorer economic status but excluded from caste-based reservation.

Arguments against extending reservations on economic basis:

- In **M. Nagaraj v. Union of India (2006)**, a Constitution Bench ruled that equality is part of the basic structure of the Constitution. The 50% ceiling is a constitutional requirement without which the structure of equality of opportunity would collapse.
- **The primary purpose of reservation** was to provide representation to the hitherto marginalized and **not as a poverty alleviation program** for the economically deprived. This amendment runs **contrary to this primary purpose of reservation**.
- **Definition of EWS and allotment of quota:** The issue with current definition of EWS is that it is too broad and would include large sections of population. Further, it also puts families below poverty line and the ones with income of 8 lakh/annum in the same category.
- **‘Pandora’s box’ of demands:** Reservation as a tool to ensure social justice may lead to a further increase in demands from various sections over time. This will result in **diluting the very basis of the policy** in the long term.
- **Tool of populism:** Offering reservations has increasingly become tool for political gains in politics. This affects their credibility as a tool for social justice.

Conclusion

There is a need to move towards a model which is composite and accounts for multiple axis of discrimination to be addressed comprehensively. There is also a need for robust data collection for better targeting and focus on addressing inequalities where they first emerge. A multi-pronged approach to address multiple underlying inequalities is needed in the long term.

2.3. KESAVANANDA BHARATI CASE

Why in news?

Recently, Kesavananda Bharati of landmark **Kesavananda Bharati Sripadagalvaru and Others v State of Kerala** case passed away.

About the Kesavananda Bharati Case

- The case dealt with a petition against the Kerala Government challenging the compulsory acquisition of his land by the Government under the **Kerala Land Reforms Act 1963**, as a violation of Fundamental Rights (FRs), as enshrined in - **Articles 25, 26 and 31** of the Constitution of India.
- The case was heard by a Bench of 13 judges — the largest formed in the Supreme Court (SC).
- As hearing proceeded, the scope of the case was expanded to address the following-
 - interpretation of **Golaknath case**
 - interpretation of the **Article 368** (Power of Parliament to amend the Constitution)
 - the validity of the **24th Constitutional Amendment Act, Section 2 and 3** of the **25th Constitutional Amendment Act** and **29th Constitutional Amendment Act**.

Background

- In the **Golaknath v. State of Punjab case**, SC had held that-
 - Article 368 merely laid down the amending procedure but **did not confer upon Parliament the power to amend the Constitution**.
 - There is no difference between the **amending power and legislative powers of Parliament** and any amendment of the Constitution must be deemed law as understood in Article 13 (2) (prohibits the state to make any law taking away or abridging FRs). This essentially meant that **FRs could not be amended by the parliament**.
 - To amend the FRs a new Constituent Assembly would be required.
- After the Golaknath case several constitutional amendments were made by the Parliament-
 - **24th Amendment:** It stated that-
 - ✓ the constitutional amendments are not 'law' under Article 13, thus Parliament has the power to amend any FRs.
 - ✓ the Parliament has the power to amend any provision of the Constitution of India.

Evolution of Doctrine of Basic Structure

The 'Basic Structure' doctrine finds no reference in the Constitution. It evolved through various court judgments-

- The SC in cases such as **Shankari Prasad Case (1951)** and **Sajjan Singh case (1965)** had earlier held that Parliament can amend any part of the Constitution including the FRs using Article 368.
- **Golaknath case (1967):** In this case SC held that FRs cannot be amended by the Parliament, implying that **some features of the Constitution lay at its core** and required much more than the usual procedures to change them. This laid the pathway for the '**Basic structure doctrine**'.
- **Kesavananda Bharati case (1973):** The SC held that Parliament can amend any part of the constitution including FRs, given that the "basic structure of the Constitution" is not disturbed.
- **Evolution on case to case basis:** The SC had since then strengthened and reaffirmed the doctrine and elaborated on the principles that constitute the 'Basic Structure' of Indian Constitution, in several judgments such as- **Indira Nehru Gandhi v. Raj Narain case (1975)**, **Minerva Mills case (1980)**, **S.R. Bommai case (1994)** etc.
- Some principles that are presently part of the 'Basic Structure' are stated below-
 - sovereignty of India
 - essential features of the individual freedoms secured to the citizens
 - mandate to build a welfare state
 - supremacy of the Constitution
 - republican and democratic form of government
 - secular and federal character of the Constitution
 - separation of powers between the legislature, executive and the judiciary
 - unity and integrity of the nation
 - power of Judicial review
 - harmony and balance between FRs and DPSPs etc.

- **25th Amendment:**
 - ✓ **Section 2** of the act 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.
 - ✓ **Section 3** gave precedence to 'Directive Principles of State Policy (DPSP)' over the FRs and **took away the scope of Judicial Review** for policies laid down under several DPSPs (Articles 39 (b) and 39 (c)).
- **29th Amendment:** It added two land reform legislations to the **Ninth Schedule** of the Constitution of India (list of central and state laws which cannot be challenged in courts).

Outcomes of Kesavananda Bharati Case

- **Upheld the validity of the 24th amendment:** SC held that **Parliament had the power to amend any or all provisions of the Constitution** (including FRs), with a condition that the amendments should not alter, damage or destroy the essential features or the fundamental principles of the Constitution. This came to be known as the "**Basic Structure Doctrine**".
- **Corrected judgments of the Golaknath case:** SC held that Article 368 contained both the power and the procedure for amending the Constitution and that **amending powers and legislative powers of Parliament were different**.
- **Other judgments:** SC upheld the 25th and 29th Amendments except for the parts that curtailed its power of judicial review and also asserted that the **Preamble is a part of the Constitution** and hence amendable.

Significance of the case

- It **expanded the scope of judicial review**, where the apex court was free to mould the 'Basic Structure' doctrine to strike down any constitutional amendment that attacks the very spirit of the Indian Democracy.
- Despite the large number of amendments made to the Indian Constitution, the 'Basic structure doctrine' helped in **preserving the integral philosophies of its framers**.
- It created a check on Parliament's endeavor to wipe out judicial review and strive for unconditional power to amend the Constitution (through Constitution (42nd Amendment) Act, 1976).
- Also, it clarified the distinction in amending and legislative powers of Parliament and gave the Preamble its righteous and integral position in the India constitution.

2.4. ONE NATION ONE LANGUAGE

Why in news?

Recently, on the occasion of Hindi Diwas, the Union home minister had proposed to promote Hindi as the country's common language which resurfaced **debate over one nation one language** in the country.

Background

- The debate over **One Nation One Language** started in the constituent assembly debates on the official language.
- Hindi was voted as official language, however due to outpour and anti-Hindi agitation from various sections, **English** was also continued as an associated official language.

Key Debates on the issue

- **Understanding the Relation Between Language and Identity:** Language is intrinsically tied to identity, and this often includes the identity of a nation.
 - Thus, there is a close connection between language, identity and policy.

Basis for promoting Hindi language

- **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 and
 - to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule.
- **Article 120 and 210** regarding language to be used in Parliament and state legislature respectively gives the option of transacting business in Hindi as well in English.
- **Article 343** gives power to parliament to decide by law, the languages to be used for official work.
- **Article 344** provides for constitution of a parliamentary committee every 10 years to recommend to the President regarding progressive use of the Hindi language for the official purposes of the Union and restrictions on the use of English.

- **Language vs Nationalism:** The relationship between language and a nation is a fundamental one, as language is often used in the very creation of nations.
- **What is the Idea of having one Nation:** The meaning of one in 'one nation' cannot be based on quantity and has to be only a quality as majority does not create oneness. Thus, the oneness is the kind of oneness which is between the humans and the world, and oneness between each individual of nation, independent of the language we speak or the religion we practice.

Arguments in favour of One Nation One language

- **Removing barriers in the development:** There are various areas where there is a perceived lag only because of lack of national language, like trade, education and research.
- **For effective administration:** The various people who work for central government or Armies etc. always face the language problem when they move to other regions of India. Therefore, the administrative machinery will not be able to deliver efficiently, if the language becomes a barrier in understanding people's aspirations and needs.
- **To give India a global Identity:** A uniform national language, will give us great advantage at global scale due to its large number of users thus forcing people of other nations to learn that language etc.

Arguments against One Nation One Language

- **Idea of one country, one language: A colonial Construct:** The idea that a language represents a nation is one of the colonialism's construct.
- **Issue of consensus:** There is a lack of consensus- among the population with respect to one language, as the whole construct of a national language seems more of an imposition of one language over others.
- **Diverse structure: A uniform language goes against the idea of a diverse and federal structure of the country, where such common language may not be desirable. It also runs contrary to the spirit of the Constitution and our country's linguistic diversity"**
- **Against the spirit of three-language formula,** which should not be tinkered with and unnecessary controversies should be avoided on such 'emotive' issues.
- **Inevitability of English:** English is today's language of science and technology in the whole world. Even if we replace English from all technological usage in India with Hindi, still it will remain the language of science.

Can Hindi be the choice for "One Language, one nation"?

Arguments in Favour

- Hindi can serve as a crucial link to preserve **our ancient philosophy, culture and memory of freedom struggle.**
- Hindi is **most widely spoken** in the country across various regions thus can become the lingua franca.
- **In agreement with constitutional framers-** such as Mahatma Gandhi and Sardar Patel, who appealed to citizens to increase the use of the mother tongue and Hindi.
- **Safeguard the diverse language base-** of the country which comprise of 122 languages and more than 19,500 dialects. It is important that the culture is preserved from the foreign influence.
- **Suitable application of Hindi-** could be done such as in the areas of **law and science and technology.**

Arguments Against

- Hindi is spoken in pure form **even in the Hindi Heartland** (North and Central India) with several dialects of the language. Further, majority-spoken language is **Hinglish (a mix of Hindi and English)** while there are parts of the country where Hindi is hardly spoken or understood leave alone being the language of choice.
- **Similarly,** the history of Hindi is much more recent than many languages of India, say Tamil, Kannada, Telugu, and so on.
- Most of marginalized castes and indigenous communities of India prefer English, a language devoid of caste memory and a language that provides mobility.
- **Article 29** gives every Indian the right to a distinct language, script & culture.

Three-language formula

- It is commonly understood that the three languages referred to are **Hindi, English and the regional language of the respective States.**
- Though the teaching of Hindi across the country was part of a long-standing system, it was crystallised into a policy in an official document only in the **National Policy on Education, 1968.**
- It was again mooted in NPE 2019 but later the idea was dropped from the draft.
- State has been following the **two-language formula for many decades,** under which only English and one regional language are compulsory in schools.

Conclusion

- To preserve our ancient philosophy, our culture and the memory of our freedom struggle, it's important that we **strengthen our local languages simultaneously** without being biased towards any one language.
- While the development of Hindi is undoubtedly a constitutional command the Union government cannot ignore, however, the manner in which it is done **should not give the impression to the States that there is creeping imposition of Hindi**. At the same time **three language policy** can also be pondered upon.

2.5. 9TH SCHEDULE OF INDIAN CONSTITUTION

Why in news?

Recently there was **demand to put reservation provisions** for schedule caste, schedule tribe and other backward classes **under 9th schedule of constitution**.

Background of 9th schedule

- At the time of independence, a significant part of the country's population lived in the villages and was dependent on agriculture, hence to **attain the goal of social and economic justice, agrarian reforms were most important**. And, fundamental rights (especially right to property) were seen as hindrance to this process of social reform. Hence, 9th schedule was introduced with the objective of expediting the process of Agrarian reforms.
- 9th Schedule **contains a list of central and state laws which cannot be challenged in courts even if they violated the Fundamental Rights**.
- It was **added by 1st Amendment to the Constitution, which inserted Article 31B** which declares that none of the Acts and Regulations specified in the Ninth Schedule shall be deemed to be void on the ground that it is inconsistent with any of the Fundamental Rights.
- Also, it has **retrospective operation** i.e. if laws are inserted in the Ninth Schedule after they are declared unconstitutional, they are considered to have been in the Schedule since their commencement, and thus valid.

Criticisms of 9th schedule

- **Against fundamental rights:** 9th schedule provides complete blanket protection to Central as well as the State laws against Fundamental Rights. Thus, it acts as a stumbling block against the fundamental rights enshrined in the constitution.
- **Against principle of Judicial review:** It deprives the courts of the power to examine the constitutionality of the Acts. Supreme Court, in L. Chandra Kumar case- 1997 held that **power of judicial review over legislative action** vested in the High Courts under Article 226 and in the Supreme Court under Article 32 of the Constitution is an **integral and essential feature of the Constitution, constituting part of its basic structure**.
- **Outlived its utility:** The main motive during the insertion of this schedule was to **protect land reform legislations from judicial dissection** and ensuing delay. But in due course it has been expanded to contain laws which have nothing to do with not only land reforms but also fundamental rights and directive principles of state policy at large.
- **Tool to realise political gains:** Since the commencement, 9th Schedule has dilated constantly to the extent that it now harbours 257 acts within it. It has given rise to various demands to include Acts under it to protect them from constitutional challenge. E.g. A Tamil Nadu law that provides 69 per cent reservation in the state is part of the Schedule.

Supreme Court's view on 9th Schedule

- **In IR Coelho versus State of Tamil Nadu case**, Supreme Court held that laws placed in the 9th Schedule were open to judicial scrutiny implying that such laws could not be entitled to blanket protection.
 - SC observed that **Judicial review is a basic feature of the Constitution** and to insert in the 9th Schedule an Act which, or part of which, has been struck down as unconstitutional in exercise of the power of judicial review, is to destroy or damage the basic structure of the Constitution.

- Thus, **SC laid down dual test to examine the validity of a law placed in the Ninth Schedule** i.e. Whether it violates any fundamental right and if yes whether the violation also damages or destroys the basic structure.
 - If the answer to both the questions is in the affirmative, then only a law placed in the Ninth Schedule can be declared unconstitutional.

Conclusion

From its inception, 9th Schedule was put up as a constitutional device to safeguard land reform laws. The provisions were of significant importance at that point of time. But historical functioning of this provisions reveals that it has worked to its exhaustion and this necessitates a relook into its requirement.

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3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATURE AND EXECUTIVE

3.1. LEGISLATURE

3.1.1. PARLIAMENTARY COMMITTEES

Why in news?

Recently, suggestions were made to increase the tenure of parliamentary committees from 1 year to two years in the backdrop of COVID-19.

About parliamentary committees

- Parliamentary committee means a committee that:
 - Is appointed or elected by the House or nominated by the Speaker / Chairman
 - Works under the direction of the Speaker / Chairman
 - Presents its report to the House or to the Speaker / Chairman
 - Has a secretariat provided by the Lok Sabha / Rajya Sabha
- Broadly, parliamentary committees are of two kinds—**Standing Committees and Ad Hoc Committees**. The former are permanent (constituted every year or periodically) and work on a continuous basis, while the latter are temporary and cease to exist on completion of the task assigned to them.

Role of parliamentary committees

- **Detailed scrutiny:** Due to the magnitude of work and the limited time available in the parliament, comprehensive scrutiny of bills becomes difficult. Also, committees working continues to take place even if Parliament sessions are disrupted e.g. during COVID-19.
- **Impartial functioning:** Since antidefection law does not apply to these committees, it provides a platform for building consensus on various issues.
- **Engagement with multiple stakeholders:** The committees regularly seek feedback from citizens and experts on subjects it examines. E.g. RBI governor was summoned by the Finance Committee on the subject of demonetization.
- **Uphold government accountability:** It increases the ability of Parliament to scrutinize government policies and make it accountable through an informed debate in the legislature. They examine budgetary allocations for various departments and other policies of the government.
- **Financial Prudence:** The system ensures economy and efficiency in public expenditure, as the ministries/ departments would not be more careful in formulating their demands

Concerns with their functioning

- **Bypassing parliamentary committees:** E.g. only 25% of the bills introduced were referred to the Committees in the 16th Lok Sabha, as compared to 71% and 60% in the 15th and 14th Lok Sabha respectively.
- **Short tenure for members:** Constitution of committees for a year leaves very little time for specialisations.
- **Lack of expertise:** Members of the committee lack technical expertise required to go into intricacies of specialized subjects under consideration of some committees such as accounting and administrative principles,
- **Poor attendance of Members:** The attendance of members in committee meetings has been a cause for concern as well, which is about 50% since 2014-15.
- **Politicization of the proceedings:** With greater public interest shown in some issues, members have started taking strict party lines in committee meetings.

Way forward

The **recommendations of the National Commission to Review the Working of the Constitution, 2002** like referring all bills to the Committees, longer tenure for its members and strengthening the Committees with adequate research support shall be taken up. Other measures:

- **Avoid overlapping functions:** Additional responsibilities of financial oversight can be given to them and doing away with existing finance committees to avoid overlapping of work on budgets etc.

- **Regular Monitoring:** There is a need to formulate mechanism for a regular assessment of the performance of the committee.
- **Adopting Best Practices:** In several countries, the concerned minister appears before the committee to elaborate and defend the policies of the government while in India, ministers don't appear before the committees.

3.1.2. PARLIAMENTARY PRIVILEGES

Why in news?

Breach of privilege was in news for various reasons.

Concept of privileges and types of privileges

- The Constitution (under **Art. 105** for Parliament, its members & committees / **Art. 194** for State Legislature, its members & committees) confers certain privileges on legislative institutions and their members to:
 - Protect freedom of speech and expression in the House and insulates them against litigation over matters that occur in these houses
 - Protect against any libel through speeches, printing or publishing
 - Ensure their functioning without undue influence, pressure or coercion
 - Ensure sovereignty of Parliament
- Currently, **there is no law that codifies all the privileges** of the legislators in India.
- Privileges are based on five sources: i) Constitutional provisions ii) Various laws of parliament (iii) Rules of both the houses iv) Parliamentary conventions v) Judicial interpretations
- Whenever any of these rights and immunities is disregarded, the offence is called a **breach of privilege** and is punishable under law of Parliament.
- However, there are no objective guidelines on what constitutes breach of privilege and what punishment it entails.

Types of Privileges

Collective

- Exclude strangers from proceedings. Hold a secret sitting of the legislature
- Freedom of press to publish true reports of Parliamentary proceedings. But, this does not in case of secret sittings
- Only Parliament can make rules to regulate its own proceedings
- There is a bar on court from making inquiry into proceedings of the house (speeches, votes etc.)

Individual

- No arrest during session and 40 days before and 40 days after the session. Protection available only in civil cases and not in criminal cases
- Not liable in court for any speech in parliament
- Exempted from jury service when the house is in session.

Challenges with respect to privileges

- **Against 'Constitutionalism'** or doctrine of limited powers. **Absence of codified privileges** gives unbridled power to house to decide when and how breach of privilege occurs.
- Discredits **separation of powers**, as speaker acts as complainant, advocate and the judge.
- **Penal action in cases of breach of privileges unwarranted**, unless there is an attempt to obstruct the functioning of the house or its members.
- **Must only be invoked by legislature when there is "real obstruction to its functioning"**. Breach of privilege invoked for genuine criticism of members of the house or due to political vendetta, reduces accountability of elected representatives.
- **Invoked on grounds of defamation by individual members**, while judicial remedy available under defamation and libel law.

Instances of breach of privileges

- In 1978, Indira Gandhi faced a motion for breach of privilege on the basis of observations of excesses during emergency.
- Tamil Nadu assembly punished the journalists of The Hindu for criticizing the CM in 2003.
- Karnataka assembly passed a resolution imposing imprisonment and fines on scribes in 2017.

Way Forward

- Constituent Assembly envisaged the system of **uncodified privileges based on British House of Commons, as only temporary**. Therefore, there is a need for proper codification of privileges. E.g. **Australia** passed **Parliamentary Privileges Act in 1987**, clearly defining privileges, the conditions of their breach and consequent penalties.

- The decisions of the speaker may be influenced by his/her political affiliations. Therefore, the **trial must be conducted by a competent, independent and impartial tribunal.**
- The 'sovereign people of India' have restricted right to free speech while 'their representatives' have absolute freedom of speech in the houses. Courts must **revisit earlier judgments to find right balance between Fundamental Rights of the citizens and privileges of legislature.**

3.1.3. ANTI-DEFECTION LAW

Why in news?

Recently, the deep political crisis in the state of Madhya Pradesh has once again brought the spotlight on the worrying trend in Indian parliamentary system i.e. **Anti-Defection Law.**

Understanding Anti-defection Law (ADL)

- The **Tenth Schedule** also known as Anti-defection Law, was inserted in the Constitution in 1985, by the **52nd Amendment Act.**
- It lays down the process by which legislators may be disqualified on grounds of defection by the Presiding Officer of a legislature based on a petition by any other member of the House.
- It seeks to provide a stable government by ensuring the **legislators do not switch sides.** It seeks to prevent such political defections which may be due to reward of office or other similar considerations.
- The law **applies to both** Parliament and state assemblies.
- **Disqualification under ADL**
 - **Members:** There are **two grounds** on which a member of a legislature can be disqualified:
 - ✓ If the member **voluntarily gives up the membership** of the party, he shall be disqualified. Voluntarily giving up the membership is not the same as resigning from a party.
 - Even without resigning, a legislator can be disqualified if by his conduct the Speaker/Chairman of the concerned House draws a reasonable inference that the member has voluntarily given up the membership of his party.
 - ✓ If a legislator votes in the House **against the direction of his party** and his action is not condoned by his party, he can be disqualified.
 - **Independent Members:** He becomes disqualified to remain a member of the House if he joins any political party after such election.
 - **Nominated Members:** If he joins any political party after the expiry of six months from the date on which he takes his seat in the House.
- **Exceptions under the law:** Legislators may change their party without the risk of disqualification in **certain circumstances:**
 - If there is a **merger** between two political parties and two-thirds of the members of a legislature party agree to the merger, they will not be disqualified.
 - If a person is elected as the **speaker of Lok Sabha or the Chairman of Rajya Sabha** then he could resign from his party, and re-join the party once he demits that post.

Amendment of the law

- When the anti-defection law was enacted first, **there was a provision** under which if there occurs a **split in the original political party** and as a result of which one-third of the legislators of that party forms a separate group, they shall not be disqualified.
- However, this provision resulted in large scale defections and the lawmakers were convinced that the provision of a split in the party was being misused.
- Therefore, in the **91st Constitutional Amendment in 2003**, defections on the grounds of split and merger were prohibited.
- Now, the only provision which can be invoked for protection from disqualification is the **provision relating to the merger.**

Why anti-defection law needs an overhaul?

- **Rampant defection in spite of the law:** As allegations of legislators defecting in violation of the law have been made in several states including Andhra Pradesh, Arunachal Pradesh, Goa, in recent years.
- **Questionable position of speaker:** The Tenth Schedule gave the Speaker of Lok Sabha and assemblies unquestionable power in deciding petitions seeking disqualification of MLAs under the anti-defection law.
 - This was challenged in the **Supreme Court, in Kihoto Hollohan case [1992]** which ruled that Speakers, while deciding petitions under anti-defection law, exercised judicial powers akin to a tribunal and **hence their decisions would be subject to scrutiny of HCs and the SC.**
- **To stabilise the parliamentary system and in turn democracy** as often Political parties have been found indulging in horse-trading and corrupt practices.

- **No room for legitimate dissent:** The law often restricts a legislator from voting in line with his conscience, judgement and interests of his electorate, as political parties issue a direction to MPs on how to vote on most issues.
- **Open to interpretations:** The first ground for disqualifying a legislator for defecting from a party is his 'voluntarily giving up' the membership of his party. This term is susceptible to interpretation.

Ways to strengthen the Anti-defection Laws

- **Alternate independent mechanism:** Recently, the Supreme Court said the "Parliament should amend the Constitution to substitute the Speaker with a **permanent Tribunal headed** by a retired Supreme Court Judge or a retired Chief Justice of a High Court, or some other outside independent mechanism, to ensure that such disputes are decided both swiftly and impartially.
- **Reasonable time frame to decide the disqualification cases by the speaker:** The Supreme court had said that "the Speaker, in acting as a Tribunal under the Tenth Schedule, is bound to decide disqualification petitions **within a reasonable period**".
- **Administrative Reforms Commission and various other expert committees** have recommended that the issue of disqualification of members on grounds of defection should be decided by **the President/Governor** on the advice of the **Election Commission**.
- Several experts have suggested that **the law should be valid only for those votes** that determine the **stability of the government** (passage of the annual budget or no-confidence motions).

Related News

Removal of Manipur's Minister by the Apex Court by invoking Article 142.

- Recently for the first time, the **Supreme Court removed** Manipur's Minister against whom disqualification petitions were pending before the Speaker since 2017, from the state cabinet.
- Though, **Article 212 of the Constitution bars courts from inquiring into proceedings of the Legislature**, the SC was "**constrained**" to invoke the court's extraordinary powers under Article 142 of the Constitution, "given the extraordinary facts" in the case, as in this case the Speaker's conduct has been called into question on several occasions.
- **Article 142:** 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, and any decree so passed or orders so made shall be enforceable throughout the territory of India.

3.1.4. QUESTION HOUR

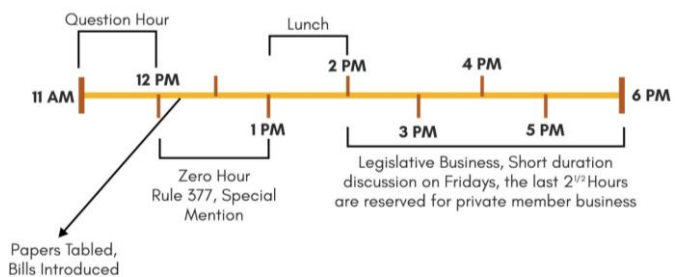
Why in News?

In the wake of the ongoing COVID-19 pandemic, Lok Sabha and Rajya Sabha suspended question hour and private members' business during the last monsoon session of Parliament.

More on News

- As per revised schedule,
 - **Zero hour has been cut short** to 30 minutes.
 - **No Question Hour** but MPs can ask Unstarred questions.
 - **Short notice questions** would be allowed with oral answers in case of urgency upon the discretion of the Speaker/Chairman.
 - **No Private Members' business**, hour set aside for bills put up by MPs.

A DAY IN PARLIAMENT



Question Hour

- This is first hour of a sitting. It is during this MPs ask questions to ministers and hold them accountable for functioning of their ministries.
- Both Houses of the Parliament follow their own set of rules which are formulated to govern themselves.
- Category of questions asked:
 - **Starred Questions:** The answers to these questions are desired to be given orally on the floor of the House during the Question Hour.
 - **Unstarred Questions:** The answers to these questions which are deemed to have been laid on the Table of the House are given by Ministers at the end of the Question Hour in a written form.

- **Short Notice Questions:** These questions are asked orally in the House after the Question Hour or as the first item in the agenda where there is no Question Hour at a notice shorter than that prescribed for Starred and Unstarred Questions.
- **Questions to Private Members:** This Question is addressed to a Private Member provided that the subject matter of the question relates to some Bill, Resolution or other matter connected with the business of the House for which that Member is responsible.

Zero Hour

- The time **immediately following the Question Hour has come to be known as "Zero Hour"**.
 - It starts at around 12 noon (hence the name).
- Typically, discussions on important Bills, the Budget, and other issues of national importance take place from 2pm onwards.
- Members wishing to raise matters during the "Zero Hour" need **to give notice to the Speaker prior to the start of the daily session**.
- Zero Hour is an Indian parliamentary innovation and unlike Question Hour it is **not mentioned in the Rules of Procedure**. Zero hour has been in existence since 1962.
 - It is not mandatory to have a Zero Hour every day during the session.

- When a member feels that the answer given to a question is **not complete or does not give the desired information** etc., he **may be allowed by the Speaker to raise a discussion** in the House for half an hour. The procedure is, therefore, **termed as 'Half-an-Hour Discussion'**.

Significance of question hour

- **Fulfill the objectives of the parliamentary democracy:** Basic concept of the parliamentary governance is that it owes a collective responsibility towards the parliament. Question hour obliges the government to be responsible and accountable.
- **Generate public awareness:** A question and discussion on an issue leads to greater public notice as the information reaches to the far ends of the nation.
- **Formulate public policy:** Government gets to know the short comings and flaws in the policy and also certain clarifications are also done and the reasoning and aim behind the policy or law is clarified by the government.
- **Limit judicial intervention:** Lack of parliamentary oversight has been compounded by judicial intervention in many policy issues. For example, the government's actions related to the lockdown and the hardships caused to migrants should have been questioned by Parliament. However, this was taken to the Supreme Court, which is not equipped to balance policy options.

3.2. EXECUTIVE

3.2.1. DOCTRINE OF NEUTRALITY

Why in news?

In recent times, constitutional offices have come under the scanner of Supreme Court (SC) **on the grounds of political neutrality**.

Understanding doctrine of Neutrality

- It is a bedrock of a constitutional democracy. Neutrality is about being **'a third' vis-à-vis a conflict between others**.
- The claim of neutrality is a claim addressed to the belligerent parties to show respect for the choice of the neutral and **not to become involved in their conflict**.

Significance of Neutrality Doctrine in case of Constitutional offices

- **Upholding constitutional trust:** A constitutional trust has been vested in the office of Speaker, Governor, EC etc. which needs to ensure their neutrality in their actions.
- **Ensuring political fairness:** The exercise of the wide constitutional powers by the constitutional office such as Governor's, speaker's, CAG's and Election Commission's is supposed to be in line with the "sacred" conventions of political neutrality and fairness.
 - However, we see erosion of such conventions in case of Uttarakhand and Arunachal Pradesh, the Speakers in both assemblies had helped ruling parties keep their flocks together by using their powers to disqualify MLAs under the Tenth Schedule.

- **Upholding federalism:** In India, the balance of power is tilted towards the Union. The importance of the constitutional posts such as Governor's arises from, he being the crucial link within this federal structure in maintaining effective communication between the Centre and a State.
- **For continuity in governance and keeping a check on the executives:** Constitutional posts such of Speakers and Governors, acting independently of each other or in concert, can navigate the destiny of State governments.
 - As a figurehead who ensures the continuance of governance in the State, even in times of constitutional crises, Governor's role is often that of a neutral arbiter in disputes settled informally within the various strata of government, and as the conscience keeper of the community.
- **For a fair system of election and thus strengthening democracy:** Elections are pivotal to the quality of a country's governance and can either greatly advance or set back a country's long-term democratic development. Therefore here EC's neutrality is of utmost significance and value.
- **To maintain the health of the economy:** The independence, powers and responsibilities of the constitutional offices like CAG's place high ethical demands on the auditor and the staff he employs or engages for auditing and accounting work.
 - The general standards for the CAG include independence from the legislature and from the executive so that any economic misconduct by the government or siphoning of the public exchequer can be pointed out.

Conclusion

The principle of political neutrality, which requires the state to remain neutral on disputed questions is an extension of traditional liberal principles of toleration and independence of opinion.

Thus, political neutrality casts duties not only on constitutional offices but also on government of the day. The political leaders must protect independent constitutional offices from political interference and must not involve them in political activities or debates.

3.2.2. POWERS OF GOVERNOR

Why in news?

Recent controversy in Rajasthan around Governor's refusal to summon a session as desired by Council of Ministers has brought in light certain issues about Powers of Governor.

Constitutional powers of Governor

- **Article 154:** The executive power of the state shall be vested in the governor and shall be exercised by him either directly or through officers subordinate to him in accordance with this Constitution.
- **Article 163 (1):** There shall be a council of ministers with the chief minister as the head to **aid and advise the governor in the exercise of his functions**, except in so far as he is **required to exercise his functions in his discretion**.
- **Article 163 (2):** If any question arises whether a matter falls within the governor's discretion or not, the **decision of the governor is final** and the validity of anything done by him cannot be called in question on the ground that he ought or ought not to have acted in his discretion.
- The governor **has constitutional discretion in the following cases:**
 - Reservation of a bill for the consideration of the President (Articles 200 and 201).
 - Recommendation for the imposition of the President's Rule in the state (Article 356).
 - While exercising his functions as the administrator of an adjoining union territory (in case of additional charge).
 - Special responsibility in 5th and 6th schedule areas.
 - Seeking information from the chief minister with regard to the administrative and legislative matters of the state.

Some recent issues of controversy include:

- **Governor's power to summon an Assembly session** - SC in 2016 ruled that **governor has no discretion in the matter of summoning the house under Article 174** if chief minister enjoys majority in the house and, therefore, is bound to act on the advice of the cabinet.
- **Governor's power to set an agenda for the session**- Cabinet is **not bound to state the agenda for the session** to governor. Agenda is decided by the Business Advisory Committee presided over by the Speaker.
- **Rajasthan Governor's insistence on 21-day notice for the session** - Rule of 21-day notice (later changed to 15 days) for session was first set by the Lok Sabha and adapted by State legislatures. This used to be notice period for questions. However, there have been instances where sessions have been convened at shorter notice.

- Also, governor has **situational discretion** (i.e., the hidden discretion derived from the exigencies of a prevailing political situation) in the following cases:
 - Appointment of chief minister **when no party has a clear-cut majority** in the state legislative assembly or when the chief minister in office dies suddenly and there is no obvious successor.
 - **Dismissal of the council of ministers** when it cannot prove the confidence of the state legislative assembly.
 - **Dissolution of the state legislative assembly** if the council of ministers has lost its majority.

Concerns with the role of governor

- **Misuse of discretionary powers:** States allege that this provision has often been misused by the governor who acts on behalf of the union government which is opposed to the basic scheme of the Indian Constitution.
- **Appointment by centre:** This often leads to appointment of persons aligning with party's ideology to the post of Governor and he/she remains faithful to the Union government of the day rather than acting on behalf of State Executive.
- **Arbitrary removal:** Even after Supreme Court Judgement in B.P. Singhal v. Union of India calling for a fixed tenure for Governors to encourage neutrality and fairness in the discharge of their duties, it is not being implemented on ground.

Suggestions

- **Sarkaria Commission**
 - The state assembly should not be dissolved unless the proclamation is approved by the parliament.
 - Sparing use of article 356 of the constitution should be made.
 - All possibilities of formation of an alternative government must be explored before imposing presidential rule in the state.
- **M M Punchhi Commission**
 - The governor should follow **"constitutional conventions"** in a case of a hung Assembly.
 - It suggested a provision of **'Localized Emergency'** by which the centre government can tackle issue at town/district level **without dissolving the state legislative assembly**
- **Supreme Court Judgements:**
 - **Bommai case of 1994:**
 - ✓ The court accorded primacy to a **floor test** as a check of majority.
 - ✓ The court also said that the power under Article 356 is extraordinary and must be used wisely and not for political gain.
 - **Rameshwar Prasad case (2006)**
 - ✓ Bihar Governor's recommendation for dissolving the Assembly the previous year was held to be illegal and mala fide
 - ✓ A Governor cannot shut out **post-poll alliances** altogether as one of the ways in which a popular government may be formed.
 - ✓ The court had also said **unsubstantiated claims of horse-trading** or corruption in efforts at government formation cannot be cited as reasons to dissolve the Assembly.

3.2.3. IMPEACHMENT OF US PRESIDENT

Why in news?

Recently, US House of Representatives Speaker announced that the **House would initiate a formal impeachment inquiry against former US President Trump.**

Procedure for Impeachment of President of India (Article 61)	Procedure for Impeachment of President of US
<ul style="list-style-type: none"> • Indian President can be removed from office for "violation of the constitution" whose meaning is not defined in the constitution. 	<ul style="list-style-type: none"> • US president can be removed from office for 'Treason, Bribery, or other high Crimes and Misdemeanours'.
<ul style="list-style-type: none"> • The impeachment charges can be initiated by either House of Parliament. 	<ul style="list-style-type: none"> • Only House of Representatives (lower house) can initiate impeachment proceedings
<ul style="list-style-type: none"> • These charges should be signed by one-fourth members of the House (that framed the charges), and a 14 days' notice should be given to the President. 	<ul style="list-style-type: none"> • Once this is passed with a simple majority, the process goes for trial.
<ul style="list-style-type: none"> • After the impeachment resolution is passed by a majority of two-thirds of the total membership of that House, it is 	<ul style="list-style-type: none"> • Next, the Senate (upper house) is convened like a court, with both sides presenting evidence.

sent to the other House, which should investigate the charges.	
<ul style="list-style-type: none"> If the other House also sustains the charges and passes the impeachment resolution by a majority of two-thirds of the total membership, then the President stands removed from his office from the date on which the bill is so passed. 	<ul style="list-style-type: none"> At the conclusion of these hearings, the President can be removed from office only if two-thirds of the Senate votes for it.

3.2.4. US PRESIDENTIAL ELECTION

Why in news?

Recently, US Presidential elections were held.

Process of US Presidential Election versus Indian Presidential Election

Process of Indian Presidential Election	Process of US Presidential Election
To be eligible for election as President she should be a citizen of India and should have completed 35 years of age, among other things.	President must be 35 years of age, be a natural-born citizen, and must have lived in the United States for at least 14 years.
President's election is held in accordance with the system of proportional representation by means of the single transferable vote	The two main political parties - Republican and Democratic - hold primaries and caucuses to choose the best candidate to represent them in the general election.
Each member of the electoral college is given only one ballot paper. The voter, while casting his vote, is required to indicate his preferences by marking 1, 2, 3, 4, etc. against the names of candidates.	Each party holds a national convention to select a final presidential nominee. State delegates from the primaries and caucuses will "endorse" their favorite candidates.
President is elected by members of electoral college consisting of elected members of <ul style="list-style-type: none"> both the Houses of Parliament, legislative assemblies of the states; legislative assemblies of the Union Territories of Delhi and Puducherry. 	US citizens vote to elect a group of officials called electors, (the total being 538) who choose the president and vice-president. The number of electors in a state is proportionate to the size of its population.
Candidate, in order to be declared elected to the office of President, must secure a fixed quota of votes.	The candidate who receives the majority of the votes from the people of a state will receive all electoral votes of that state. The presidential nominee with the most electoral votes becomes the President.



फाउंडेशन कोर्स सामान्य अध्ययन

प्रारंभिक एवं मुख्य परीक्षा 2021

इनोवेटिव क्लासरूम प्रोग्राम

- प्रारंभिक परीक्षा, मुख्य परीक्षा और निबंध के लिए महत्वपूर्ण सभी टॉपिक का विस्तृत कवरेज
- मौलिक अवधारणाओं की समझ के विकास एवं विश्लेषणात्मक क्षमता निर्माण पर विशेष ध्यान
- एनीमेशन, पॉवर प्वाइंट, वीडियो जैसी तकनीकी सुविधाओं का प्रयोग
- अंतर - विषयक समझ विकसित करने का प्रयास
- योजनाबद्ध तैयारी हेतु करंट ओरिएंटेड अप्रोच
- नियमित क्लास टेस्ट एवं व्यक्तिगत मूल्यांकन
- सीसेट कक्षाएं
- PT 365 कक्षाएं
- MAINS 365 कक्षाएं
- PT टेस्ट सीरीज
- मुख्य परीक्षा टेस्ट सीरीज
- निबंध टेस्ट सीरीज
- सीसेट टेस्ट सीरीज
- निबंध लेखन - शैली की कक्षाएं
- करेंट अफेयर्स मैगजीन

लॉकडाउन तक कक्षाएं ऑनलाइन होंगी।
लॉकडाउन के बाद, ऑफलाइन कक्षाएं शुरू की जाएंगी

DELHI | 29 OCTOBER | 1:30 PM

LUCKNOW | 15 SEPT | 9 AM

JAIPUR | 15 SEPT | 4 PM

लाइव/ऑनलाइन कक्षाएं भी उपलब्ध

4. IMPORTANT ACTS AND LEGISLATIONS

4.1. CITIZENSHIP AMENDMENT ACT

Why in News?

Citizenship Amendment Act (CAA), 2019 was recently enacted by the Parliament that seeks to amend the Citizenship Act, 1955.

Background

- **Article 11 of Indian constitution** empowers Parliament to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship.
- Citizenship (Amendment) Act, 2003 provided that **'illegal migrants' will not be eligible to apply for citizenship by either registration or naturalisation.**
- Section 2(1)(b) of Citizenship Act, 1955 defines **illegal migrant** as a foreigner who:
 - enters the country without valid travel documents, like a passport and visa or
 - enters with valid documents, but stays beyond the permitted time period.
- However, considering the plight of minorities in neighbouring countries, Citizenship Amendment Bill was introduced in Parliament in 2016 but the bill got lapsed.

The Citizenship Act, 1955

- It provides for acquisition of citizenship by **birth, descent, registration, naturalization and by incorporation of territory** into India.
- The Act **prohibits illegal migrants** from acquiring Indian citizenship. It defines an illegal migrant as a foreigner: (i) who enters India without a valid passport or travel documents, or (ii) stays beyond the permitted time.
- It **regulates registration of Overseas Citizen of India Cardholders (OCIs)**, and their rights.

Key provisions of the Citizenship Amendment Act (CAA), 2019

- The amendment provides that illegal migrants who fulfil four conditions **will not be treated as illegal migrants under the Act.** The conditions are:
 - they are Hindus, Sikhs, Buddhists, Jains, Parsis or Christians
 - they are from Afghanistan, Bangladesh or Pakistan
 - they entered India on or before December 31, 2014 they are not in certain tribal areas of Assam, Meghalaya, Mizoram, or Tripura included in the Sixth Schedule to the Constitution, or areas under the "Inner Line" permit, i.e., Arunachal Pradesh, Mizoram, and Nagaland.
 - ✓ These tribal areas include Karbi Anglong (in Assam), Garo Hills (in Meghalaya), Chakma District (in Mizoram), and Tripura Tribal Areas District.
- All **legal proceedings against above category of migrants** in respect of their illegal migration or citizenship will be closed.
- The **period of naturalisation** has been reduced **from 11 years to 5 years** for **above category of migrants.**
- **Grounds for cancelling OCI registration:** The amendment provides that the central government may cancel registration of OCIs, if the OCI has **violated Citizenship Act or any other law so notified by the central government.** Also, the cardholder has to be given an opportunity to be heard.
 - The Act provides that the central government **may cancel registration of OCIs on five grounds** including registration through fraud, showing disaffection to the Constitution, etc.

Arguments in favour of the Amendment Act

- **Religious persecution-** Nehru-Liaquat pact, also known as the Delhi Pact, signed in 1950, sought to provide certain safeguards and rights to religious minorities like unrecognition of forced conversions and returning of abducted women and looted property etc.
 - However, Afghanistan, Pakistan and Bangladesh have a state religion with discriminatory blasphemy laws, religious violence and forced conversions which has resulted in religious persecution of minority groups.
 - For instance, in 1951, the Non-Muslim minorities population 23.20% in Bangladesh which is around 9.6% in 2011.

- **Illegal immigration** from neighboring countries has been a contentious issue for decades. E.g. During the 6-year long agitation that started in 1979 in Assam, the protestors demanded the identification and deportation of all illegal foreigners – predominantly Bangladeshi immigrants. This act would **differentiate between** illegal immigrants and persecuted communities seeking refuge.

Arguments against the Amendment Act

- **Classification of countries:** It is not clear why migrants from these countries are differentiated from migrants from other neighboring countries such as Sri Lanka (Buddhism is the state religion) and Myanmar (primacy to Buddhism).
 - Sri Lanka has had a history of persecution of a linguistic minority in the country, the Tamil Eelams.
 - Myanmar has had a history of persecution of a religious minority, the Rohingya Muslims.
- **Classification of minority communities:** The amendment simply mentions the 6 ‘minority communities’ and there is no mention of ‘persecuted minorities’ or ‘religious persecution.’ So, ideally it should not differentiate between religious persecution and political persecution. Moreover, exclusion of Muslims, Jews and Atheists from CAA is said to be violation of Article 14 of the constitution. For example:
 - Persecution of co-religionists like Shias, Hazaras or Ahmadiyya Muslims in Pakistan (who are considered non-Muslims in that country).
 - The murder of atheists in Bangladesh has also been noticed.
- **Classification based on date of entry:** CAA also offers differential treatment to migrants based on their date of entry into India, i.e., whether they entered India before or after December 31, 2014.
- **Against the letter and spirit of Assam Accord:** The Assam accord put the date of detection and deportation of foreigners as March 25 1971, whereas, for other states, it was 1951. CAA extends the cut-off date for NRC from 25th March 1971 to 31st Dec 2014. CAA extends the cut-off date for NRC from 25th March 1971 to 31st Dec 2014.
- **Cancellation of OCI registration:** giving the central government the power to prescribe the list of laws whose violation result in cancellation of OCI registration, may amount to an excessive delegation of powers by the legislature.
- **Implication on external relations:**
 - The amendment implies that **religious persecution of the Hindu minority in Bangladesh** as one of the reasons for the amendment and also implies that Muslim migrants from Bangladesh will be “thrown out”. This invites trouble from Bangladesh with bearing on bilateral issues.
 - India’s strong commitment to civic nationalism and religious pluralism, have been important pillars on which **India’s strategic partnerships with the US and the West** have been built, which may be imperiled.

Conclusion

- Indian democracy is based on the concept of welfare and secular state and a progressive constitution where Article 21 provides the Right of a dignified life. So, it becomes a moral obligation of the state to allay the fears of minority communities, if any. Hence, the classification done in CAA on the basis of country of origin and religious minorities can be made more inclusive.
- Moreover, India should enact a refugee law wherein the right to live a life without fear or confinement can be protected. If the fear is that people may seek permanent asylum, the UNHCR can work with them officially for their voluntary repatriation, and without rendering long-term refugees ineligible for applying for citizenship.

4.1.1. NATIONAL POPULATION REGISTER

Why in News?

Government has decided to prepare a **National Population Register (NPR)** to lay the foundation for rolling out a citizens' register across the country.

About National Population Register

- A group of ministers created after the Kargil war **recommended compulsory registration of all residents in India**, to facilitate the preparation of a national register of citizens and curb illegal migration.
- The NPR is a **list of “usual residents of the country”**.

- According to the Ministry of Home Affairs, a “usual resident of the country” is one who has been **residing in a local area for at least the last six months, or intends to stay in a particular location for the next six months.**
- The NPR is being prepared under provisions of **the Citizenship Act 1955 and the Citizenship (Registration of Citizens and issue of National Identity Cards) Rules, 2003.**
 - The **Citizenship Act 1955** was amended in 2004 by inserting Section 14A which provides for the following:-
 - ✓ The Central Government may **compulsorily register every citizen of India and issue National Identity Card.**
 - ✓ The Central Government may maintain a **National Register of Indian Citizens (NRIC)** and for that purpose establish a National Registration Authority.
 - ✓ Out of the universal data set of residents, the subset of citizens would be derived after due verification of the citizenship status. Therefore, it is also **compulsory for all usual residents to register** under the NPR.
- NPR will be conducted at the local, sub-district, district, state and national levels.
- It will be conducted in conjunction with the first phase of the **Census 2021, by the Office of the Registrar General of India (RGI) under the Home Ministry.**
 - Only **Assam will not be included**, given the recently completed NRC.
- There is also a **proposal to issue Resident Identity Cards** to all usual residents in the NPR of **18 years of age.**

Benefit of NPR

- **Database of residents:** It will help to create a comprehensive identity database of its residents with relevant demographic details and also streamline data of residents across various platforms.
- **Better implementation:** It will help the government formulate its policies better and also aid national security.
 - Ministry of Home Affairs has argued that the NPR would be more suited for distributing subsidies than the UID, as the NPR has data linking each individual to a household.
- **Remove any errors:** For e.g. It is common to find different date of birth of a person on different government documents. NPR will help eliminate that.
- **Avoid duplication:** With NPR data, residents will not have to furnish various proofs of age, address and other details in official work. It would also eliminate duplication in voter lists, government insists.

Issues regarding NPR

- **Privacy issue:** Even as issues of privacy associated with Aadhaar continue to be debated in the country, the NPR is on a drive to collect detailed data on residents of India. There is as yet no clarity on the mechanism for protection of this vast amount of data.

NPR vs Aadhar

The data collected in NPR will be sent to UIDAI for de-duplication and issue of Aadhaar Number.

- **Voluntary vs. Mandatory:** It is compulsory for all Indian residents to register with the NPR, while registration with the UIDAI is considered voluntary.
- **Number vs. Register:** UID will issue a number, while the NPR is the prelude to the National Citizens Register. Thus, it is only a Register.
- **Authentication vs. Identification:** The UID number will serve as an authenticator during transactions. It can be adopted and made mandatory by any platform. The National Resident Card will signify resident status and citizenship. It is unclear what circumstances the card will be required for use in.
- **UIDAI vs. RGI:** The UIDAI is responsible for enrolling individuals in the UID scheme, and the RGI is responsible for enrolling individuals in the NPR scheme.
- **Door to door canvassing vs. center enrollment:** Individuals will have to go to an enrollment center and register for the UID, while the NPR will carry out part of the enrollment of individuals through door to door canvassing.
- **Prior documentation vs. census material:** The UID will be based off of prior forms of documentation and identification, while the NPR will be based off of census information.

Data collected in NPR

- The NPR will collect both **demographic data and biometric data.**
- There are 15 different categories of **demographic data**, ranging from name and place of birth to education and occupation.
- For **biometric data** it will depend on Aadhaar, for which it will seek Aadhaar details of the residents.
- It is working to **update the Civil Registration System of birth and death certificates.**
- While registering with the NPR is mandatory, furnishing of additional data such as **PAN, Aadhaar, driving licence and voter ID is voluntary.**

- **Legality of sharing data:** Both the legality of the UID and NPR collecting data and biometrics has been questioned. For example, it has been pointed out that the collection of biometric information through the NPR, is beyond the scope of subordinate legislation.
- **National security:** It can raise national security threats, given the size of the databases that will be created, the centralized nature of the databases, the sensitive nature of the information held in the databases, and the involvement of international agencies.
- **Issues similar to NRC:** NPR will be the base for a nationwide National Register of Citizens and will be similar to the list of citizens of Assam. During the NRC exercise, there were several instances where some members of a family featured in the draft list while the others did not.
- **Duplication of projects:** It is unclear why the government would feel the need to subject India's citizenry to another identification drive when over 90 per cent of them are covered by Aadhaar, which was an elaborate, time-consuming exercise.
 - With these multiple projects like Aadhaar, NRC, NPR, census etc it has created **confusion regarding the idea of citizenship in the country.**
- **Uncounted people:** The census does not cover the entire population, which leaves unanswered the questions of the status of those citizens who are not visited by a census officer.
 - It also leaves ambiguity over migrant labour, who may well be citizens but would not qualify as "usual residents".

How is it different from census and NRC?

- **Census** doesn't ask for individual identity details, and at the end of the day, is a macro exercise. The NPR, on the other hand, is designed to collect identity details of every individual.
 - Census data is protected by a confidentiality clause. The government has committed that it will not reveal information received from an individual for the headcount. NPR would serve as the mother database to verify citizenship if a nationwide NRC is carried out later.
- Unlike the **NRC**, the NPR is not a citizenship enumeration drive, as it would record even a foreigner staying in a locality for more than six months.
 - Once the NPR is completed and published, it is expected to be the basis for preparing the National Register of Indian Citizens (NRIC), a pan-India version of Assam's National Register of Citizens (NRC).

Conclusion

There needs to be clarity over the privacy concerns surrounding the amount of data being collected in NPR and it also needs to learn lessons from such similar exercises in Assam i.e. NRC. Then only it will be able to serve as the mother database to verify citizenship if a nationwide NRC is carried out later.

4.1.2. NATIONWIDE NRC**Why in news?**

Government of India has signalled its intent of carrying out a nationwide National Register of Citizens (NRC).

More on the news

- The National Register of Citizens is a list of all the legal citizens of the country, with necessary documents.
- Earlier, following the Supreme Court's order, the Government conducted the NRC updating exercise in Assam and as a result over 19 lakh applicants failed to make it to the NRC list.

Rationale behind the nationwide NRC

- **Ascertaining the identity of citizens:** NRC will provide a much-needed perspective on the extent of illegal migration. The fear that illegal immigrants will change the demography of the country and influence the politics of different states will also be done away with.
- **Demand from some stakeholders-** such as the NGOs like the Assam Public Works (APW), which had petitioned the Supreme Court for upgrading the previous NRC.
- **Statutory obligation of the state-** as the **Section 14A** in the Citizenship Act of 1955 provides in sub-section (1) that "The Central Government **may compulsorily register** every citizen of India and issue national identity card to him".
 - The procedure to prepare and maintain **National Register of Indian Citizens (NRIC)** is specified in the **Citizenship (Registration of Citizens and Issue of National Identity Cards) Rules, 2003.**
- **Move towards solving the immigration issue-** as it is expected to deter future migrants from entering the country.
 - It can also aid the agencies in effective border management, especially with Nepal and Bangladesh.

Issues with nationwide NRC

- **Existence of deportation provisions-** as immigrants are subject to laws like the Foreigners Act, 1946 and Passport (Entry into India) Act, 1920 and tribunals are already empowered to detect, detain and deport them.
- **Legal infirmities-** The last time the Central government tried to make an identity enrolment mandatory was the Aadhaar project and this was struck down as excessive (except in limited and justifiable cases). The NRIC scheme, as proposed, would thus be directly in violation of the K.S. Puttaswamy judgment on **right to privacy**.
- **Not learning from Assam's experience-** considering the complications that have cropped up in the previous NRC such as:
 - **No clarity over previous results-** on what the end results mean for the 19 lakh plus people who find them outside the NRC, potentially stateless and at risk of "deportation" to Bangladesh, which refuses to acknowledge the same.
 - **Wastage of public resources-** as many critics are questioning the expenditure of the taxpayers' money which were spent on the previous NRC.
 - **Lack of capacity-** Assam's first detention centre is being constructed, but it will only house 3,000 people against the need for 19 lakh people excluded from the final NRC. Further, media reports have been stating that these detention camps are infamous for their inhumane living conditions.
 - **Protests-** Many sections of Assam, like Bodoland students, have been protesting against the repetition of NRC in Assam.
- **Link with CAA:** There are fears that such an exercise could end up targeting minorities in the country. Also, to implement CAA, citizens and illegal migrants have to be identified. So, a NRC is seen as necessary first step for CAA.
- **Implementation anomalies-** as the NRC will take a gigantic toll on people's **time, money and productivity**, especially of the **poor and illiterate** sections.
 - Under the Foreigners Act of 1946, the burden of proving whether an individual is a citizen or not, lies upon the individual applicant and not on the state. Also, the details of how such an exercise will be carried out are **not yet known**.
 - Further, there is **poor documentary culture** in India and here around 125 crore Indians will have to produce documentary proof of their ancestors up to a certain date to create a legacy tree.
- **No specific policy in ascertaining the fate of people:** The government has not prepared a post NRC implementation plan, as the possibility of deportation of illegal migrants to Bangladesh is bleak as the people excluded from the list should be proven citizens of Bangladesh, and that will require cooperation from that country.
- **Allegations of human rights violations-** as at a US Congress hearing on human rights in South Asia, not just Kashmir issue was raised but Assam's NRC also came up.
- **Issue of Statelessness:** There are apprehensions that India will end up creating the newest cohort of stateless people, on the lines of Rohingyas who fled Myanmar for Bangladesh.

The Citizenship Act, 1955

- It provides for acquisition of citizenship by **birth, descent, registration, naturalization and by incorporation of territory** into India.
- The Act **prohibits illegal migrants** from acquiring Indian citizenship. It defines an illegal migrant as a foreigner: (i) who enters India without a valid passport or travel documents, or (ii) stays beyond the permitted time.
- It **regulates registration of Overseas Citizen of India Cardholders (OCIs)**, and their rights.

Criteria of citizenship

- The Citizenship Act, 1955 clearly states that anyone born in India on or after January 26, 1950 up till July 1, 1987 is an Indian citizen by birth.
- Anyone born on or after July 1, 1987 but before the commencement of the Citizenship (Amendment) Act, 2003 and either of whose parents is an Indian citizen at the time of his birth is an Indian citizen. And anyone born after the commencement of the Citizenship (Amendment) Act, 2003 and both of whose parents are Indian citizens at the time of his birth is an Indian citizen.
- The only exception to this was Assam where as per the 1985 Assam Accord foreigners who came to the state up to March 24, 1971 were to be regularized as Indian citizens.
- Seen in this context, only Assam was allowed to take in foreigners up to March 24 1971.
- For the rest of the country, those born outside the country after January 26, 1950 and residing in India without proper documents is a foreign, illegal immigrant.

Way Forward

- **Set a common Cut-off date to maximum two generations** - which will ease up the process for citizens to show documentary proofs.

- The problem in Assam was the cut-off year of 1971, which made it near impossible for many to get documents that went so far back in the past.
- The NRC should attempt to prevent further arrivals of illegal migrants. Past arrivals cannot easily be wished away without causing needless human misery and also disrupting micro-economies in the states where the illegals reside and work.
- **Bring a fair process-** There were allegations that some sections had submitted false documents during Assam's NRC exercise. A nationwide NRC is expected to learn from this.
- **Tackle issue of illegal migration comprehensively-** by focusing on comprehensive border management, assistance from international organisations such as United Nations High Commissioner for Refugees (UNHCR) among others.
 - Government of India can work with other governments to get authenticated copies of their own voter and citizenship records. This can be done under a large SAARC convention too.
- **Maximize use of technology-** such as utilization of **digital lockers**. Citizens should be told get all their documents authenticated in digital lockers, so all they would need to do is provide access to this documentation when the NRC happens.
 - By appropriately using **artificial intelligence** and **data analytics**, governments can match residents suspected of being immigrants fairly easily using multiple databases.

The Assam Accord and NRC in Assam

- It was a Memorandum of Settlement signed between representatives of the **Government of India** and the **leaders of the Assam Movement** in New Delhi on 15 August 1985.
- The **Citizenship Act of 1955 was amended after the Assam Accord** as per which all Indian-origin people who came from Bangladesh before January 1, 1966 to be deemed as citizens.
- Those who came **between January 1, 1966 and March 25, 1971** were eligible for citizenship after registering and living in the State for 10 years.
- Those who came **after March 25, 1971** should be detected and deported under the **Illegal Migration Determination (by Tribunals) (IMDT) Act, 1983**. It also talked about the deletion of foreigners' names from the electoral rolls.
- **NRC was updated in Assam** as per Assam Accord.

Provisions for people having missed out the NRC list

- Assam government has assured people that those who find their names missing from the final NRC **will not** immediately be termed "foreigners" or illegal immigrants.
- Such people will be allowed to register protests with the **Foreigners Tribunal**. They can approach the High Court or even the Supreme Court for **further appeal** in the matter.
- The State government will also provide **legal aid to the poor** who find their names missing from the list.
- Under the **Foreigners Act of 1946**, the burden of proving whether an individual is a citizen or not, lies upon the individual applicant and not on the state.
- **Doubtful or D-voters** are those who are disenfranchised by the government on the account of their alleged lack of proper citizenship credentials and their inclusion will depend on decision of the **Foreigners Tribunal**.

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5. ELECTIONS IN INDIA

5.1. ELECTORAL REFORMS

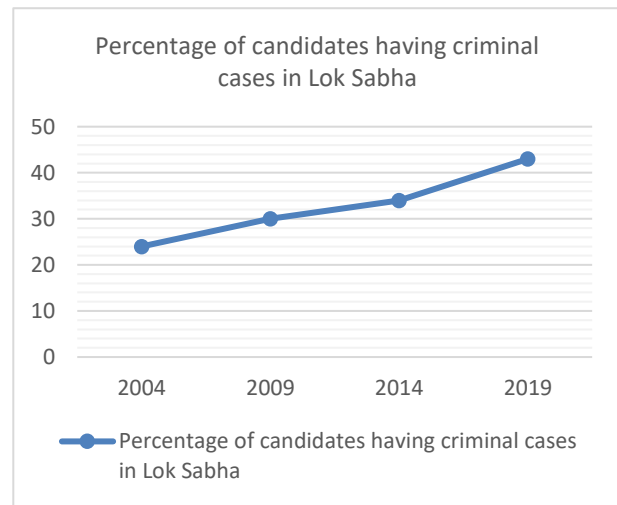
5.1.1. CRIMINALIZATION OF POLITICS

Why in News?

Recently, Supreme Court made it mandatory for political parties to publish, including on official social media pages, details of cases against their candidates and the reasons for selecting them over others.

Background

- **Criminalisation of politics** means rising participation of criminals in the electoral process and selection of the same as elected representatives of the people.
- Supreme Court called criminalisation of politics an “**extremely disastrous and lamentable situation**”, and raised concerns about “unsettlingly increasing trend” in the country.
 - There is an **increase of 109% (in 2019)** in the number of MPs with declared serious criminal cases since 2009.
 - **29%** of those elected to the Lok Sabha in 2019 have **declared serious crimes**.
- Association for Democratic Reforms (ADR) analysis shows that **candidates facing criminal charges had double the chances of winning** as compared to those with clean record.



Legal Provisions

- **Article 102(1) and 191(1)** disqualifies an MP and an MLA respectively on certain grounds.
- **Section 8 of the Representation of People Act, 1951**, bans convicted politicians. But those facing trial, no matter how serious the charges, are free to contest elections.

Reasons for Criminalisation of Politics

- **Vote Bank politics:** as majority of the voters are manoeuvrable, purchasable. Expenditure for vote buying and other illegitimate purposes through criminals leads to nexus between politicians and criminals.
- **Corruption:** nexus between politicians and criminals have become stronger as politicians get their election funding as well as muscle and manpower from such criminals.
- **Loop Holes in The Functioning of EC:** For the past several general elections there has existed a gulf between the EC and the voter. Model Code of Conduct is openly flouted by candidates without any stringent repercussions.
- **Denial of Justice and Rule of Law:** Not more than 6 per cent of the criminal cases against Indian MPs and MLAs ended in a conviction, as per the data submitted by the Centre to the Supreme Court. This is in sharp contrast to the **overall conviction rate of 46%** at the national level under IPC.
- Though the Representation of the People Act (RPA) disqualifies a sitting legislator or a candidate on certain grounds, there is **nothing regulating the appointments to offices within the party**. A politician may be disqualified from being a legislator, but (s)he may continue to hold high positions within his/her party.

Impact of Criminalization

- The law-breakers get elected as lawmakers- The people who are being tried for various offences are given the opportunity to make laws for the whole country, which **undermines the sanctity of the Parliament**.
- **Loss of public faith in Judicial machinery-** It is apparent that those with political influence take advantage of their power by delaying hearings, obtaining repeated adjournments and filing innumerable interlocutory petitions to stall any meaningful progress.
- **Tainted Democracy:** Where the rule of law is weakly enforced and social divisions are rampant, a candidate's criminal reputation could be perceived as an asset.

- **Self-perpetuating:** Since the parties focus on winnability of the candidate (also hampering the inner party democracy), they tend to include more and more influential elements. Thus, criminalization of politics perpetuates itself and deteriorates the overall electoral culture.

Steps by Supreme Court to control Criminalisation of Politics

- SC in 1997 directed all High Courts **not to suspend the conviction** of a person on appeal if he was convicted and sentenced to imprisonment by a trial court under the **Prevention of Corruption Act 1988**.
- In Union of India (UoI) vs ADR 2002, SC directed that all the contesting candidates shall disclose their assets and liabilities, criminal conviction, if any, and pending cases in court of law at the time of filling the nomination papers.
- In Lily Thomas case (2013), SC ruled that a sitting MP and MLA convicted of a jail term of two years or more would lose their seat in the legislature immediately.
- Introduction of **None of The Above (NOTA)** option in **People's Union for Civil Liberties (PUCL) vs Union of India, 2014** to put moral pressure on political parties to put up clean candidates.
- In **Public Interest Foundation Vs UoI 2014**, SC directed the trial courts to complete the trial of cases involving the legislators within one year.
- In **Lok Prahari Vs UOI case 2018**, SC made mandatory the disclosure of the source of income of political candidates as well as their dependants and associates would be mandatory.
- In **Public interest foundation case 2018**, Court directed disclosure of criminal cases pending against the candidate by himself/herself through EC and his/her political party. Moreover, the criminal antecedent of candidates must be widely publicized through different media including the websites of concerned political parties.
- In recent directive, SC said that:
 - It is **mandatory** for political parties (at the Central and State election level) to **publish detailed information regarding candidates with pending criminal cases** and the **reasons for selecting them** over others as well as to why other individuals without criminal antecedents could not be selected as candidates.
 - The reasons as to selection shall be with reference to the qualifications, achievements and merit of the candidate concerned, and **not mere "winnability"** at the polls.

Steps taken by Election Commission (EC) to De-Criminalize Indian Politics

Election Commission of India has consistently undertaken certain electoral reforms on its own as well as at the direction of Supreme Court.

- 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.
- Currently, a candidate to any National or State Assembly elections is required to **furnish an affidavit** containing information regarding their **criminal antecedents**, if any, their assets, liabilities, and educational qualification.
- Recently, EC decided to revise the **timeline for publicity of criminal antecedents** by candidates concerned and by the political parties that nominate them for elections.

Various committee observation on Criminalization of Politics

The Santhanam Committee Report 1963

- It referred to political corruption as more dangerous than corruption of officials and recommended for Vigilance Commission both at the Centre and in the States.

Vohra Committee Report (1993)

- It studied the problem of the criminalization of politics and of the nexus among criminals, politicians and bureaucrats in India. However, even after the submission of report 25 years ago, the report has not been made public by the government.

Padmanabhaiah Committee on Police Reforms

- It found that Corruption is the root cause of both politicization and criminalization of the police.
- Criminalization of police cannot be de-linked from criminalization of politics. It is the criminalization of politics, which has produced and promoted a culture of impunity that allows the wrong type of policeman to get away with his sins of commission and omission.

Way forward

Election Commission and Law Commission have made the following recommendations to the Union Government to be made into law in the form of electoral reforms for the decriminalization of politics:

- **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 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 in relevant courts** where a case is led against a sitting Members of Legislatures and to conduct the trial on a day-to-day basis with an **outer limit of completing the trial in one year**.
 - Once the said period expires, the person may be automatically disqualified at the end of the said time period.
- **Retroactive application**- from the date the proposed amendments come into effect, all persons with criminal charges (punishable by more than 5 years) pending on that date are liable to be disqualified subject to certain safeguards.
- **Granting EC additional powers** to make recommendations to the appropriate authority to-
 - refer any matter for investigation to any agency specified by the Commission
 - Prosecute any person who has committed an electoral offence under RPA, 1951
 - appoint any special court for the trial of any offence or offences under RPA, 1951

Limitations of EC in tackling Criminalization

- **Need of Large-scale infrastructure to monitor and ensure compliance:** For example, to ensure compliance of recent SC directions, extensive human resources and robust digital systems are essential.
- **No power to disqualify candidates prior to conviction:** even if a person is facing several serious charges. Section 8 of the RPA, 1951 deals with disqualification only after a person is convicted for certain offences.
- **False affidavits:** False affidavit or suspension of material information in the affidavit is not included as grounds for challenging the election or for rejection of nomination papers section under RPA, 1951.
- **Misuse of religion for electoral gain:** While such practices are qualified as corrupt practices, they can be questioned only by way of an election petition and cannot be a subject of enquiry before the EC when the election is in progress.
 - These provisions will have application only during the period of election and there is no provision to challenge the corrupt practice of the candidate who lost the election.

5.1.2. ELECTORAL BONDS

Why in news?

Recently, the information received under the Right to Information revealed some startling facts on electoral bonds.

More on news

- Electoral bond scheme was announced in Union Budget 2017-18 in an attempt to “**cleanse the system of political funding in the country.**”
- Electoral bonds with denomination of Rs 1 crore accounted for more than 91 per cent of the money raised till now.

Issues with electoral funding

- **Opacity in donations:** Political parties receive majority of their funds through anonymous donations (approximately 70%) through cash. Also, parties are exempted from income tax, which provides a channel for black money hoarders.
- **Lack of action against bribes:** The EC sought insertion of a new section, 58B, to RPA, 1951 to enable it to take action if parties bribe voters of a constituency, which has not come to light.
- **Allowing foreign funding:** Amendment of the Foreign Contribution (Regulation) Act (FCRA) has opened the floodgates of foreign funding to political parties, which can lead to eventual interference in governance.
- **Lack of transparency:** Despite provisions under section 29 of RPA, 1951, parties do not submit their annual audit reports to the Election Commission. Parties have also defied that they come under the ambit of RTI act.

Rationale behind introduction of Electoral Bonds

- **To limit the use of cash in political funding:** To reduce using illicit means of funding and the 'system' was wholly opaque and ensured complete anonymity.
- **To curb black money-** due to the following features included in the electoral bonds-
 - Payments made for the issuance of the electoral bonds are accepted only by means of a demand draft, cheque or through the Electronic Clearing System or direct debit to the buyers' account".
 - **Limiting the time** for which the bond is valid ensures that the bonds do not become a parallel currency.
- **Eliminate fraudulent political parties-** that were formed on pretext of tax evasion, as there is a stringent clause of eligibility for the political parties in the scheme.
- **Protects donor from political victimization-** as non-disclosure of the identity of the donor is the core objective of the scheme.

Analysis of use of electoral bonds on political funding

- **Still maintains opacity in political funding-** due to the following reasons-
 - Prior to electoral bonds, political parties had to maintain records of donations **above Rs 20,000**. However, the electoral bonds were kept out of the purview of this requirement.
 - Further, political parties are legally bound to submit their income tax returns annually under **Section 13A** of the Income Tax Act, 1961. However, the **electoral bonds have also been exempted from IT Act**.
 - The electoral bonds were also opened for **foreign funding**, which has been highlighted in the recent dissent note of the RBI.
- **Allowed possibility of corporate misuse-** as revealed from the nature of transactions discussed above.
 - Earlier, no company could donate more than 7.5% of its profits to a political party. But this limit was completely removed under this scheme.
- **Lack of level playing field in terms of political funding-** as
 - Government amended **Section 29B of the Representation of the People Act**, restricting the benefits of electoral bonds only to a few political parties.
 - Data revealed through the audit report of ruling party also showed that the ruling party has received 94.6% of all the electoral bonds sold in 2017-18.
- **Merely an urban phenomenon-** the data also highlights the fact, that electoral bonds have been used by the rich players in cities, rather it being percolating to the majority population, especially in rural areas.

Conclusion

The early trends on electoral bonds attest to what political analysts have been fearing that the new channel would greatly undermine India's electoral democracy by **inviting unbridled corporate influence**. There is a need to carry out a thorough check on the way the scheme is being implemented otherwise it can undo the significant gains achieved in political finance reforms and transparency norms.

POLITICAL FUNDING CLEAN-UP

What Is An Electoral Bond
An interest-free financial instrument for making anonymous donations to political parties; resembles a promissory note.

Who May Purchase These Bonds
A Citizen of India or a body incorporated in the country.

Bond Denominations
₹1,000, ₹10,000, ₹100,000, ₹1 million, ₹10 million; can be purchased from selected branches of SBI.

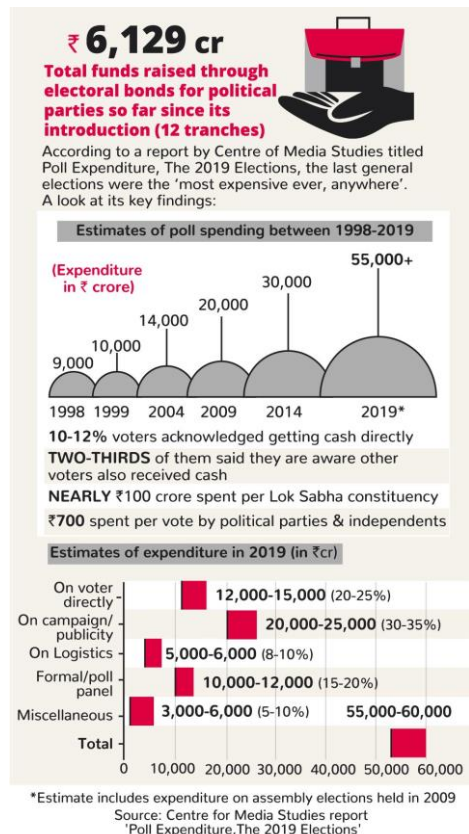
When May Such Bonds Be Bought
Available for purchase for 10 days each in January, April, July, & October.

Lifespan
Redeemable in the designated account of a registered political party within 15 days since issuance.

Which Political Parties Are Eligible To Receive Donations Through Electoral Bonds?
Political parties who have at least secured 1% votes in the last Lok Sabha or state assembly elections and are registered under Section 29A of the Representation of the People's Act, 1951.

Other Details

- Political parties will be required to file returns to the Election Commission of the quantum of money it receives through electoral bonds. Donors will be eligible for tax deduction while political parties will be eligible for exemption, provided returns are filed by the political party.
- SBI is the Sole Authorized Bank by the Government of India for selling Electoral Bonds.
- Electoral Bonds shall not be eligible for Trading on stock exchanges.
- They cannot be used as collateral for loans and are available only in physical form.



Also, various ways can be looked into that may bring more transparency in political funding like:

- Switching to complete digital transactions.
- Donations above a certain limit be made public to break the corporate-politico nexus.
- **Political parties should be brought under the ambit of RTI** as followed in countries like Bhutan and Germany.
- Establish a **national electoral fund** where donors contribute and funds are distributed among different parties according to their respective performances in the last elections. This will also weed out black money as well as ensure anonymity to donors.
- **State funding of elections** has been suggested in the past in response to the high cost of elections. Law Commission of India, 2nd ARC, National Commission to Review the Working of the Constitution, have favored state funding.
- **Cap maximum expenditure of political parties** to a multiple of half of maximum prescribed limit for individual candidates with the number of candidates fielded.

5.1.3. INTRA PARTY DEMOCRACY

Why in news?

Lack of intra-party democracy in Indian political parties was in news.

What is Intra-Party Democracy?

- Internal party democracy can be defined as “implementation of a minimum set of norms within the organization of political parties”. This minimum set of norms should provide a bottom-up approach to forming a decision in the party and the internal distribution of power at different levels, bodies, and individuals.
- Since Independence, the authority in organizational matters has mostly been from the top to the bottom. Thus, leadership in most political parties in India may be democratic in appearance but is highly centralised in reality.
- Unlike some countries like Germany and Portugal, India has no legal provision for enforcing internal democracy in a political party apart from few related provisions in section 29A of RPA & in Election Commission guidelines.

Why need for intraparty democracy?

- It helps party members to **hold leaders accountable** and engage in policy decision processes meaningfully as it would bring in competition, participation and representation inside the party. ARC also talked about corruption due to high centralization.
- It may lead to **dismantling of nepotism & dynasty politics** (affiliations based on family background, caste, religion etc.).
- It would give space for dissent within the party **reducing the possibility of formation of number of off shoots of political parties.**
- It may promote **transparency in handling party funds**, thereby reducing influence of money and muscle power.
- It may cultivate a **sense of ownership for local politicians** in larger issues facing the nation as policy decisions will involve deliberations and debate within party.

Suggestions

- There is a need for a **comprehensive law** that deals specifically with the framework and relevant

Some recommendations to improve Regulation of Political Parties

- Of the more than 1100 parties registered with the Election Commission in 2009, only about 360 actually contested the general election that year. There is **no specific provision to de-register a party.**
 - Election Commission proposed that an amendment be made to Representation of the People Act, 1951, enabling it to de-register political parties.
- **National Commission to Review the Working of the Constitution** recommended that the rules and by-laws of the parties seeking registration should include provisions for:
 - declaration of adherence to democratic values and norms of the Constitution in their inner party organizations.
 - declaration to shun violence for political gains.
 - declaration not to resort to casteism and communalism for political mobilization etc.
 - provision for party conventions to nominate and select candidates for political offices at the grass root and State levels
 - code of conduct etc.

provisions for inner party democracy. Committee headed by M. N. Venkatachaliah, had **drafted a bill to regulate the functioning of political parties.**

- **EC should be enabled to take steps** to ensure better implementation of the existing intra-party democracy measures through certain penal provisions against non-compliance by parties.
- Validation of internal elections by an external organisation would provide them more legitimacy and party membership would also be more open to accepting unfavourable results.
- Anti-defection law should be amended as currently it prevents elected members of a legislature from voting against an order of their party. This impinges upon the basic features of Indian democracy, representation and dissent.

5.1.4. OTHER AREAS OF ELECTORAL REFORMS

Conduct and Better Management of Elections

• Issues

- Irregularities in polling procedure have been identified as important issues that need to be addressed in our electoral system.
- Rigging through muscle power and intimidation
- Proliferation of candidates: too many candidates in the election fray puts unnecessary and avoidable stress on the management of elections and increases expenditure

• Recommendations:

- **Goswami Committee** recommended that the Election Commission should be empowered to take strong action on the report of returning officers, election observers, or civil society in regards to booth capture or the intimidation of voters.
- Increasing the security deposit of candidates to check proliferation of candidates.
- **Voter Registration:** Online registration, provision of e-EPIC (Electronic Photo ID Card) for voters, quarterly/six monthly qualifying date for voter registration instead of one annual date as qualifying date.
- **Voter Facilitation:** Single simplified form for all services to voters, expanding the network and Electoral Service Centres (ESCs) to streamline electoral services to citizens etc.
- **Outreach, education and awareness:** Partnership with PSUs and Private Organizations such as voter awareness forums and Chunav Pathshala in polling stations, setting up Electoral Literacy Clubs in schools etc.
- EC has proposed to link the Aadhaar card with the Election Photo Identity to ensure preparation of **error free electoral roll, to prevent duplication** of entries etc.

Related news: Postal ballot

- Person with disabilities (PwDs) and people over 80 years of age were allowed to cast their vote in Delhi Assembly Election through postal ballot.
- **Postal voting** is a type of voting in elections whereby Electronically Transmitted Postal Ballot Papers (ETPB) are **distributed to electors and returned by post.**
- **Service voters**, have the option of either voting **through postal ballot or through a proxy voter.** It includes
 - members of Armed Forces of the Union
 - members of forces to which provisions of Army Act, 1950 applies.
 - members of armed police force of a State and serving outside that state
 - persons who are employed by Govt in a post outside India.

Adjudication of Election Disputes

- **Issue: Representation of the People Act, 1951**, provide that the High Court shall make an endeavour to dispose of an election petition within six months from its presentation. However, according to 2nd ARC, such petitions remain pending for years and in the meanwhile, even the full term of the house expires thus rendering the election petition infructuous.
- **Recommendation:** National Commission to Review the Working of the Constitution recommended Special election benches designated for election petitions only should be formed in the High Court.

5.2. DELIMITATION COMMISSION

Why in news?

Central government has constituted the Delimitation Commission for the purpose of delimitation of Assembly and Parliamentary constituencies in the Union territory of Jammu and Kashmir and the States of Assam, Arunachal Pradesh, Manipur and Nagaland.

About Delimitation

- Delimitation literally means **the act or process of fixing limits or boundaries of territorial constituencies in a country or a province** having a legislative body.
- The **job of delimitation is assigned to a high power body**. Such a body is known as Delimitation Commission or a Boundary Commission.
- **Under Article 82**, the Parliament enacts a Delimitation Act after every Census which establishes a delimitation commission.
- **Under Article 170**, States also get divided into territorial constituencies as per Delimitation Act after every Census.
- In India, such Delimitation Commissions have been constituted 4 times – in 1952, 1963, 1973 and 2002.
- In 2002, the **84th Constitutional Amendment** was used to freeze the process of delimitation for Lok Sabha and State assemblies till at least 2026.
- 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.
- This had led to wide discrepancies in the size of constituencies, with the largest having over three million electors, and the smallest less than 50,000.

Issues arising out of Unequal Representation

- **Malapportionment in Democracy**- The present delimitation, based on 2001 census, has been undertaken after 30 years. The population has increased by almost 87% and the nature of constituencies in the country, by and large, had become malapportioned.
- **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 lakh.
- **Increasing burden on the Representatives**- An MP today represents more than four times the number of voters than what an MP did in 1951-52, when the first general elections were held
- **Don'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 increase skewed in direction and intensity.
- **Lead to divide among the people**- The perception of one region controlling the others or ignoring cultural and social aspirations may invoke popular agitations. Also it creates a divide of **politically important vs. unimportant** states for the political parties. It also creates demand for **smaller states**.

Delimitation Commission

- The Delimitation Commission is **appointed by the President of India and works in collaboration with the Election Commission of India**.
- The commission has **three ex-officio members**:
 - a serving or retired judge of the Supreme Court as the chairperson,
 - the Chief Election Commissioner or Election Commissioner nominated by the CEC and
 - State Election Commissioner of the concerned state.
- Its functions include:
 - **Determining the number and boundaries of constituencies** to make population of all constituencies nearly equal and providing equal representation to equal segments of a population.
 - **Identifying seats reserved for Scheduled Castes and Scheduled Tribes**, wherever their population is relatively large.
- Its **orders have the force of law** and cannot be called in question before any court.

Implications if the limitation freeze is lifted

- **Concerns of family planning remains**- where the states will be apprehensive towards such measures as it may reduce their seats in Parliament.
- **Control of Presiding Officers of House**- who find it extremely difficult to conduct the proceedings of the House. Their directions and rulings are not shown proper respect, and disruptions of proceedings aggravate the problem. The sudden increase in numbers will further aggravate this matter.
- **Working of the house**- It will be subjected to severe strain because the hourly window for the Zero Hour, Question Hour etc. will be too small for increased members.

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.

5.3. WOMEN PARTICIPATION IN POLITICS

Why in news?

Recently, Lokniti-CSDS and Konrad Adenauer Stiftung released a survey report which assessed the perception of women on different dimensions of political participation and representation in India.

Trends highlighted by the survey

- **Socio-economic class determining political participation:** Women belonging to the upper social (castes) and upper economic classes were found to be more active in electoral politics as compared to women placed at the bottom of the social and economic hierarchy.
- **Increased participation as voters:** Women's participation as voters has seen a sharp increase over the years.
- **Limited autonomy in taking decisions about politics:** Two-third women reported that they have no freedom at all with respect to their political participation.
- **More preference to male candidates:** Around 50% women agreed that parties always prefer a male candidate while giving tickets and over 40 percent women expressed a feeling that Indian voters are more likely to vote for men.
- **Patriarchy as the biggest obstacle:** More than one fifth of the women feel that patriarchal norms/structure of the society were the biggest obstacles that prevented them from taking part in politics followed by household responsibilities, individual barriers and cultural norms.
- **Increasing interest in politics but unwillingness for politics as a career:** The younger generation appears to be more plugged into politics as are those who have access to education. Women in rural areas have demonstrated a greater interest, especially in local politics.
 - However, 3/4th of the women respondents were not willing to make politics as their career if given the opportunity.
- **Exposure to media news:** It is a major source of political information, resulting in a higher level of interest. Women having higher exposure to news media showed more interest in politics compared to those with no or low exposure.

Other trends in women's participation in politics

- **Increased Participation in both houses since independence:** Between the First Lok Sabha (1952) and the Seventeenth Lok Sabha (2019) women's representation has increased from 4.4 per cent to 14.4 per cent. Women's representation in Rajya Sabha has also increased from 6.9 per cent in 1952 to 11.4 per cent in 2014.
 - **Lower than the global average:** Global average is 22.9 per cent. Considering the share of women (49.5%) in the total population of India, their representation in Parliament represents a skewed statistic. India ranks 153 out of 190 nations in the percentage of women in the lower house of world parliaments.
 - **More women representation in local bodies:** There are approximately 13.45 lakh Elected Women Representatives (EWRs) in PRIs which constitute 46.14% of total Elected Representatives (ERs). Women sarpanchs accounted for 43 per cent of total gram panchayats (GPs) across the country.
- While the reservation for women in Gram Panchayats has led to a rise in their participation in politics, challenges still remains such as:
- **Lack of knowledge among the elected women themselves** regarding the Panchayati Raj Act and rules, and this was compounded by illiteracy.
 - **Lack of experience** in political administration, gender prejudice from predominantly male staff who work in the system, restrictions around women's mobility, non-conducive work environments, and
 - **Lack of agency** when elected women being represented by their male relatives. More often than not, the power is hijacked by their husbands and other male family members, who would have nudged them to contest elections in the first place.

Need for more women participation in politics

- **Balanced views:** Full and equal participation of both women and men in political decision making provides a balance that more accurately reflects the composition of society. Moreover, there is documented evidence both at the international level and at the gram panchayat (village) level to suggest that a greater representation of women in elected offices balances the process and priorities that elected bodies focus on.
- **Addressing women related and other social issues:** There is a greater focus on issues like malnutrition, anemia, reproductive health, children's welfare, poverty etc.
- **Important role in parliamentary committees:** Department-related parliamentary committees play a crucial role in scrutinizing the decisions, legislation and working of the government in India. Therefore,

participation of female MPs in these committees is of vital importance **to ensure that the legislation and policies formulated by Parliament are gender-inclusive.**

- **Increased economic performance:** A recent study by the United Nations University found that **women legislators in India raise economic performance in their constituencies by about 1.8 percentage points per year** more than male legislators.
- **Empowerment:** Political empowerment **could lead to opening more opportunities for women** and as a result, create a level playing field for them.

Steps that need to be taken to improve women participation

- **Quotas for women in Parliament:** The 73rd and 74th amendments to the Indian Constitution reserve one-third of local body seats for women. There is an urgent need to bring back to the table the Women's Reservation Bill guaranteeing 33 per cent reservation to women in Lok Sabha, and in all state legislative assemblies.
- **Reservation for women in political parties:** While this does not provide any assurance about the number of women parliamentarians, it does allow for a more meritocratic and less complex method of increasing participation. Sweden, Norway, Canada, the UK and France are examples.
- **Eliminate structural and legal obstacles** that hinder all girls' and women's participation in politics and decision-making, and hold those obstructing them accountable.
- **Promote community and sports programs** that foster leadership skills for girls and women and promote gender equality. Support women's leadership in the workplace through greater **inclusion in executive positions and on corporate boards.**
- **Fund grassroot organizations** that build the capacity of girls and women to participate both individually and collectively in social, economic, political, and public life.

Conclusion

Recognizing the significance of roles of women in decision making process in the society is critical to strengthen women's agencies for building a progressive society with equality of opportunities among all citizens.

5.4. FACTORS AFFECTING VOTING BEHAVIOUR IN ELECTIONS

Why in news?

Recently, a new study by Abhijit Banerjee, Amory Gethin and Thomas Piketty examined the factors, issues and ideas that determine India's electoral choices.

Why Voting behaviour is important?

- It can serve as a window to **understand the needs and expectations** of voters.
- It can help reveal though indirectly **psychology or thinking process of voters.**
- Voting patterns **showcase if the power centres are local, regional or national** for a given group of people.
- It can also be seen as a parameter to judge the extent of **faith voters have in the electoral process.**

Factors that affect voting behaviour

- **Ethnic Factors (caste and religious identification):** Voters generally support parties and candidates associated with their ethnic group, not because of a psychological attachment to their in-group, but because they see co-ethnics as their best chance of claiming state resources.
- **Language:** Since people have emotional attachment with their languages, linguistic considerations influence their voting behaviour. E.g. rise of parties like DMK in Tamil Nadu and TDP in Andhra Pradesh can be attributed to language.
- **Distributive Politics:** Voters select leaders based on targeted benefits and leaders, in turn, deliver these benefits to voters.
- **Winnability of a candidate:** Voters prefer to vote for a candidate who has a realistic chance of winning.
- **Personality Cult:** The charisma of the party leader plays an important role in shaping preferences of the voter.
- **Loyalty to a Politician:** Individual politicians often are credible to narrow segments of the electorate with whom they have established a personal reputation grounded in a history of repeated interaction.
- **Performance of party in power:** Voters tend to reward or punish the party in power based on its performance.

- **Ideology:** Some voters are committed to certain ideologies like communism, capitalism etc.
- **Immediate factors:** Extreme events like war, depression, disease outbreak also indirectly impact voting behaviours.
- **Candidates with criminal records:** Research suggests that increased information about the criminal background of candidates deters voters from choosing those candidates.

Emerging trends in voting behaviour

- **Performance-based or economic voting:** Several researches have cited that economic performance at national as well as state level considerably influences voter behaviour.
- **Constituency service:** Recently, it has been observed that voters tend to **reward politicians more** for their constituency level work when compared with ethnicity-based redistribution.
- **Governance Issues:** More than 40% voters have stated that issues like employment opportunities, healthcare facilities, road, drinking water etc. play a crucial role in determining their preferences.

Conclusion

Since it is observed that access to information plays a crucial role in determining voter preferences, steps on further spreading of information about candidates shall be taken up. Also, information campaigns are most effective when the information is widely disseminated from a credible source. So, initiatives by EC like SVEEP (Systematic Voter Education and Electoral Participation) program shall be promoted.

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6. JUDICIARY

6.1. HIGHER JUDICIARY

6.1.1. CONTEMPT OF COURT

Why in news?

Recently, Supreme Court has held the lawyer-activist Prashant Bhushan as guilty of contempt of court in the context of the comment made on social media, targeting the current Chief Justice of India.

What is contempt of court?

- Contempt refers to the **offence of showing disrespect to the dignity or authority of a court.**
- **Constitutional Provisions in relation to contempt:**
 - **Article 129 of the Constitution** conferred on the Supreme Court the power to punish contempt of itself. **Article 215 conferred a corresponding power on the High Courts.**
- The **Contempt of Courts Act, 1971 defines contempt** (the expression contempt of court is **not defined in the constitution**). It divides contempt into civil and criminal contempt.
 - **Civil contempt** refers to the willful disobedience of an order of any court.
 - **Criminal contempt** means the publication (whether by words, spoken or written, or by signs, or by visible representations, or otherwise) of any matter or the doing of any other act whatsoever which
 - ✓ **scandalises or tends to scandalise**, or lowers or tends to lower the authority of, any court and have the effect of undermining public confidence in the judiciary; or
 - ✓ **prejudices, or interferes or tends to interfere** with, the due course of any judicial proceeding; or
 - ✓ **interferes or tends to interfere with**, or obstructs or tends to obstruct, the administration of justice in any other manner.
- **Punishment:** As per Contempt of Courts Act of 1971, punishment is simple imprisonment for a term up to six months and/or a fine of up to ₹. 2,000.
- **Period of Limitation:** No court shall initiate contempt proceedings either on its own notions or otherwise **after the expiry of one year** from the date on which contempt is alleged to have been committed.
- **Exceptions to contempt of Court:**
 - **Fair and accurate reporting** of judicial proceedings.
 - **Any fair criticism on the merits** of a judicial order after a case is heard and disposed of.
 - If the publication or other **act is merely a defamatory attack on the judge** and is not intended to interfere with the administration of justice, it will not be taken as contempt of court.
 - The Act was amended in 2006 and introduced truth as a valid defence, if it was in public interest and was invoked in a *bona fide* manner.

Judicial Decisions to constitute Contempt of Court in India

- **Interference with Administration of Justice:** In **Brahma Prakash Sharma v State of Uttar Pradesh**, the Supreme Court had held that in order to constitute the offence of Contempt of Court, **it was not necessary to specifically prove that an actual interference with administration of justice has been committed.**
- **Scandalizing the Court:** In the case of **PN Dua v Shiv Shankar and others**, the Supreme Court held that mere criticism of the Court does not amount to contempt of Court.
- In the case of **Baradanath Mishra v the Registrar of Orissa High Court** judgement, the court said that in a contempt case the court has to ask whether the vilification is of the Judge as a judge, or it is the vilification of the Judge as an individual. If the latter the Judge is left to his private remedies and the Court has no power to commit for contempt.
- **Interference with due course of Justice:** In **Pritam Lal v. High Court of M.P** the Supreme Court held that to preserve the proceedings of the Courts from interference and to keep the streams of justice pure, **it becomes the duty of the Court, to punish the contemnor in order to preserve its dignity.**

How do judges respond to criticisms in other democracies?

- **England:** Contempt Law in England has now been abolished after the last contempt proceedings occurred in 1930.
- **Canada:** In Kopyto case in 1987, court observed that courts are free to be criticised unless there is any imminent danger to administration of justice.

Issues with contempt of court

- **Stifle with freedom of speech and Expression:** Law of contempt still continues to strike a **fine balance** between 'the need to uphold the majesty of the courts and administration of justice' and 'the non-comprisable fundamental right to freedom of speech.
- **Vague and wide jurisdiction:** Definition of criminal contempt in India is extremely wide and can be easily invoked because of the *Suo motu* powers of the Court to initiate such proceedings.
- **Against Natural Justice:** A fundamental principle of natural justice, that no one may be the judge in his or her own case. However, the contempt law enables judiciary to sit in judgement on itself.
- **Limited right to appeal:** As per the present statutory scheme, a person convicted for the criminal contempt has the right to file a review petition against the judgment and that plea is decided in chambers by the bench usually without hearing the contemnor.
- **Impact Executive functioning:** Court Orders can be sometimes be used to blackmail executive. Fear of contempt of court make misallocation of resources of administration like using of force, logistics etc.
- **International practice:** The offence of "scandalising the court" continues in India even though it was abolished as an offence in US, Canada and England.

Way forward

- Under the Indian **Contempt of Courts laws power is discretionary** in nature. To check its abusive use **it should be made more determinate and principled.**
- **Element of 'mens rea' may be incorporated** in the act.
 - 'Mens rea' is a legal concept denoting criminal intent or evil mind. Establishing the 'mens rea' of an offender is usually necessary to prove guilt in a criminal trial.
- Proceedings may be **according to the Indian evidence act and Criminal procedure code.**
- **Punishment for contempt is inadequate** and is not a sufficient deterrent especially with regard to fine it should be sufficiently enhanced to deal with interference in administration of justice.

Should the provision be retained or not?

In 2018, the Department of Justice asked Law Commission of India to examine Contempt of Courts Act, 1971. **Law Commission** has submitted a report stating that there is no requirement to amend the Act, for the reasons stated below:

- **High number of contempt cases:** High civil and criminal contempt pending in various High Courts and the Supreme Court **justify the continuing relevance** of the Act.
- **Source of contempt power:** Courts derive their contempt powers from the Constitution. The Act only outlines the procedure in relation to investigation and punishment for contempt. Therefore, deletion of the offence from the Act will not have an impact.
- **Impact on subordinate courts:** The Constitution allows superior courts to punish for their contempt. The Act additionally allows the High Court to punish for contempt of subordinate courts. If the definition of contempt is narrowed, subordinate courts will suffer as there will be no remedy to address cases of their contempt.
- **International comparison:** Commission warranted a continuation of the offence in India as
 - India continues to have a high number of criminal contempt cases, while the last offence of Scandalising the Court in the UK was in 1931.
 - Offence of Scandalising the Court continues to be punishable in UK under other laws.
- **Adequate safeguards into the Act to protect against its misuse.** Provisions in 1971 act suggest that the courts will not prosecute all cases of contempt. The Commission further noted that the Act had withstood judicial scrutiny, and therefore, there was no reason to amend it.
- **Restrict court power:** 1971 Act was a good influence as laying down procedure, restricts the vast authority of the courts in wielding contempt powers. Amending the definition of contempt will lead to ambiguity.

6.1.2. JUDGES IN RAJYA SABHA

Why in news?

Recently, the President nominated the former Chief Justice of India, Ranjan Gogoi to the Rajya Sabha.

More on news

- The President has used his powers under **Article 80 (1)(a)** to nominate 12 persons having special knowledge or practical experience in respect of such matters as the following: Literature, science, art and social service.
- Ranjan Gogoi was nominated to the Rajya Sabha within six months of his retirement as the 46th Chief Justice of India

Arguments in favour

- **No legal/ constitutional bar-** the **Article 124(7)** provides that a retired Supreme Court judge cannot “plead or act in any court or before any authority within the territory of India”.
 - This provision only restricts post-retirement appointments in Judiciary itself, but not in posts of president, governor, member of parliament, etc.
- **Not a strict separation of power-** the Indian constitution does not provide for a strict separation of powers as available in the American constitution.
 - Further, the legislature and judiciary can work together for nation-building, if there are such exchange of personalities.
 - The presence of judges in Parliament will be an opportunity to project the views of the judiciary before the legislature and vice versa.
- **Other instances of post-retirement appointments of judges-** in other domains and areas such as Justice P. Sathasivam was appointed the Governor of Kerala and Justice Hidayatullah became the Vice President of India.
- **Has not joined any political party-** The given instance is of nomination of judge. There is a crucial difference between elected and nominated members.
 - Those who are elected to a house from a party are subject to whip of that party. They are bound to vote the way the party directs them, and in general, they can't criticise the party and the govt if the party is in power.
 - On the other hand, a nominated member is an independent member, not subject to any party whip.
- **Adds value to the Rajya Sabha debates-** Eminent judges can contribute towards more nuanced law making in the country and strengthen Rajya Sabha as the conscience keeper of the Parliament.
- **Previous Instances of such appointments-** Justice Ranganath Mishra, Justice Baharul Islam, Justice Kawdoor Sadananda Hegde served as members of Rajya Sabha.

Arguments against

- **Compromises the independence of judiciary-** It sends out the message that if a judge gives ruling in favour of the executive, he/she will be rewarded.
 - More than being a reward for the retired judge, the offer of a plum post-retirement job, sends a message to judges who are still working.
- **Integrity of the judges-** the judges are expected to conduct themselves in such a manner even after their retirement so as not to create an adverse impression about the independence of judiciary.
- **Violates the fundamentals of separation of powers-** The government is by far the **largest litigant** before the judiciary. Every such appointment puts under question the court's ability to adjudicate matters in a transparent manner.
- **Erode people's trust-** The judiciary thrives on perception and faith. Such actions can shake people's confidence and faith in the independence of judiciary.

Measures which can be taken

- **Mandatory cooling off period-** for judges for taking up government assignments after retiring. The cooling-off period will minimise the chances of judgments getting influenced by post-retirement allurements.
- **Follow Britain's model-** where each and every judge of the Supreme Court has the right to sit in the House of Lords for the rest of his or her life.
 - If nomination is automatic upon retirement, there is no scope for doubting the independence of such new members in the Rajya Sabha.
- **Extend the application of other statutes to judges-** such as Section 8 of the Lokpal and Lokayukta Act, 2013, which barred its chairman and members from re-employment or taking any assignments as diplomat and Governor and other posts, on ex-judges of the Supreme Court and high courts.

Post-retirement appointment/ cooling off period

- **Group “A” Government officers-** cannot seek commercial employment within 2 years, post their retirement, without the permission of the government.
- **Comptroller and Auditor-General (CAG)-** is not be eligible for further office either under the Government of India or under the Government of any State after he has ceased to hold his office.
- **Union Public Service Commission (UPSC)-** on the expiration of his term of office, a member is ineligible for reappointment to that office.

6.1.3. TRANSFER OF JUDGES

Why in News?

The unusual transfer of the Chief Justice of the Madras High Court to Meghalaya High Court has created a controversy around collegium system.

Why the controversy?

- Earlier, the collegium, headed by Chief Justice, had recommended transfer of Justice Tahiramani to the Meghalaya High Court.
- Justice Tahiramani's request to reconsider the transfer proposal which was declined by collegium, in response to which Justice Tahiramani resigned from the post.
- While **sections of the Bar have questioned the transfer as well as the lack of transparency** about the real reason, the Supreme Court (SC) has issued an official statement that the Collegium indeed had cogent reasons and that these could be revealed, if necessary.

Procedure of transfer of judges

- **Constitutional provision:** The transfer of Judges from one High Court to another High Court is made by the President after consultations with the Chief Justice of India under Article 222 (1) of the Constitution.
 - Art 217 (1) provides that the President shall hold consultation with the Chief Justice of India, the Governor of the State, and in case of appointment of a Judge other than the Chief Justice, the Chief Justice of the High Court.
- **Judicial Interpretation:** The Supreme Court derives its power to select, appoint and transfer judges from its verdicts in Three Judges Cases. From the SC decisions on the subject of judges' transfer, following points emerge:
 - Transfer of a judge cannot be a punitive measure.
 - Transfer can be ordered only on 'public interest' for the 'better administration of justice'.
 - Transfer can be ordered by President only on the basis of concurrence of the CJI after effective consultation.

Steps to be taken

- **Need for judges' consent for transfer:** Judges of High Court are not subordinate to the CJI and the SC collegium judges. They enjoy equal status as judges of Constitutional Courts. The Constitution has not given the CJI and collegium judges any powers to have administrative superintendence over judges of High Court. Therefore, consent of judge should be required before transfer.
- **Recording of reasons for transfer:** Recording of reasons operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.
- **Standard Procedure for transfer:** A standard procedure of transfer should be established in consultation with government. At present collegium need not to take any input from the government in case of mere transfer of judges. But in case of elevation as judge a Memorandum of Procedure is followed.

Conclusion

Any arbitrary transfer by the Supreme Court collegium reduces the High Court judges to a subordinate status. Further, the collegium system, by its opacity, has failed to build a fearless and strong judiciary and serve the public interest. Immediate steps should be taken to improve transparency in judiciary to maintain the trust of general public.

6.1.4. REGIONAL BENCH OF SUPREME COURT

Why in News?

Vice President of India has suggested setting up of four Regional Benches of the Supreme Court. Currently, the Supreme Court sits at Delhi.

Constitutional provision

Article 130: According to Article 130, the Supreme Court may sit at place(s) other than Delhi on the order of the Chief Justice of India with the prior approval of the President of India.

- Under Article 130, the chief justice of India acts as a persona designata and is not required to consult any other authority/person. Only presidential approval is necessary.
- Also, no constitutional amendment would be required in order to set up such benches.

Need for Regional Benches

- **Constitutional obligation:** Article 39-A directs the State to ensure that the operation of the legal system promotes justice on a basis of equal opportunity to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities. Thus, it is essential to ensure that the additional transaction cost of litigation for people of north-eastern states or southern states should be minimal.
- **High pendency of cases:** More than 65,000 cases are pending in the Supreme Court, and disposal of appeals takes many years.
- **Supreme Court as constitutional court:** The number of cases decided by constitution benches, benches comprising five or more judges, has steadily declined in recent times. With regional benches, Supreme Court of India situated in Delhi would only hear matters of constitutional law and public law.
- **Litigation as a measure of well-being:** An empirical study on litigation in India, finds that there is direct correlation between civil case filing and economic prosperity (more prosperous states have higher civil litigation rates). However, in recent years civil case backlog has discouraged civil case filings which may impact India's future economic growth. Thus, setting up regional bench is a step-in right direction.

Various committees and SC on the matter

- **Parliamentary standing committee:** Standing Committees of Parliament recommended in 2004, 2005, and 2006 that Benches of the court be set up elsewhere. In 2008, the Committee suggested that at least one Bench be set up on a trial basis in Chennai.
- **Law commission:** Law commission had recommended the division of the Supreme Court into 1) Constitutional court and 2) National court of appeal. Law Commission, in its 229th Report, recommended that a **Constitution Bench be set up in Delhi to deal with constitutional and allied issues, and four Cassation Benches** in Delhi (north), Chennai/Hyderabad (south), Kolkata (east) and Mumbai (west) to deal with all appellate work arising out of the orders/judgments of the High Courts.
- **Supreme Court:** The Supreme Court itself, as early as in 1986, had recommended establishment of National Court of Appeal with regional Benches at Chennai, Mumbai and Kolkata. In **V. Vasantha Kumar case, 2016** the Supreme Court referred the matter to a Constitutional Bench for decision on the National Court of Appeal.
 - **The National Court of Appeal with regional benches** in Chennai, Mumbai and Kolkata is meant to act as final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in civil, criminal, labour and revenue matters.

Issues associated with setting up of regional benches

- **Dilute the authority of Supreme Court:** Setting up of regional benches may dilute superiority of the Supreme Court's decisions.
 - However, critics argue that **many High Courts in this country have different Benches for meting out justice without 'justice' being 'diluted'**. For example, the Bombay High Court has four Benches, in Mumbai, Aurangabad, Nagpur and Panaji (Goa).
 - Also, with the decentralization being both functional and structural in nature, with only the bench in Delhi dealing with constitutional matters, such concerns may be put to rest.
- **Affect integrated judiciary system:** The Indian Constitution has established an integrated judicial system with the Supreme Court at the top and the state high courts below it. The setting up of regional court may dilute this unitary character. In 2010, the Full Court, comprising 27 judges and headed by Chief Justice of India had rejected law commission recommendation for regional Benches citing this reason.
 - However, it has been argued that High Court having different branches has not diluted the integrated judiciary system.

Conclusion

With the rising arrears of cases and practical difficulties being faced by poor litigants, it is about time that the idea of setting up regional benches be explored seriously. Setting up regional benches of the Supreme Court dealing with appeals and a constitutional bench in Delhi is the best way forward.

6.1.5. ARTICLE 131 OF INDIAN CONSTITUTION

Why in news?

Recently **Kerala and Chhattisgarh** have filed a suit in the Supreme court challenging the constitutional validity of various central laws such as Citizenship Amendment Act (Kerala) and the National Investigation Agency Act (Chhattisgarh), **under Article 131** of the Indian Constitution.

About Article 131

- Article 131 of the Constitution talks about the original jurisdiction of the **Supreme Court**, where the apex court deals with any dispute **between the Centre and a state; the Centre and a state on the one side and another state on the other side; and two or more states.**
- This means **no other court** can entertain such a dispute.
- A dispute to qualify under Article 131, it has to necessarily be between states and the Centre, and must involve **a question of law or fact** on which the existence of a legal right of the state or the Centre depends.
 - In the **State of Karnataka v Union of India, Case, 1978** Justice P N Bhagwati had said that for the Supreme Court to accept a suit under Article 131, the state need not show that its legal right is violated, but **only that the dispute involves a legal question.**
 - It cannot be used to settle political differences between state and central governments headed by different parties.
- However, **Centre has other powers to ensure that its laws are implemented.**
 - The Centre can issue directions to a state to implement the laws made by Parliament.
 - If states do not comply with the directions, the Centre can move the court seeking a permanent injunction against the states to force them to comply with the law.
- **The original jurisdiction of the Supreme Court does not extend to:**
 - A dispute arising out of any treaty, agreement, covenant, engagement or other similar instrument executed before the commencement of the constitution and continues to be in operation or which provides that the **jurisdiction of the Supreme Court shall not extend to such a dispute;**
 - disputes relating to the use, distribution, or control of the water of any inter-state river;
 - Suits brought by private individuals against the government of India.

Other Jurisdictions of the Supreme Court

- **Advisory:** Under its advisory jurisdiction, the President has the power to seek an opinion from the apex court under Article 143 of the Constitution.
- **Appellate:** Under its appellate jurisdiction, the Supreme Court hears appeals from lower courts.
- **Extraordinary original jurisdiction:** The Supreme Court has exclusive power to adjudicate upon disputes involving elections of the President and the Vice President, those that involve states and the Centre, and cases involving the violation of fundamental rights.

Power to declare a legislation unconstitutional under Article 131:

- In 2011, in State of MP v Union of India, the Supreme Court held that validity of central laws can be challenged under Article 32 of the Constitution and not under Article 131.

Significance of Article 131

- **India's quasi-federal constitutional structure:** Inter-governmental disputes are not uncommon; therefore, the framers of the Constitution expected such differences, and added the **exclusive original jurisdiction of the Supreme Court** for their resolution.
- **Resolve disputes between states: Unlike individuals,** State governments cannot complain of fundamental rights being violated or cannot move to the courts under article 32 (Remedies for enforcement of rights). Therefore, the Constitution provides that whenever a State feels that its legal rights are under threat or have been violated, it can take the **"dispute" to the Supreme Court.**
 - States have filed such cases under Article 131 against neighbouring States in respect of **river water sharing and boundary disputes.**

Way forward suggested

Supreme Court, should constitute a **larger bench** to decide the question whether the suits challenging central laws are maintainable under article 131 or not. In that case, if the suits are declared maintainable, the same bench may also adjudicate the disputes.

6.2. JUDICIAL REFORMS

6.2.1. ALL INDIA JUDICIAL SERVICES

Why in news?

Recently, the **proposal of the All India Judicial Services (AIJS)**, has been revisited by the legal think tank Vidhi.

Background

- The idea of creating an All India Judicial Services (AIJS) was first introduced by the **14th Report of the Law Commission in 1958**.
- The **First National Judicial Pay Commission (Justice Jagannath Shetty Commission) in 1996**, also recommended it at the district judge-level.
- **After the Swaran Singh Committee's recommendations in 1976, Article 312** of the Constitution (provides for creation all-India services), was amended by the Constitution **42nd Amendment Act, 1976**, to include an all-India judicial service.
- Currently, the appointments of District Judges and Subordinate Judiciary are done **by the respective State governments**.

About AIJS

- It aims at **creating a centralized cadre of District Judges** who will be recruited centrally through an all-India examination and allocated to each State along the lines of the All India Services (AIS).
- It has been pitched **as a solution to judicial vacancies**, lack of representation for the marginalised and the failure to attract the best talent.

Why is the need for All India Judicial Services?

- **To fill up vacancies:** It would help fill the approximately 5,000 vacancies across the District and Subordinate Judiciary in India, as **recommended by the Parliamentary Standing Committee on Law and Justice** in 2013.
- **To enrich the quality of justice:** As the judicial academies give proper training and High Courts provide the freedom within identified parameters to innovate at work, district judges' efficiency will increase considerably and this **would reduce appeals** arising from their decisions.
- **Address Lacunas of state mechanism:** The existing system under which High Courts or State Public Service Commissions are recruiting judges to the district judiciary is full of loopholes, delays and inefficiency.
- **To attract best talent:** This would help incentivize better talent to join the District and Subordinate Judiciary through transparent and efficient method of recruitment. For motivated young men and women, job satisfaction and personal reputation are more important and they are less likely to become corrupt.
- **Cooperative federalism:** A unified judiciary, with uniform laws and an all-India judiciary, helps to institutionalise the idea of co-operative federalism.
- **Better Bar-Bench relation:** Due to better quality of judges, cordial relationship between Lawyers and Judges are likely to change for the better, which is a desirable reform in the present circumstances.

Issues

- **Fear of centralization and federalism debate:** Creation of an AIJS will necessarily mean **transferring the recruitment and appointment powers of district judges**, from the State Governments (**Article 233**), to a centralized system, as exists for other AIS.
 - According to Article 233, the appointments of persons to the post of District Judges shall be made by the Governor of the State in consultation with the High Court exercising jurisdiction over such State.
- **Problem of language:** Up to the court of District and Sessions Judge, the proceedings are conducted and the judgments are written in the local language.
 - The judges recruited through AIJS process, being not familiar with the language/customs of the state, and deciding cases may **affect the legitimacy of the judicial system** in the eyes of local population and reduce its efficiency.
- **Independence of judiciary:** Currently, the independence of District Judges, is guaranteed by the fact that the **High Court play a significant role in the appointment, transfer and removal of District Judges**. With the setting up of the AIJS, this control would be impaired or weakened and thereby independence of the judiciary would suffer further erosion.
 - There are also apprehensions that Indian Judicial Service will substantially reduce or impair the promotional avenues of the members of the subordinate State Judicial Service.
- **Fear over reservation & examination:** Many of the communities who currently benefit from the State quotas, may oppose the creation of AIJS. This is because the communities recognised as Other Backward Classes (OBC) by State governments may or may not be classified as OBCs by the Central government.

Related Information

- As per, **Code of Civil Procedure, 1908** and **Code of Criminal Procedure, 1973** the proceedings of civil and criminal courts are to be conducted in a language prescribed by the State Government.
- **Only High Courts** are required to conduct their proceedings in English, although some High Court have a special exemption and conduct their proceedings in Hindi.

- A “national exam” risks shutting out those from less privileged backgrounds from being able to enter the judicial services.
- **Local laws:** It may end up not taking into account local laws, practices and customs which vary widely across States, vastly increasing the costs of training for judges selected through the mechanism.

Way Forward

- There is need to ensure that service is **insulated from the influence of both the Central Government and State Government**, right from the process of appointment to the process of removal.
 - 116th report of the Law Commission recommends that appointments, postings and promotions to the AIJS be made by a **proposed National Judicial Service Commission consisting of retired and sitting judges of the Supreme Courts**, members of the bar and legal academics.
- Any change in the judicial set up of the country **must be concurred in by the States** and the High Courts as also members of the legal fraternity.
- It may be more prudent to investigate **the reasons and causes for the large number of vacancies in the poorly performing States**.
- **Intensive training can imparted** to the recruits for picking up one more language would certainly provide adequate and effective knowledge of the local language of the State to which he or she is allocated.

6.2.2. FAST TRACK SPECIAL COURTS

Why in news?

Ministry of Law and Justice has recently started a scheme for setting up **1023 Fast Track Special Courts (FTSCs)** for **rape and POSCO act cases**, as a part of **National Mission for Safety of Women (NMSW)**.

Evolution of Fast track special courts

- In 2000, **11th Finance Commission** recommended a scheme for creation of 1734 Fast Track Courts (FTCs) for disposal of **long pending cases in lower courts**, particularly cases of **under trials**.
- An average of 5 FTCs were to be established for five years (2000-05), in each district by the state governments in consultation with the respective High Courts.
- The **judges** for these FTCs were **appointed** on an **ad hoc basis**. The High Courts selected them from amongst retired HC judges, eligible judicial officers and members of the Bar.
- By 2005, only 1562 were functional by 2005. The scheme was continued till 2010-11 under Supreme Court's direction. But by the end of 2011, only 1192 FTCs were functional.
- Later, the Central government **discontinued** the scheme, but the **state governments** could establish FTCs from their own funds.
- However, if they decide to continue then the FTCs have to be made a **permanent feature**. States such as Arunachal Pradesh, Assam, Maharashtra, Tamil Nadu and Kerala chose to do so.
- After the Delhi gang rape case of 2012, the Verma Committee Report and public sentiment favoured speedy justice, and states were requested to set up **fast track special courts** for trying cases of sexual assault.

Pendency of cases in India

- As of August 2019, there are over 3.5 crore cases pending across the Supreme Court, the High Courts, and the subordinate courts.
- Of these, subordinate courts account for over 87.3% pendency of cases, followed by 12.5% pendency before the 24 High Courts.
- As of 2017, High Courts have 403 vacancies against a sanctioned strength of 1,079 judges, and subordinate courts have 5,676 vacancies against a sanctioned strength of 22,704 judges.
- Between 2006 and 2017, the number of vacancies in the High Courts has increased from 16% to 37%, and in the subordinate courts from 19% to 25%.

Issues with FTSCs

- **Systemic issues:** Inadequate staff and IT infrastructure, delay in getting reports from the understaffed forensic science laboratories, lack of victim support services and victim/witness protection measures, frivolous adjournments are some of the issues.
 - This also leads to very high incidence of **complainants and witnesses turning hostile**.
- **Inadequate number of Judges:** Mostly, fresh appointments are not done. When states hire from the current pool of judges, it only increases the workload of the remaining judges.

- **No legislative clarity:** There is no legislative foundation which sets out the purpose of these courts, or specific fast track mode of functioning and any special time bound procedures to be followed.
 - They are technically special courts rather than fast track courts.
- **Lack of feedback and updation:** There has been no evolution in the conception of fast track courts since they were first established more than a decade ago.

Way Forward

- **Apart from increasing number of judges, equal attention** must be paid to both the metropolitan and far-flung non-metropolitan areas.
- Once established, special courts should be subject to **periodic monitoring and evaluation**, to assess their performance and effectiveness.
- **Judicial officers and prosecutors** should be selected based on their attitude, knowledge and skills and given special sensitization **training**.
- **Mechanisms for collaboration** with other court agencies and non-government organisations should be developed.
- **Comprehensive legislation** should provide for **victim support services**, including interpreters, social workers and other services to protect victims, enable them to testify in safety and reduce the trauma they might experience.

6.2.3. ONLINE JUSTICE DELIVERY

Why in news?

The Supreme Court recently passed directions for all courts across the country to **extensively use video-conferencing for judicial proceedings** so that the congregation of lawyers and litigants can be avoided to maintain social distancing amid the coronavirus pandemic.

How online delivery of judicial services help in tackling various issues in judicial system?

- **High pendency:** Between 2006 -2019, there has been an overall increase of 22% in the pendency of cases across all courts. Online judicial services can provide additional aid to clear this backlog and reduce the time and cost involved.
- **Enhanced efficiency of courts:** Standard system generated formats of routine judgments and orders, particularly in civil cases, can be used by courts for quick delivery of judgments.
 - **Reduction of paperwork** will relieve judges and other court staff from administrative duties and allow them to focus on judicial functions.
 - Real-time online data would facilitate better identification and classification of cases and also enable High Courts to exercise **proper supervision and control over subordinate courts**.
- **Tackling Infrastructural constraints:** Video and audio enabled hearings can save significant court costs in terms of building, staff, infrastructure, security, transportation costs for all parties to the court proceedings.
- **Availability of judicial data:** The Law Commission of India in its 245th Report noted that the lack of comprehensive and accurate data relating to cases from courts across the country poses a hurdle to efficient policymaking by the government. Digital databases created by online judicial services can address this need.
- **Improving transparency and accountability in the judicial system:** Allowing audio-video recordings of court proceedings can contribute to transparency of court processes by allowing a precise record of the proceedings and at the same time discourage improper conduct in courts and wastage of court time.
- **Promoting ease of doing business:** Online resolution of contractual disputes will boost the confidence of domestic and foreign businesses as they explore investments in India.

Challenges

- **Lack of investment in court and IT infrastructure:** State of the art e-courts require the deployment of new age technology like high speed internet connection, latest audio and video equipments, cloud computing, availability of sufficient bandwidth etc.
- **Lack of technical knowhow among court officials and staff** and absence of dedicated in-house technical support.
- **Low awareness amongst litigants and advocates:** As per a survey less than 40 per cent of cases were filed exclusively through a computerized system.

- **Digital divide in access to justice:** due to insufficient infrastructure, non-availability of electricity and internet connectivity and low digital literacy in rural areas.
- **Interdepartmental Challenges:** due to lack of coordination, communication and interoperability of software between various departments.
- **Cyber security threats:** Judicial data comprise of sensitive case information and litigant data, their electronic storing and transmission fuels security and privacy concerns.
- **Procedural problems:** like admissibility and authenticity of the evidence received through the video and/or audio transmissions, the identity of the witness and/or individuals subject of the hearings, confidentiality of the hearings etc.

Way Forward

- **Making rules for use of electronic evidence:** Procedural laws / rules may also need to be amended to incorporate the suggestions of having audio-video recording of court proceedings and maintaining standard system generated formats of routine judgments and orders.
- **Design and impart regular training courses:** for judges, court staff and paralegals for using online systems and maintenance of e-data (such as records of e-file minute entries, summons, warrants, bail orders, order etc).
- **Creating a user-friendly e-courts mechanism and awareness generation:** which is simple and easily accessible by the common public and provides information in multiple Indian languages.
- **Clear rules on data privacy:** These must include consequences of data breach, infringement of privacy etc. and an appropriate grievance redressal mechanism.

Details of some important initiatives:

- **eCourts Mission Mode Project**
 - It is a **Pan-India Project**, monitored and funded by Department of Justice, Ministry of Law and Justice, Government of India for the District Courts across the country.
 - The objective of the eCourts Project is to **provide designated services to the citizens as well courts by ICT enablement** of all district and subordinate courts in the country.
 - The services being delivered to citizens include status of registration of cases, Case status, Case list, daily order sheets and final orders/judgments.
 - **e-Courts Services Mobile application and e-Courts National Portal have also been developed.**
- **National Judicial Data Grid:** It is a **web portal** that provides data related to the number of cases pending in any court in the country.
- **Judicial Service Centre:** JSCs have been established at all computerised courts which serve as a **single window for filing petitions and applications by litigants/ lawyers** as also obtaining information on ongoing cases and copies of orders and judgments etc.
- **e-Committee of Supreme Court:** It is a body constituted by the Government of India in the Supreme Court to assist the Chief Justice of India in formulating a National policy on computerization of Indian Judiciary and advice on technological communication and management related changes.
- **Re-engineering committees in High Courts:** These have been established as per the order of the eCommittee of the Supreme Court. The role of these committees is to undertake judicial process re-engineering by streamlining and improvising current court processes, eliminating redundant processes and designing new processes with respect to making court processes ICT enabled.
- **Legal Information Management & Briefing System (LIMBS):** It is a web-based portal developed by Department of Legal Affairs, Ministry of Law & Justice for monitoring and handling of various court cases of Govt. Departments and Ministries.
- **Interoperable Criminal Justice System (ICJS):** It is aimed at integrating the Crime and Criminals Tracking Network and Systems (CCTNS) project with the e-Courts and e-Prisons databases, as well as with other pillars of the criminal justice system such as forensics, prosecution and juvenile homes in a phased manner.

6.3. GRAM NYAYALAYAS

Why in news?

The **Supreme Court** has directed **all the states** to come out with notifications for establishing '**Gram Nyayalayas**' within a month and has asked the High Courts to expedite the process of consultation with state governments on this issue.

Background

- **114th Report of the Law Commission (1986)** recommended setting up of Gram Nyayalayas (**mobile village courts**) at the grass root levels to:
 - provide access to justice to the most marginalized sections of the society specifically to reduce barriers to access in terms of distance, time & associated costs.
 - reduce delay by providing for summary procedure.
 - reduce workload on higher tiers of judiciary.
- They were expected to **reduce** around **50 %** of the **pendency of cases** in subordinate courts and also to take care of the new litigations which are to be disposed within six months.
- **Gram Nyayalayas Act, 2008** came into in 2009. More than 5000 Gram Nyayalayas were expected to be set up under the Act for which the Central Government allocated about Rs.1400 crores by way of assistance to the concerned States/Union Territories.
- **However**, presently only 11 states have taken steps to notify Gram Nyayalayas so far. Only 208 Gram Nyayalayas are functioning in the country.
 - In some of the States, the proposals for establishing the Gram Nyayalayas are pending before the High Court for consultation, while in some they are not functioning despite being notified.
 - Though some States have issued Notifications for establishing the Gram Nyayalayas, all the established Gram Nyayalayas are not functioning, (except in Kerala, Maharashtra and Rajasthan).
 - Very few States have shown eagerness to establish the Gram Nyayalayas and **not a single Gram Nyayalayas have become operational in North- Eastern States.**

About Gram Nyayalayas

- **Structure:** It is established for every Panchayat at intermediate level or a group of contiguous Panchayats at intermediate level in a district.
 - It can hold **mobile courts** in villages falling under its jurisdiction and State Government shall extend all required facilities.
- **Appointments:** The **State Government** shall appoint a presiding officer called **Nyayadhikari** for every Gram Nyayalaya in consultation with the High Court, who will be a person eligible to be appointed as a **Judicial Magistrate of the First Class**.
- **Jurisdiction, powers and authority:** Gram Nyayalaya shall exercise **both civil and criminal jurisdiction**. Also, there is provision of appeals.
 - Gram Nyayalaya can try criminal cases, civil suits, claims or disputes which are specified in the **First and Second Schedules** to the Act:
 - ✓ Offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years.
 - ✓ Offences related to **central acts** such as payment of wages, minimum wages, Protection of civil rights, bonded labour, Protection of Women from Domestic Violence Act, etc.
 - ✓ Offences under **states acts** which are notified by each state government.
 - ✓ **Civil and Property suits** such as use of common pasture, water channels, farms, right to draw water from a well or tube well etc.
 - The first and second schedules of the Gram Nyayalaya Act can be **amended** by **both the central and state governments**.
- A Gram Nyayalaya is **not bound by the rules of evidence** provided in the Indian Evidence Act, 1872 but is guided by the **principles of natural justice** and is subject to any rule made by the High Court.

Ineffectiveness of Gram Nyayalaya

- **Concurrent jurisdiction with regular courts:** Majority of states have set up regular courts at the taluk level instead of setting up Gram Nyayalayas, perhaps with a view to avoid the complexities involved in implementation of a new legislation, fresh appointment of Nyayadhikaris.
- **Shortage of human resources:** The progress is affected by non-availability of judicial officers to function as Gram Nyayadhikaries, Non-availability of notaries, stamp vendors etc.
- **Funds:** The slow pace of utilisation of funds under the Scheme is mainly due to the lack of proposals from the States for setting up of Gram Nyayalayas.
- **Reduction of Pendency** has not been fulfilled. The number of cases disposed by Gram Nyayalayas is negligible and they do not make any substantial difference in the overall pendency in the subordinate courts.

- **Functioning:** Gram Nyayalayas have been established on part-time basis (weekly once or twice) and are not in addition to the existing courts.
 - However, it has been observed that in most villages, courts are held only once or twice a month while in others, the frequency is even worse, mostly due to the lack of coordination between High Courts and state governments.
- **Lack of awareness:** Many of the stakeholders including the litigants, lawyers, police officers and others are not even aware about the existence of Gram Nyayalayas.
- Further, there is **ambiguity and confusion regarding the jurisdiction** of Gram Nyayalayas, due to the existence of alternative forums such as labour courts, family courts, etc.

Way Forward

- **Establishment of permanent Gram Nyayalayas**, in every Panchayats or group of contiguous Panchayats at intermediate level.
- **Infrastructure and Security:** Separate building for the functioning of the Gram Nyayalaya as well as for the accommodation of the Gram Nyayadhikaris and other staff need to be constructed.
- **Creation of a regular cadre of Gram Nyayadhikari:** Officers recruited to this service ought to have a degree in social work apart from a law degree. Also, this could be made a compulsory service for a certain period for a newly recruited judicial officer to the regular cadre of first class judicial magistrates or civil judges.
- **Training of Gram Nyayadhikari:** Apart from the legal and procedural requirements of Gram Nyayalayas, training may also include the local language of the community amongst whom they are posted.
- **Creation of awareness among various stakeholders:** Suitable steps may be taken for creating awareness among various stakeholders including the revenue and police officers.

6.4. NEW RULES FOR TRIBUNALS

Why in News?

Union Ministry of Finance has framed new rules prescribing uniform **norms for the appointment and service conditions** of members to various Tribunals.

About the new rules

- The '**Tribunal, Appellate Tribunal and other Authorities (Qualifications, Experience and other Conditions of Service of Members) Rules, 2020**', were framed by the Ministry of Finance in exercise of powers under **Section 184 of the Finance Act 2017**.
- These apply to 19 Tribunals including **Central Administrative Tribunals; Income Tax Appellate Tribunal; Customs, Excise, Service Tax Appellate Tribunal etc.** Notably, **Foreigners Tribunals are not covered**.
- **Appointment:** appointments to the above Tribunals will be made by Central Government on the recommendations by the "**Search cum Selection Committee**" composed of:
 - The Chief Justice of India, or a judge nominated by the CJI
 - President/chairperson of tribunal concerned
 - Two government secretaries from the concerned ministry/department.
- **Removal:** Search Cum Selection Committee has the power to **recommend the removal** of a member, and also to **conduct inquiry** into allegations of misconduct by a member.
- **Qualifications for tribunal members:** **Only** persons having judicial or legal experience are eligible for appointment.
- **Term:** Rules also provide a **fixed term of four years** to the Tribunal members, based on Court's observations that the three-year term under the 2017 Rules precluded cultivation of adjudicatory experience and was thus injurious to the efficiency of the Tribunals.
- **Independence:** The condition in the 2017 Rules that the members will be eligible for **re-appointment has also been dropped** in 2020 Rules based on Court's apprehension that such a clause was likely to affect a member's independence.
- **Other omitted provisions:**
 - Provision which enabled Secretary of the concerned department/ministry to convene the Search-cum-selection committee has been omitted.
 - The provision in 2017 Rules which gave Centre the power to offer relaxations in Rules in specific cases has been omitted in 2020 Rules following the concerns flagged by the Court.

Concerns that still remain

- **Lack of judicial primacy in appointments still remain:**
 - In **Supreme Court Advocates on-Record Assn. v. Union of India (Fourth Judges Case)**, it was held that **primacy of judiciary is imperative** in selection and appointment of judicial officers including Judges of High Court and Supreme Court.
 - Strength of search-cum-selection committees of tribunals has been reduced from 5 to 4 by omitting the expert nominee as 5th member. This composition still has 'token representation' of CJI or his nominees as found in Rojer Mathew case.
 - Also, for tribunals like Central Administrative Tribunal (CAT), Debt Recovery Appellate Tribunal (DRAT) etc. a **non-judicial member can become chairperson**, which undermines judicial primacy.
- **Principles laid down in UOI vs R Gandhi, Madras Bar Association case (2010) not met:**
 - **Regarding composition**, it stated that among the 4 membered search-cum-selection committee, there should be 2 judicial appointments.
 - **Term:** the court held that the **term of office shall** be five or seven years.
 - **Suspension of the President/Chairman or member of a Tribunal can be only with the concurrence of the Chief Justice of India.** However, there is no provision in the 2020 Rules to incorporate this direction.
 - **Regarding independence of tribunals**, it was held that administrative support for all Tribunals and its members should be from the Ministry of Law and Justice, not from parent ministries or departments concerned. This also remains to be implemented.
 - **Only judges and advocates** should be considered for appointment as **judicial member of the tribunal** and not those from the Indian Legal Service.

Tribunals

- A tribunal is a **quasi-judicial body** established in India by an Act of Parliament or State Legislature under **Article 323A or 323B** to resolve disputes that are brought before it.
- Articles 323-A and 323-B were inserted through the **42nd Amendment Act of 1976** on recommendation of **Swaran Singh Committee**.
 - **Article 323A** deals with administrative tribunals.
 - **Article 323B** deals with tribunals for other matters.
- They play an important role in the sphere of the adjudication of disputes especially when the subject demand **technical expertise**.
- They **do not have to follow** any uniform procedure as laid down under the Civil Procedure Code and the Indian Evidence Act but they have to **follow the principles of Natural Justice**.
- They enjoy some of the powers of a civil court, viz., issuing summons and allowing witnesses to give evidence. Its **decisions are legally binding on the parties**, subject to appeal.

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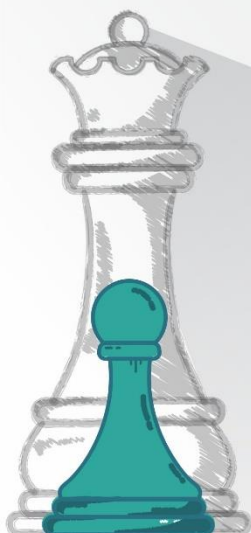
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7. TRANSPARENCY AND ACCOUNTABILITY

7.1. RIGHT TO INFORMATION (RTI) ACT

Why in news?

Parliament passed the Right to Information (Amendment) Bill, 2019.

Amendments brought in the RTI Act

- **Removal of fixed term-** As per the act, the CIC and ICs will hold office for a term of five years. The Amendment removes this provision and states that the central government will notify the term of office for the CIC and the ICs.
- **Determination of Salary-** As per the act, 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.

Similarly, the salary of the CIC and ICs (at the state level) will be equivalent to the salary paid to the Election Commissioners and the Chief Secretary to the state government, respectively.

- The Amendment empowers the Central Government to determine the salaries, allowances, and other terms and conditions of service of the central and state CIC and ICs.

Rationale behind the amendments

- The salaries and allowances and other terms and conditions of service of the CEC and EC are equal to a Judge of the Supreme Court, therefore, the CIC, IC and the State CIC becomes equivalent to a Judge of the Supreme Court in terms of their salaries and allowances and other terms and conditions of service.
 - But, the functions being carried out by the Election Commission of India and the Central and State Information Commissions are totally different.
- The purpose of the amendments proposed is to provide for enabling provision under the RTI Act to frame Rules regarding salaries, allowances and conditions of service for Chief Information Commissioners and Information Commissioners and State Information Commissioners. Presently, there are no such provisions available under the RTI Act 2005.

Arguments against the Amendments

- **Dilutes the status of CICs-** Chief Information Commissioner and Chief Election Commissioner (and the state level officers) were kept at the same footing, as according to the Supreme Court of India RTI and Right to vote are equally important fundamental rights.
- **Dilutes the independence of CICs and ICs-** as the Central government may determine the term and salaries of CICs and ICs.
- **Encroaches upon the state jurisdiction-** as the Central government will prescribe the term, status and salary of State Information Commissioners.
- **Lack of consultation-** with the civil society and the state Governments, which amounts to undemocratic imposition. It was not put in the public domain and the amendment did not undergo much scrutiny.

Conclusion

With the increasing number of attacks on RTI users, the government may focus its efforts on better proactive disclosure of information and offer protection to people who show truth to power by exposing corruption and wrongdoing.

About Central Information Commission

- CIC was established under the provisions of the **Right to Information Act, 2005**.
- The Commission consists of a **Chief Information Commissioner and not more than ten** Information Commissioners (IC).
- They are appointed by **President on the recommendation** of a committee consisting of **Prime Minister** as Chairperson, **Leader of Opposition in the Lok Sabha** and a **Union Cabinet Minister nominated by the Prime Minister**.
- They should be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.
- CIC and IC hold office for a term of 5 years or until they attain the age of 65 years, whichever is earlier. They are not eligible for reappointment.
- **President can remove** CIC and IC from the office under the certain conditions.

7.1.1. CJI UNDER RTI

Why in news?

In **Central public information officer, Supreme Court of India vs Subhash Chandra Agarwal** case a five-judge Constitution Bench of Supreme Court declared that the **Office of the Chief Justice of India (CJI) is a 'public authority'** under the Right to Information (RTI) Act.

What the SC said?

On whether CJI is public authority?

- Supreme Court of India and office of CJI are not two different public authorities. The SC includes the office of CJI and other judges as per **Article 124**. Hence, if the Supreme Court is a public authority (as per Section 2(h) of RTI Act), **so is the office of the CJI**.

On declaration of assets of judges

- CJI does not hold information on the personal assets of judges **in a fiduciary capacity** (Relationship of confidence and trust). Thus, disclosure of details of serving judges' personal assets was **not a violation of their right to privacy** and cannot be exempted from RTI.

On disclosing personal information

- **Right to know under RTI was not absolute** and ought to be **balanced with the right to privacy** of individual judges.
- Thus, it asked Information commissioner to apply **test of proportionality, keeping in mind right to privacy and independence of judiciary**.
- It gave list of **'non-exhaustive factors'** to be considered by Public Information Officer (PIO) while **assessing public interest under section 8 of RTI**, which include: nature and content of information, consequences of non-disclosure, freedom of expression and proportionality etc.
- **What are the issues raised against this?**
 - This calls for great judicial acumen and most PIOs would choose to steer clear **and refuse disclosure by invoking Section 8(1)(j) of the RTI Act** and leave the information seekers to appeal against their orders.
 - Rather, the court should have **spelt out more clearly** those items of personal information, of the judiciary, which the PIOs could **disclose without adjudication** of its benefits for the general public.

Section 8 (1) (j) of the RTI Act says that personal information, which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual shall be disclosed only if the appellate authority is satisfied that the larger public interest justifies the disclosure of such information.

Regarding information relating to judicial appointments

- Here, SC drew distinction between **'input' and 'output'**. Output is the final outcome of collegium resolution, while input is the observations, indicative reasons, inputs and data collegium examined. Thus, only names of judges recommended by the Collegium (**output**) can be disclosed, not the reasons (**input**).
- Also, SC said the information relating to collegium deliberations is treated as **confidential third-party information**.

RTI and Judiciary

- The relationship of the RTI with the judiciary has been fraught from the beginning.
- The **RTI Act conferred powers** on the Chief justice of the Supreme Court of India and the chief justices of high courts of states for carrying out its provisions, and all these courts framed their own rules.
- However, the **Supreme Court Rules undermined the RTI** in four key ways. Unlike the RTI Act, the Rules do not provide for:
 - a time frame for furnishing information
 - an appeal mechanism
 - penalties for delays or wrongful refusal of information
 - makes disclosures to citizens contingent upon "good cause shown"
- Moreover, several **high courts framed extremely unfriendly rules**, making it almost impossible to get any information. For example, the Allahabad High Court had wanted the citizen to deposit **Rs 500 for each piece of information** sought as against the Rs 10 fixed by the Supreme Court.
- In sum, the Rules allowed the judiciary to provide information at its **unquestionable discretion**, violating the text and spirit of the RTI.
- The **RTI Act does not permit any appeals** to be entertained by any court under Section 23. Nevertheless, the contradiction arises from the fact that the Indian Constitution gives powers to the Supreme Court and the high courts that override any statute.
- Further, SC has said that the decision of the Registrar General of the Court will be final and not subject to any independent appeal to Central Information Commission.

- In such cases, the PIO should follow the procedure mandated in **Section 11 of the RTI Act**. That is, a notice should be first issued to the third party — the judge concerned — about the RTI request for information. The view of the third party should be considered before the PIO takes a call.
- **What are the issues raised against this?**
 - This goes against SC assertion in **S.P. Gupta vs President Of India And Others** case in 1981, where it said documents consisting of the correspondence exchanged between the Law Minister or other high-level functionaries of the Central Government, the Chief Justice of the High Court, the State Government and the Chief Justice of India in regard to appointment and non-appointment etc. **cannot be regarded as protected entitled to immunity** from disclosure.

Conclusion

- SC rightly observed that “**transparency and accountability should go hand-in-hand**”. Increased transparency under RTI was no threat to judicial independence. Thus, judgement goes long way enhancing trust of people in justice system.

7.2. NGOS REGULATION

Why in news?

The Foreign Contribution (Regulation) Amendment Bill, 2020 was passed by parliament to better regulate NGOs.

Need to regulate NGOs

- **Upholding Accountability:** Earlier, various reports, including reports of CBI and Intelligence Bureau, have shown the misappropriation of funds by a large number of NGOs, which could cost India around 2-3% of its GDP.
- **Independence and reliability of the organisational structures of NGOs:** For instance, questions are frequently raised regarding role and composition of the board, financial accounting, management structure, etc.
- **Constitutional Mandate:** Since the NGOs receive public funds, it is important that people have the **Right to Information** under Article 21, to know about the usage of those funds.
- **Effectiveness of NGOs as a social service delivery agent:** as many bodies such as hospitals and educational institutions on land given by government, will now come under the definition of ‘public authorities’ (Section 2(h) of the RTI Act).
- **Bringing transparency:** Central Bureau of Investigation in its report submitted before the Supreme Court has said **less than 10% of the 29-lakh registered NGOs across the country file their annual income and expenditure.**

Provisions of the Amendment

- **Prohibition to accept foreign contribution:** Under the Act election candidates, editor or publisher of a newspaper, judges, government servants, members of any legislature are prohibited to accept any foreign contribution.
 - The **Amendment adds public servants** to this list. Public servant includes any person who is in service or pay of the government, or remunerated by the government for the performance of any public duty.
- **Transfer of foreign contribution:** Under the Act, foreign contribution cannot be transferred to any other person unless such person is also registered to accept foreign contribution.
 - The Amendment **prohibits the transfer of foreign contribution to any other person.**
- **Aadhaar, passport and OCI card for registration:** Amendment adds that any person seeking prior permission, registration must **provide the Aadhaar number of all its office bearers**, directors etc. In case of a foreigner, they must provide a copy of the passport or the Overseas Citizen of India card for identification.

Foreign Contribution (Regulation) Act, 2010 (FCRA)

- The Act regulates the acceptance and utilisation of foreign contribution by individuals, associations and companies.
 - Foreign contribution is the donation or transfer of any currency, security or article (of beyond a specified value) by a foreign source.
- The amendments were introduced to FCRA,
 - To **regulate non-governmental organisations** and make them more accountable and transparent.
 - To **regulate religious conversions**, which are supported by foreign funds.
 - To ensure **foreign money is not used against national interests** or for anti-national activities.

- **FCRA account:** Amendment states that foreign contribution must be received only in an account designated by the bank as 'FCRA account' in such branch of the State Bank of India, New Delhi, as notified by the central government.
- **Restriction in utilisation of foreign contribution:** Under the Act, if a person accepting foreign contribution is found guilty of violating any provisions of the Act, the unutilised foreign contribution may be utilised, only with the prior approval of the central government.
 - The Amendment adds that the government may **also restrict usage of unutilised foreign contribution** for such persons based on a summary inquiry, and pending any further inquiry.
- **Renewal of license:** Under the Act, every person who has been given a certificate of registration must renew the certificate within six months of expiration.
 - Amendment adds that, the **government may conduct an inquiry before renewing the certificate.**
- **Reduction in use of foreign contribution for administrative purposes:** Under the Act, a person who receives foreign contribution must not use more than 50% of the contribution for meeting administrative expenses.
 - Amendment reduces this limit to 20%.
- **Suspension of registration:** Under the Act, the government may suspend the registration of a person for a period not exceeding 180 days.
 - Amendment adds that such suspension may be extended up to an additional 180 days.

Other legislations for regulation of NGOs

- **Foreign Exchange Management Act (FEMA)**
 - It was introduced to consolidate and amend the law relating to foreign exchange with the objective of facilitating external trade and payments.
 - Certain NGOs are also registered under FEMA come under Ministry of Finance.
- **Labour Laws:** Any NGO employing more than 20 employees must comply with the **Employees' Provident Fund** (compliance is voluntary if an NGO has less than 20 employees).
- **GST laws:** It would apply if turnover of goods or commercial services exceeds a sum of two million Indian rupees in any fiscal year.
- **Accreditation:** Recently, New accreditation guidelines for NGOs had been formed on the basis of recommendations of **Vijay Kumar Committee.**

Concerns about the amendments in FCRA

- **Lacks fund accessibility:** Many NGO's will not be able to access foreign funds because the scheme under which they receive these funds from donor agencies and larger NGOs, known as 'regranting' has been banned.
- **Restriction to explore:** The amount NGOs can spend on administration has been cut from 50% to 20%, mean many smaller NGOs will not be able to employ enough staff, hire experts and implement strategies they require to grow.
- **Increased cost of transaction and distance:** NGOs will have to open an account with a Delhi branch of the State Bank of India. Which could be thousand kilometres away for many NGO's and increase the transaction cost.
- **Compulsion of Aadhar:** SC judgement on Aadhar said to ensure greater privacy of individual's Aadhaar data and restricts governments access, while compulsion under amendment seems contravene the judgement.
- **Not well scrutinised:** The draft of the Bill for above amendments was not in the public domain till it was introduced in the Lok Sabha.
- **Hamper delivery of social welfare schemes:** It will have far-reaching consequences on the fields of education, health, people's livelihoods because NGO's provide last-mile connectivity for the delivery of government schemes in these fields.

Related news: NGOs under RTI:

Recently, Supreme Court ruling has brought the non-government organisations (NGOs) receiving funds from the governments under the ambit of Right to Information (RTI) Act, 2005.

Issues with the ruling

- Government could use such regulations to stifle dissent and target right-based advocacy groups.
- Smaller NGOs which may lack the capacity to confirm with such legal norms and rules.

WHAT DOES THE ORDER SAY

- Trusts and NGOs "substantially funded" by the government will be considered "public authorities" under the RTI Act
- Whether an NGO/trust enjoys "substantial government financing" will be examined on a case-to-case basis
- Substantial funding can be in both direct and indirect ways
- Substantial funding does not necessarily have to be in the form of financial aid or be more than 50 per cent of funding
- While determining substantial funding, the current value of land will also have to be evaluated.

Way forward

As civil society organisations seek accountability from others, it is a moral obligation for them to themselves be accountable and transparent in substantive ways and maintain the highest standards. However, regulation should balance with their freedom of functioning. Some suggestions are:

Recommendations of Vijay Kumar Committee:

- Modernising registration process for seamless operation of the applicable provisions of the IT (Income Tax) Act and FCRA with respect to NGOs.
- Details of NGOs should be made available as searchable database information.

2nd ARC report recommendations:

- FCRA should be decentralised and delegated to State Governments/District Administration.
- Fine balance between the purpose of the legislation and functioning of the voluntary sector to avoid subjective interpretation of law and its possible misuse.

7.3. OFFICIAL SECRETS ACT

Why in news?

Recently **Official Secrets Act** was invoked in a case.

About Official Secrets Act

- It is India's **anti-espionage act**, brought in **1923** during the colonial period to prevent all such actions that could help in any way the enemy states.
- The law, applicable to **government servants and citizens**, provides the framework for dealing with espionage, sedition, and other potential threats to the **integrity of the nation**.
- It broadly deals with two aspects-
 - **Section 3**- Spying or espionage
 - **Section 5**- Disclosure of other secret information of the government. This information can be any official code, password, sketch, plan, model, article, note, document or information. Here both the person communicating the information, and the person receiving the information, can be punished.
- Apart from these, it also includes withholding information, interference with the armed forces in prohibited/restricted areas, among others, punishable offences.
- If guilty, a person may get up to 14 years' imprisonment, a fine, or both.

Major Instance when the act was invoked

- **Coomar Narain Spy Case (1985)**- Twelve former staff members in the Prime Minister's Office and Rashtrapati Bhavan Secretariat were sentenced to 10 years' imprisonment.
- **ISRO Spy Case**- against the scientist S Nambi Narayan for passing on rocket and cryogenic technology to Pakistan for illegal gratification.
- **Iftikhar Gilani Case**- The Kashmir Times journalist charged with spying for Pakistan was arrested in 2002.
- **Madhuri Gupta Case**- the formal diplomat was sentenced to three years in jail for passing on sensitive information to the ISI.

Concerns with the Official Secrets Act

- **Lack of Clarity**- The Official Secrets Act does not define the terms "**secret**" or "**official secrets**" or any parameters have been identified. Public servants could deny any information terming it a "secret".
- **Conflict with the Right to Information Act**- **Section 22** of the RTI Act provides for its primacy vis-a-vis provisions of other laws, including OSA. This gives the RTI Act an overriding effect, notwithstanding anything inconsistent with the provisions of OSA. However, under Sections 8 and 9 of the RTI Act, the government can also refuse information. So effectively, if government classifies a document as "secret" under OSA Clause 6, that document can be kept outside the ambit of the RTI Act.
- **Shoots the messenger**- The attempt to target the messenger and to criminalise the whistleblower, all under cover of "national security" or "stability" of government or "official secrecy", is an attack on the freedom of expression and the people's right to know.
- **Against the ethics of journalism**- where journalists are harassed by the state and forced to reveal their sources.

Efforts taken to review the act

- **Law Commission** - In its report on '**Offences Against National Security**', it observed that "merely because a circular is marked secret or confidential, it should not attract the provisions of the Act, if the publication thereof is in the interest of the public and no question of national emergency and interest of the State as such arises". The Law Commission, however, **did not recommend** any changes to the Act.
- **Second Administrative Reforms Commission, 2006**- recommended that OSA be **repealed, and replaced** with a chapter in the National Security Act containing provisions relating to official secrets.
- **High Level Panel under Union Home Ministry, 2015**- It submitted its report to the Cabinet Secretariat on June 16, 2017, recommending that OSA be made **more transparent and in line with the RTI Act**. No action has been taken on the panel's report.
- **Judiciary's view**- Delhi High Court in 2009 ruled that publishing a document merely labelled as "secret" shall not render the journalist liable under the OSA.

Way Forward

- The act can be repealed or merged with other acts such as RTI Act.
- Further, objective parameters should be drawn on various actions and what constitutes "secret" as per the law.
- The threats to security and integrity of the state needs to be balanced with the fundamental rights given to the people under the Constitution of India.

7.4. AADHAR

Why in news?

With Aadhaar entering its tenth year of existence a recent study **covering 1,67,000 Indians by development consulting firm Dalberg, - 'State of Aadhaar- A People's Perspective' report**, provide valuable lessons for countries on improving public services for the vulnerable.

About Aadhar

- Aadhaar is a verifiable **12-digit identification number** issued by the **Unique Identification Authority of India (UIDAI)** to the resident of India.
 - UIDAI, is a statutory authority established under the provisions of **Aadhaar Act 2016**, under the Ministry of Electronics & Information Technology.
- Aadhaar collects **only four pieces of personal information** – name, age, gender and address – along with biometric data.
- In addition, Aadhaar has created **new features such as virtual IDs** that help protect an individual's privacy.
- An important objective of Aadhaar has been to improve the ability of the state to **provide efficient, transparent and targeted delivery of welfare services** to a large number of residents who depend on it.

Fact Findings

- 95% of adults have Aadhaar and 75% of children have Aadhaar.
- 8% of people do not have Aadhaar– or an estimated 102 million people.
- 80% of beneficiaries feel Aadhaar has made PDS rations, MGNREGS and social pensions more reliable.

Key findings of the report

- **Getting Aadhaar- Enrolment and Updates:**
 - **Positives:** Aadhaar is India's most ubiquitous form of ID today, which provided the **first identity document** for an estimated 65-70 million individuals. Some states have achieved enrolment levels higher than 99%. Assam and Meghalaya are exceptions with enrolment levels under 50%.
 - **Concerns:** A sizable minority of adults and children still do not have Aadhaar. Some of those enrolled in Aadhaar have errors in their ID, fingerprint authentication fails for a significant share of transactions.
- **Using Aadhaar:**
 - **Positives:** 80% of respondents felt that Aadhaar had improved the **reliability of government-funded welfare services**.
 - **Concerns:** Still, marginalized groups face Aadhaar-related exclusion from services. Moreover, nearly 34% of Indians worry about linking Aadhaar to too many services and fear losing access to a service because of it. **For example:** An estimated 15 million children missed out on one or more mid-day meals because of difficulties with Aadhaar.
- **Perceptions, Satisfaction, and Trust:**
 - **Positives:** 90% of people trust that their data are safe in the Aadhaar system and 61% of welfare beneficiaries trust that Aadhaar prevents others from accessing their benefits.

- **Concerns:** However, a minority worries about the potential misuse of their Aadhaar. For example: 2% of people have experienced fraud that they see as being related to Aadhaar, diminishing their trust.

- **Variation of User Experience Across States:** Aadhaar usage varied across states by both frequency of use and number of services for which it is used. Aadhaar's performance is bound to be influenced by factors that relate to both implementation (e.g., number of enrolment centres) and local infrastructure (e.g., mobile data connectivity).

Way ahead

- Every decision to make Aadhaar **mandatory for service provision should be carefully considered** as making Aadhaar mandatory can lead to exclusion from welfare and other services.
- **Improvements in on-the-ground processes related to Aadhaar** should be done by designing efficient systems keeping the most vulnerable sections of society in mind.
- Different states implement Aadhaar in very distinct ways, which represents an **opportunity to innovate and learn from each other's successful practices.**

Related news: Aadhaar Authentication Rules

Aadhaar authentication for good governance (social welfare, innovation, knowledge) rules, 2020 were notified.

About the Rules

- As per Rules, Central government may allow Aadhaar authentication by requesting entities for the following purposes-
 - usage of digital platforms **to ensure good governance,**
 - prevention of dissipation of **social welfare benefits**
 - enablement of **innovation and spread of knowledge**
- Till now, the government has allowed seeding of Aadhaar number for delivery of social welfare benefits under some programmes such as Public Distribution System. However, new rules would **expand the scope of Aadhaar** for agriculture, education and health schemes etc.
- For availing authentication services, individual government departments will have to **seek approval of Unique Identification Authority of India (UIDAI),**
- Also, **only the government agencies would be allowed to use Aadhaar authentication** services, not any private entity.
 - This is in line with the 2016 Supreme Court judgment that Aadhaar could only be used to authenticate beneficiaries of government subsidy schemes.

Intended Benefits of the rules

- **Customer centricity:** Transport ministry can seek permission for Aadhaar authentication to renew driving licence. There can be contactless delivery of driving licence, which will help the citizens, especially during the COVID-19 crisis as they will not have to be physically present at the transport office.
- **Identify fake licences:** E.g. Aadhaar authentication will help the transport ministry weed out fake or duplicate driving licences.



8. GOVERNANCE

8.1. REGULATION OF GOVERNMENT ADVERTISEMENTS

Why in news?

Recently, some states have responded to a letter of Ministry of Information and Broadcasting regarding constitution of committees to implement the Supreme Court guidelines on the issue of government advertisements.

Need of regulating government advertisements

- **Projection of vested interests-** Against serving the public interest, many government advertisements glorify political personalities and parties.
- **Lack of clarity over public purpose-** There is a very thin boundary between government messaging for citizens and political messaging for voters.
- **Against the democratic setup-** The incumbent government gains an advantage over other parties and candidates, especially before the elections by using such advertisements.
 - It also allows governments to patronise publications and media organizations, so as to get favourable media coverage by **selective dispersal** of the advertising information.
- **Exponential rise in costs-** The information received through various RTI applications reveal that the government expenditure on advertisements has increased every successive election year by around 40% in recent times.

Rationale behind government advertisements

- **Sharing information on government initiatives-** These advertisements facilitate circulation of necessary information with respect to government's policy or initiative, or about any public health or safety or other matters meant for citizens.
- **Right to Information-** It is a fundamental right under **Article 21** of the Constitution, for the citizens to know about their government's actions.
- **Nature of advertisements-** As per the government, 60% of the advertisements released on behalf of various governmental agencies are related to issues like recruitment, tender and public notices.
- **Measure to check advertisements-** There exists substantive guidelines regulating the Governments' advertisements issued by the erstwhile DAVP.

Status of implementation

- Following the directions, the Ministry of Information and Broadcasting issued an order containing-
 - The Supreme Court Guidelines would function as a **stopgap arrangement** until a legislation comes into force to regulate the content projected in government sponsored advertisements.
 - A **three-member committee** would be constituted at the Centre and will be set up parallelly at the state level, appointed by the respective State Governments
- **Appointment of Committee-**
 - The Union government constituted a committee in 2016. However, there were criticisms with some members allegedly being close to the political party in power.
 - Most of the states have **not constituted nor in process of constituting** any such committee.
- **Conflict of Interest-** The government merged the previous departments into the Bureau of Outreach and Communication (BOC). Its mandate is to scrutinize the advertisements and report any alleged violation of the Hon'ble Supreme Court's guidelines to the Committee. This goes against the autonomy of the committee, which becomes dependent on this government body's inputs.
- **Flouting of norms-** Various state governments have shown disregard to the SC guidelines. E.g. the Vikas Yatra in Chhattisgarh was advertised using government funds, showcasing photographs of various political leaders.

Conclusion

- In the past, various bodies including Law Commission Report on Electoral Reforms, the Comptroller and Auditor General (CAG) and the Election Commission (ECI) have repeatedly demanded for standards to regulate such advertising.
 - The ECI has even recommended any advertisements highlighting achievements of existing governments should be prohibited for a period of six months before the due elections to the legislature.

- The flouting of these regulations also raises important concerns about the use of public funds in **political campaigns** and rallies.

Supreme Court Guidelines on Content Regulation of Government Advertising issued in 2015

- **Scope of advertisements-**
 - It includes both **copy** (written text/audio) and **creatives** (visuals/video/multimedia) put out in print, electronic, outdoor or digital media.
 - It **does not** include classified advertisements.
- **Five guiding principles of content in advertisements-**
 - **Related to Government responsibilities-** The content of the government advertisement should be relevant to the governments' **constitutional** and **legal obligations** as well as the **citizens' rights** and **entitlements**.
 - **Presented in objective manner-** Advertisement materials should be presented in an objective, fair, and accessible manner and be designed to meet the objectives of the campaign.
 - **Should not be directed at promoting political interests of ruling party-**
 - ✓ They should **not include** the name of ruling party, party symbol or logo, any attack on the views/ actions of opposition parties in any form.
 - ✓ They should not include **photographs** of government leaders with the exception of the President, Governor, the Prime Minister, the Chief Minister, other ministers and the Chief Justice of India.
 - **Cost effectiveness of advertisements-** There must be an optimum use of public funds which reflect a need-based advertising approach.
 - **Compliance with procedures-** Government advertising must comply with **legal requirements** (election laws and ownership rights) and **financial regulations** and procedures.
- **Compliance and Enforcement-** Government should constitute a **three-member body** consisting of persons with unimpeachable neutrality and impartiality and who have excelled in their respective fields.
 - It shall ensure the implementation of these directions.

It will address complaints from the general public on violation of the guidelines prescribed by the Court.

Related news: Government Advertisements on Social Media Platforms

Ministry of Information & Broadcasting has issued **draft policy guidelines** for empanelment of social media platforms for Centre's paid outreach campaigns.

Benefits of using social media

- **Enhanced Outreach-** Social media acts as a powerful platform for forming an opinion as well as generating mass support. E.g. India has **nearly 400 million smartphone users** which offer unprecedented outreach.
- **Real Time engagement:** Social Media **releases shackles of time and place** for engagement and can connect policy makers to stakeholders in real time. E.g. During Libyan crisis, Ministry of External Affairs used social media platforms such as Twitter to assist in locating and evacuating Indian Citizens from Libya.
- **Targeted approach:** Social media platforms also **facilitate targeted approach** which helps in reaching out to desired set of people in an efficient and cost-effective manner.
- **Individual Interaction:** Social Media platform offers **ability to connect with each and every individual**. It is also useful in seeking feedback on services.
- **Managing Perceptions:** One big challenge for government is to **avoid propagation of unverified facts and frivolous misleading rumors** with respect to government policies. Leveraging these platforms can help to counter such perceptions and **present facts to enable informed opinion making**.

Challenges related to use of social media

- **Which Platforms to use:** Given **plethora of platforms and even types of social media**, it is very difficult to choose the type and no. of platform on which to engage.
- **Who will engage:** Most departments have limited capacity to engage with traditional media itself and since **social media demands a deeper and constant interaction**, availability of such resources is even more limited.
- **How to engage:** Many questions revolve around rules of engagement, like how to create and manage an account, what should be response time, what are legal implications etc.

8.2. REFORMS IN CRIMINAL LAWS

Why in news?

Recently, the Union Ministry asked all state governments to send their suggestions for a **major overhaul and recasting of the Indian Penal Code (IPC) and the Code of Criminal Procedure (CrPC)**, thus paving way for reforming criminal justice system of India.

More about news

- **Bureau of Police Research and Development** (under Ministry of Home Affairs) will undertake review of the laws such as IPC, CrPC, Indian Evidence Act and Narcotic Drugs and Psychotropic Substances Act.

Need for reforms in Criminal laws (IPC and CrPC)

- **To make the laws more moral and ethical:** Some penal code offences need to be dropped to make the code consistent with the new ideals of constitutional morality, viz. the narrowest possible definitions of crimes, presumption of innocence etc.
- **To give a fair share to individual:** In a criminal justice system, since an accused as an individual is pitted against the might of the state, criminal law must ensure that the state does not take undue advantage of its position as prosecutor.
- **To get rid of obsolete and archaic provisions:** IPC was intended to be regularly revised by legislative amendment. This did not happen, as a result the courts had to undertake this task upon themselves.
- **To remove ambiguity and vagueness:** For instance, the distinction between 'culpable homicide' and 'murder' is criticised as the 'weakest part of the code' as definitions are obscure.
 - 'Culpable homicide' is defined, but 'homicide' is not defined at all.

About IPC and CrPC

- **IPC:** It is the **official criminal code** of India.
 - It is a comprehensive code intended to cover all **substantive aspects** of criminal law.
 - The code was drafted in 1860 on the **recommendations of first law commission of India established under Lord Macaulay.**
- **CrPC:** It is the **main legislation on procedure for administration of substantive criminal law** in India.
 - It was enacted in 1973, though initially created in 1882.
 - It provides the machinery for the **investigation** of crime, apprehension of suspected criminals, collection of evidence, determination of guilt or innocence of the accused person and the **determination of punishment** of the guilty.

Way Ahead

- Any revision of the IPC, therefore, needs to be done while keeping several principles in mind. Such as:
 - Reforms must be introduced to **uphold democratic values**, and human rights must be given a high priority. **Victimological underpinnings** ought to be given a major thrust in reforming laws to identify the rights of crime victims.
 - **Construction of new offences** and reworking of the existing classification of offences must be informed by the principles of criminal jurisprudence which have substantially altered in the past four decades.
 - **New types of punishments** like community service orders, restitution orders, and other aspects of restorative and reformatory justice could also be brought in this fold.
 - **Classification of offences** must be done in a manner conducive to management of crimes in the future.
 - **Unprincipled criminalisation must be avoided** to save the state from dealing with too many entrants into the criminal justice system.
 - **On the procedural side**, sentencing reforms are highly imperative. Principled sentencing is needed as judges at present have the discretion to decide the quantum and nature of sentence to be imposed.

Criminal justice is in a **state of policy ambiguity** therefore there is a need to draft a **clear policy** that should inform the changes to be envisaged in the IPC or CrPC.

8.2.1. IMPORTANT DATA - CRIME IN INDIA 2019 REPORT

Why in news?

National Crime Record Bureau's "Crime in India" 2019 report was released.

Key findings

- **Crimes against women**
 - **Increased** 7.3 per cent from 2018 to 2019.
 - Majority of cases under crime against women were registered under '**cruelty by husband or his relatives**'.
- **Caste based violence:** Crimes against **Scheduled Castes (SC)** went up 7.3% from 2018 to 2019.

Related news

Prison statistics of India, 2017: released by NCRB

- **Decrease in number of prisons:** The total number of prisons at national level has decreased from 1,401 in 2015 to 1,361 in 2017, having decreased by 2.85% during 2015-2017.
- **Overcrowding in Jails:** The NCRB report said a total of 1,361 jails across the country had over 4.50 lakh prisoners, around 60,000 more than the total capacity of all prisons, at the end of year 2017.
- **Death in prisons:** The number of deaths in prisons has surged by 5.49 percent during 2015-17
- **Undertrial Prisoners:** The number of undertrial prisoners has increased by 9.4% during 2015-17.

- **Offences against the state**
 - **Decreased** by 11.3% from 2018 to 2019.
 - Of these, 80.3% were registered under **Prevention of Damage to Public Property Act**, followed by Unlawful Activities (Prevention) Act.
- **Cybercrimes**
 - Registered a **63.5% jump over 2018** to 2019.
 - 60.4% of cybercrime cases registered were for the **motive of fraud**, followed by sexual exploitation.
- **Crime against Scheduled Tribes** saw an increase of 26% from 2018 to 2019.
- **Crimes against children** increased by 4.5% from 2018 to 2019.
- There has been **1.6% increase in registration of cases** from 2018 to 2019.

8.3. PRISON REFORM IN INDIA

Why in news?

A report by Justice **Amitava Roy Committee for Prison Reforms**, was taken up for hearing before the Supreme court (SC).

Background

- 'Prisons' is a **State subject** under Seventh Schedule to the Constitution. 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.

Why is the need for Prison Reforms?

The Supreme Court, in **Ramamurthy v. State of Karnataka** has identified various problems which need immediate attention for implementing prison reforms.

- **Rampant Overcrowding: "Prison Statistics India"**, brought out by **National Crime Records Bureau** stated that in 2015, there were nearly 4.2 lakh inmates in 1,401 facilities against the sanctioned strength of 3.83 lakh, with an average occupancy rate of 114% in most.
 - Due to overcrowding the segregation of serious criminals and minor offenders has turned out to be difficult, which can, in turn, cause bad influence over minor offenders.
 - **Overcrowding results in** restlessness, tension, inefficiency and general breakdown in the normal administration.
- **Delay in Trials:** In 2016, 67% of the people in Indian jails are under trials which is extremely high by international standards like it is 11% in UK, 20% in US and 29% in France.
- **Torture and ill-treatment:** The prisoners including the undertrials are forced to do severe labour without any remuneration and treated with utmost torture. There has been a continuous **rise in the custodial deaths** due to torture and ill-treatment. **Women prisoners are more vulnerable to abuse.**
- **Severe staff crunch:** 33% of the aggregate prerequisite of jail authorities still lies vacant, whereas, the ratio between the prison staff and the prison population in India is approximately 1:7.
- **Inadequate prison infrastructure:** Most Indian prisons were built in the colonial era, are in constant need of repair and part of them are uninhabitable for long periods.
- **Neglect of Health, Hygiene, food etc:** The prisoners in India suffer from severe unhygienic conditions, lack of proper medical facilities and consistent risk of torment and misuse. The kitchens are congested and unhygienic and the diet has remained unchanged for years now.

Important Reform Measures taken so far in India

- The modern prison system was conceptualised by **TB Macaulay in 1835.**
- **Prison Discipline Committee, 1836**, recommended increased rigorousness of treatment while rejecting all humanitarian needs and reforms for the prisoners.
- **Prison Act, 1894**, enacted to bring uniformity in the working of the prisoners in India. The Act provided for **classification of prisoners.**
- **All India Jails Manual Committee 1957-59** to prepare a model prison manual.
 - The committee was asked to examine the problems of prison administration and to make suggestions for improvements.
- **All India Committee on Jail Reforms 1980-83** under Justice A N Mulla, suggested setting up of a **National Prison Commission as a continuing body to bring about modernisation of prisons in India.**
 - Also, After-care, rehabilitation and probation as an integral part of prison service.
- In 1987, the Gol appointed the **Justice Krishna Iyer Committee** to undertake a study on the situation of **women prisoners in India.**
 - It has recommended induction of more women in the police force in view of their special role in tackling women and child offenders.

- **Issue of women prisoners:** Though not exclusively looking after female prisoners, there are just 9.6 % women across all levels of the prison administration in comparison to **the 33 per cent suggested in policy documents.**
- **Deficiency in Communication:** The prisoners are left to live in isolation without any contact with the outside world, their family members and relatives.

Reform measures suggested by Various Committees, Law Commissions and the Judiciary

- **All India Prison Service:** The **All India Committee on Jail Reforms (1980– 1983)**, under Justice A N Mulla recommended to develop an **All India Prison Service** as a professional career service with appropriate job requirements, sound training and proper promotional avenues.
- **Adherence of Model Prison Manual 2016** by all the States and UTs.
- **Uniformity of standards:** Central Government along with NGO's and prison administration should take adequate steps for effective centralization of prisons and a uniform jail manual should be drafted throughout the country.
- **Training & correctional activities:**
 - Training to staff in using the latest technology, vocational training courses in cloth making, electrification etc for the inmates, facilities for recreational activities such as games and competitions for inmates and staff etc.
- **Infrastructure:**
 - Technological up-gradations such as biometric identification facilities, prisoner information system, provision of CCTVs, video conferencing facilities, etc are needed.
 - Up-gradation of hospital infrastructure such as beds, equipment, testing facilities, vehicle during medical emergency, facilities for pregnant women etc are needed.
- **Staff:** All vacant staff positions should need to be reassessed. Recruitment of additional staff including medical, guarding, correctional staff, clerical, etc
- **Fund flow:** Mechanism to monitor fund flow from the State treasury department to the implementing agency
- **Strengthening the open prison system**, which has come as a very modern and effective alternative to the system of closed imprisonment.
- **Strengthening PLVs:** In 2009, National Legal Services Authority (NALSA) brought out a scheme called the Para-Legal Volunteers Scheme which **aimed at imparting legal training to volunteers to act as intermediaries between the common people and the Legal Services Institutions** to remove impediments in access to justice ensure legal aid reaching all sections of people.
- **Increase the availability of justice services**—and infrastructure in courts, police stations, legal aid clinics—in rural areas so as to reduce the present disparity in accessing justice that exists between rural and urban populations.
- **Law commission recommendations like:**
 - Amending the bail provisions in the Criminal Procedure Code with emphasis on the early release on bail of under trials.
 - ✓ Under trials who have completed one-third of the maximum sentence for offences up to seven years be released on bail.
 - ✓ Those who are awaiting trial for offences punishable with imprisonment of more than seven years should be bailed out if they have completed one-half of their sentences.

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 all over the country. Key revisions in the manual include-

- Access to free legal service
- Additional provisions for women prisoners
- Rights of prisoners sentenced to death
- Modernization and prison computerization
- Focus on after care services
- Provisions for children of women prisoners
- Organisational uniformity and increased focus on prison correctional staff
- Inspection of Prisons, etc.

Case Study

Reforming prisons in Telangana

- It aimed to take the system from **security based to a more human-centric one.**
- The prison staff is made accountable for every death – individually and collectively.
- Collaboration with behavioural psychologists for collective behaviour therapy has helped change prisoner attitudes to life, crime and each other.

Swadhar Greh

- This is a scheme for rehabilitation of women victims of difficult circumstances.
- Among other beneficiaries, the scheme also includes women prisoners released from jail and are without family, social and economic support.

- Comprehensive anti-torture legislation on lines of Draft anti-torture legislation (**suggested by 273rd report**)
- **Draft National Policy on Prison Reforms and Correctional Administration, 2007** recommended:
 - Introduction of a **provision for aftercare and rehabilitation** services.
 - **Establishment of a Research and Development wing**, and financial assistance to nongovernmental organizations working for the rehabilitation of prisoners.
 - **Community-based alternatives** to imprisonment for offenders convicted for relatively minor offences

Conclusion

Indeed, prisons in India make for a massive social organisation. Part and parcel of the larger criminal justice system, they make an invaluable contribution to upholding up the rule of law and, thereby, to the maintenance of law and order, peace and tranquillity, in society.

8.3.1. CUSTODIAL VIOLENCE

Why in News?

The recent death of a father-son duo from Tamil Nadu, allegedly due to custodial violence, has sparked anger across India.

About Custodial Violence

- Custodial violence is the **violence which takes place in the judicial and police custody** where an individual who has done a crime is tortured mentally as well as physically. It includes torture, rape and death.
- According to **National Campaign Against Torture**, a joint initiative by multiple NGOs, about 3/4th deaths in police custody occurred primarily as a result of torture in 2019.

Legal concerns raised in such incidents

- **Poor regard of Fundamental Rights:** A report by Common Cause and CSDS-Lokniti, showed that 12% of police personnel never receive human rights training. Also, SC in **Rama Murthy v. State of Karnataka (1996)** while upholding fundamental rights of prisoners identified 'Torture and ill treatment' in prisons as an area that needs reform.
- **Misuse of power of arrest:** The National Police Commission (3rd Report) had observed that 60 per cent of all arrests were "unnecessary". Moreover, unnecessary application of various sections of IPC like Section 506 in order to get non-bailable remand for the accused is **against Fundamental Right to Freedom (Art 19)**.
- **Extra-legal behaviour:** it involves ignorance of rules and use of torture by Police while making such arrests, not following procedure laid down under CrPC by magistrate while granting police custody (upto 15 days) or judicial custody (upto 60-90 days), etc.

Challenges in curbing such incidents

- **Lack of strong legislation against torture:**
 - India does not have an anti-torture legislation and is yet to criminalise custodial violence.
 - Though India had signed the U.N. Convention against Torture in 1997 but it is yet to ratify it.
- **Lack of modernisation and unused funds: Bureau of Police Reforms and Development (BPR&D)** data and the CAG has highlighted the underutilisation of funds allocated under the Modernisation of Police Forces (MPF) Scheme.
- **Lack of independent functioning:** Police Act of 1861 is silent on 'superintendence' and 'general control and directions.' This enables the executives to reduce the police to mere tools in the hands of political leaders to fulfil their vested interests.
- **Lack of accountability and impunity enjoyed by Police:**
 - **Law does not permit common citizens to sue a police officer** and only the government has that discretion.
 - ✓ Recommendations of 2nd ARC and the Supreme Court (Prakash Singh case 2006) for constituting **independent complaint authority** to inquire into the cases of police misconduct have not been implemented by most of the States.
 - **Internal departmental inquiries** to examine wrongdoing rarely find police culpable.
- **Poor conviction rate: National Crime Records Bureau (NCRB)** data highlights that between 2001 and 2018, only 26 policemen were convicted of custodial violence despite 1,727 such deaths being recorded in India as most such deaths were attributed to reasons other than custodial torture such as suicide.

- **Weak functioning of National Human Rights Commission:** In practice its recommendations have mostly been limited to calling on the government to **provide compensation or other immediate interim relief**.
- **Lack of witness protection:** Often, investigations related to custodial killings are mired with much delays during which victim's families are often intimidated and witnesses turn hostile.
- **Popular support encourages such actions:** Public needs to realise that the police have limited powers under the law. The police have to uphold rule of law and not take it in their own hands.

Way Forward

- **Legal remedies:**
 - **Ratify UN convention against torture.**
 - Reform Section 197 of CrPC to make clear that prosecutors do not need to obtain government approval before pursuing charges against police in cases alleging arbitrary detention, torture, extrajudicial killings, and other criminal acts.
- **Administrative remedies and enforcement of laws:**
 - **Strict implementation of DK Basu judgment (1997):** In this case, the SC issued 11 directions to increase transparency and fix responsibility while making an arrest. For ex: medical examination of accused was made mandatory, notifying nearest kin of arrested person etc.
 - **Effective role of magistrate:** magistrates have a duty to prevent overreach of police powers by inspecting arrest-related documents and ensuring the wellbeing of suspects by directly questioning them.
 - **Ensure that the right to counsel** is available to suspects as soon as possible in pursuance with Article 22 of the Indian Constitution.
- **Ensure Police Accountability:**
 - **External Accountability:** Ensure that Police Complaints Authorities (PCAs) are set up as provided in Prakash Singh case (2006). End the practice of transferring police alleged to have committed abuses and ensure that investigations ordered by external agencies like NHRC are not referred to Police from same Police station.
 - **Internal accountability:** Authorize an independent internal affair or "professional responsibility" unit at the state level to conduct random and surprise checks on police lock-ups and respond to allegations of ongoing or recurrent violations of the SC guidelines in D.K. Basu case.
- **Provide training in scientific methods of investigation:** Train investigating officers on modern, non-coercive techniques for suspect and witness interviewing and questioning.
- **Robust Witness Protection Regime** to protect families of Victims of Custodial Killings and witnesses as recommended by **Law Commission in its 198th and 273rd reports**. All complaints by families of victims and witnesses on any kind of alleged intimidation, coercion or threat etc need to be recorded.

Conclusion

Gore Committee on Police Training (1971-73), the Ribeiro Committee on Police Reforms (1998), the Padmanabhaiah Committee on Police Reforms (2000), Malimath Committee on Reforms of Criminal Justice System (2001-03), 2nd ARC (2006) have given important recommendations. Political will is needed to implement these, especially by States as Police is a state subject.

8.4. E-GOVERNANCE FOR PUBLIC SERVICE DELIVERY

Why in news?

Various E-governance initiatives were taken to improve Public service delivery in India.

What is Public service?

- Public Service is a service which is provided by government to people:
 - either directly (through the public sector). or
 - by financing provision of services.
- Some key Public Services are: Health care, Education, Social services for the poor and marginalized, Environmental protection, Infrastructure – Roads, Railways etc.

Status of Public service delivery in India

- **Insufficient fund allocation:** E.g. Annual budgetary allocations for health, including water and sanitation, have remained stagnant at less than 1.5% of GDP.

- **Poor awareness among beneficiaries**, making Public service delivery allocation based rather than demand driven.
- **Low levels of human capital and inadequate access to basic infrastructure:** Lack of trained, motivated officials especially at local level.
- **Weak monitoring and leakages** in Public services and programmes. E.g. leakages from the PDS.
- **Limited reach and lack of transparency**, due to nature and institutional lacuna in service delivery mechanism.
- **Poor infrastructure** of public health services, roads in rural areas, in schools (absence of toilets etc.).
- **Slow procedures and absence of grievance redressal mechanism**, which keeps the citizen at the mercy of delivery agents.

Role of E-governance in reforming Public service delivery

E-Governance (Electronic Governance) is the application of information and Communication Technologies (ICTs) to the processes of government functioning to accomplish simple, accountable, speedy, responsive and transparent governance. It integrates people, processes, information and technology for meeting goals of the government. Potential of e-governance:

- **Fast, Convenient and Cost-Effective Service Delivery:** With the advent of e-Service delivery, the government can provide information and services at lesser costs, in reduced time and with greater convenience.
- **Transparency, Accountability and Reduced Corruption:** Dissemination of information through ICT increases transparency, ensures accountability and prevents corruption.
- **Expanded Reach of Governance:** Expansion of telephone network, rapid strides in mobile telephony, spread of internet and strengthening of other communications infrastructure would facilitate delivery of number of public services.
- **Empowering people through information:** Increased accessibility to information has empowered the citizens and has enhanced their participation. Eg., Recently launched **Jan Soochna Portal** by the Rajasthan State Government. It is the first of its kind system in the country and has information about 23 government schemes and services from 13 departments on a single platform. The initiative is inspired by the spirit of **Section 4 (2) of Right to Information Act, 2005**, i.e. "Proactive Disclosure of Information".
- **Improve interface with Business and Industry:** Industrial development in India has been hampered in the past with complex procedures and bureaucratic delays.

Challenges in E-governance adoption

- **Digital divide:** There is separation that exists between the individuals, communities and businesses that have access to Information Technology and those that do not have such access.
- **Cost:** In developing countries like India, cost is one of the most important obstacles in the path of implementation of e-governance projects. A huge amount of money is involved in implementation, operational and evolutionary maintenance tasks.
- **Privacy and Security:** A critical obstacle in implementing e-Governance is the privacy and security of an individual's personal data that he/she provides to obtain government services.
- **Local language:** The e-governance applications must be written in local language of the people so that they may be able to use and take advantage of these applications.
- **Resistance to Change:** The struggle to change phenomenon can explain much of the hesitation that occurs on the part of the constituents in moving from a paper-based to a web-based system to interact with government.

Way forward

- **National e-Governance Service Delivery Assessment 2019** (the assessment was aimed at **improving the overall e-Government development** by evaluating the efficiency of service delivery mechanism from a citizen's perspective) recommended the following
 - Creating an inclusive Digital Ecosystem
 - e-Literacy for inclusiveness
 - Improving Accessibility for higher uptake
 - Embracing new age technologies for improved service delivery
 - Adoption of Standards for uniformity in governance
 - Integrated service delivery – focus on IndEA (India Enterprise Architecture)

- **Nagpur Resolution:** A holistic approach for empowering citizens was adopted during a regional conference on 'Improving Public Service Delivery – Role of Governments', in Nagpur. The resolution emphasized upon:
 - Empowering citizens through timely updation of citizens charters,
 - Empowering citizens by adopting a bottom-up approach to improve quality of grievance redressal
 - Adopting a holistic approach for improved service delivery through digital platforms;
 - Focussing on dynamic policy making and strategic decisions, monitoring of implementation, appointment of key personnel, coordination and evaluation.

8.5. ROLE OF CIVIL SOCIETY IN TIMES OF CRISIS

Why in news?

Civil Society Organisations (CSOs) are at the forefront assisting people during the COVID-19 pandemic.

Introduction

- The **World Bank defines civil society organizations (CSOs)** as a wide array of formal and informal organizations: community groups, non-governmental organizations (NGOs), labour unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations.
- Faced with an unprecedented Covid-19 global pandemic, government has constituted the **Empowered Group (EG 6) chaired by CEO, NITI Aayog to leverage the network of CSOs.**
- The EG 6 has succeeded in **galvanising a network of 92,000 CSOs/NGOs** to harness their strengths and resources, expertise in key social sectors such as nutrition, health, sanitation, education, and extensive reach in the community.

Contribution of CSOs during COVID-19

According to a reply submitted by the central government in the Supreme Court, a total of approx. 84 lakh people were provided meals across the country during the lockdown.

- Of these, 54.15 lakh people were fed by state governments while the remaining 30.11 lakh were fed by NGOs.
- State-wise data presented by the Centre shows that **in 13 states and UTs, NGOs outperformed state governments** in providing humanitarian relief in the form of free meals. **Most of these meals were provided to stranded migrant labourers and the poor** who have been hit the worst owing to loss of income during the lockdown.
 - Overall, there were **9 states and UTs** where **NGOs fed more than 75% of the people** who were provided meals during the lockdown.
- Apart from providing meals to the needy, NGOs across the country also opened **relief or shelter homes** for people to take refuge. The analysis of the central government's reply shows that
 - 10.37 lakh people in India took refuge in shelter homes provided by state governments and NGOs. Of these 10.37 lakh, or **39.14%, are staying in camps set up by NGOs.**
 - In Maharashtra, 83.56% people were in camps set up by NGOs. In Meghalaya, this figure was 95%.
- In another development which reflects upon the critical importance of grassroot organisations and workers, government has directed the Food Corporation of India to **provide wheat and rice** to these organisations at the **open market sale rates (OMSS) without going through the e-auction process.**

Role of CSOs in Crisis times

- **Mobilise and channel resources:** CSO can leverage **strong relationships with communities and ready pool of volunteers** and resources, while also being a channel for the private sector to deploy resources.
 - CSOs/NGOs mobilised by EG 6 have been assisting and supporting the local administration in delivering essential services particularly for migrants and homeless population working in urban areas.
- **Provide immediate relief:** Just like in any other disaster, **civil society can serve as first responders** by providing food, ensuring water and sanitation facilities in camps, and distributing protective gear – particularly in far flung areas. Government reports that **NGOs mobilised by EG 6 were successful in**
 - **providing shelter** to homeless, daily wage workers, and urban poor families.
 - **extending support for distribution of Personal Protective Equipment (PPE)** for community workers and volunteers.
 - supporting the government in **setting up health camps.**
 - **identifying hotspots** and deputing volunteers and care givers to deliver services to the elderly, persons with disabilities, children, transgender persons, and other vulnerable groups.
 - handling the **mass exodus of migrant labourers.** NGOs are coordinating efforts and working closely with the district administrations and state governments so that **measures of care, quarantine, and treatment** go hand in hand.

- **Run awareness campaigns:** Given the amount of misinformation going around, CSOs have a major role to play in building awareness among communities, panchayats, and public representatives. As reported by the Government, CSOs/NGOs network of EG 6 was successful in creating awareness about
 - prevention, hygiene, social distancing, isolation, and combating stigma.
 - **Developing communications strategy** in different vernaculars whereby they become active partners in creating awareness at the community level so that COVID-19 spread is tightly controlled.
- **Holding Government accountable:** There are **significant corruption risks** during times of crisis. Civil society has an important role to play in ensuring funds to tackle the Covid-19 pandemic reach their destination.

Challenges being faced by civil society during the pandemic

During the ongoing pandemic, civil society is facing several constraints on its ability to carry out its work, as a result of lockdown, distancing, and quarantine measures.

- **Concerns related to their accountability**
 - The crackdown on thousands of NGOs in recent years had positioned CSOs at the margins of administrative decision making. Several NGOs have been criticized as being corrupt and in violation of foreign funding norms.
- **Access to information**
 - Lockdowns prevent physical access to information, which was previously available from work, an educational institution, a library, etc.
 - Moreover, **lack of digital connectivity** along with **restrictions on internet** and **digital illiteracy** further restricts the widespread digital engagement with the stakeholders or access to information and communication.
- **Gaining momentum for civic initiatives is difficult**
 - During times of crisis it can be very difficult to gain momentum and participants for a cause, as media and public **orientation are focused on the emergency.**
- **Restriction of movement prevents activities that require meeting physically**
 - This is particularly the case for **civil society's social accountability role**, as most social accountability tools require engaging local communities to come together to participate in initiatives. This is not possible when social distancing measures are in place.

Opportunities for civil society during the pandemic

- **Potential to increase legitimacy of civil society** through **building broader participation** by a network of online reporters and activists with strong links to the communities in which they live. This may counter the tendency of NGOs to be driven by donor demands and the need to secure funding.
- **Potential for widespread engagement:** The current situation has released an urge to participate, demonstrated by the huge donations to PM-CARES Fund and helping hands coming forward to help migrants enroute to their hometowns. Some of this engagement could be channelled into constructive support and alternative forms of civic engagement.
- **Building of new alliances** with other types of CSOs beyond NGOs, such as professional associations (e.g. nurses unions), and other membership-based organisations.
 - These different forms of CSOs often have **good communication structures** and can engage different people in the monitoring and oversight of Covid-19 responses.
 - Building new alliances and networks can help civil society organisations to **break down silos** and **create new synergies** between organisations, which can prove useful in emergencies.
- **Exploring platforms for digital civic engagement:** There are several examples of how civic engagement and accountability have moved online, with many **untapped resources** to draw upon to **mobilise digital participation.**
 - For example, in the UK, **'Frontline PPE'** provides information about availability of personal protective equipment (PPE). In Spain, **'Frene La Curva'** publishes requests for help or offers to collect food or medicine.

Conclusion

The **United Nations** refers to civil society as the **"third sector"** alongside government and private businesses. In such testing times, CSOs have emerged as key supporting partners for the state in charting out a response. They have helped in widening the reach of the state. Going forward, keeping in mind their potential, there is a need to institutionalize the way they interact with the state. This not only will increase their legitimacy but will also pave the path for even wider and deeper cooperation.

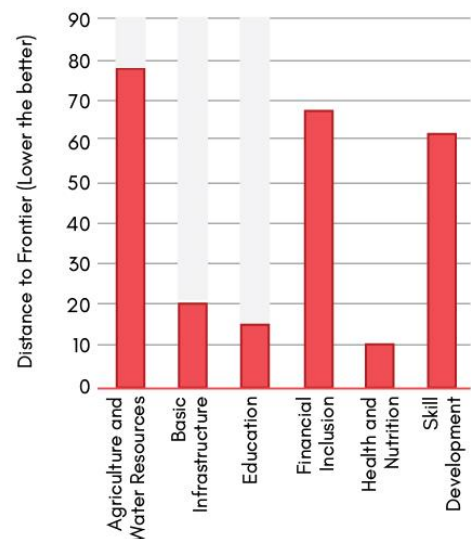
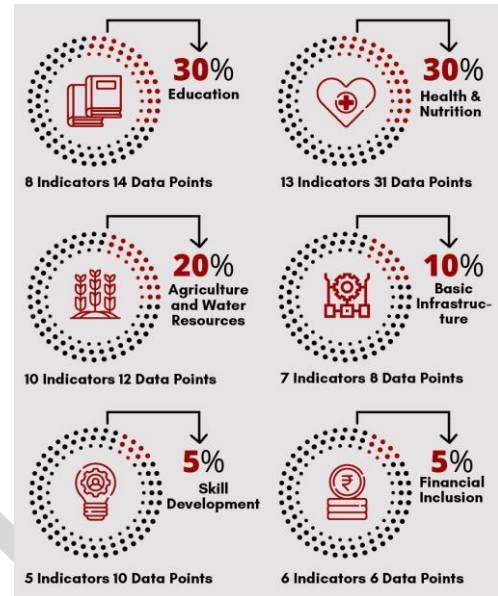
8.6. ASPIRATIONAL DISTRICTS PROGRAMME

Why in news?

Recently, an assessment report of **Aspirational Districts Programme** was released jointly by Institute for Competitiveness (IFC) and Social Progress Imperative.

About Aspirational Districts Programme (ADP)

- ADP was launched by the GOI in January 2018 **to accelerate improvement in the socio-economic indicators of the most underdeveloped districts** of the country.
- Currently, the programme has been implemented in **112 of India's 739 districts** including 35 Left Wing Extremism (LWE) affected regions spread across the country.
- The programme is **driven by the following ideas** that signal a shift in the approach of the government towards policy and governance:
 - Moving Beyond Economic Measures of Success
 - Enabling Equitable Regional Development
 - Driving Change through Cooperative and Competitive Federalism
- The programme **focuses on practical and measurable social progress outcomes, in six main themes** that directly impact the quality of life as well as the economic productivity of citizens.
 - These are- Health and Nutrition, Education, Agriculture and Water Resources, Financial Inclusion, Skill Development, and Basic Infrastructure. These are further broken down into 49 indicators.
- The programme is **based on three core principles, which are encapsulated in the 3Cs Approach** – **Convergence** (among State and Central Government initiatives at the district level), **Collaboration** (among citizens and functionaries of Central & State Governments including district teams), and **Competition** (among districts).
- Basic Structure of the programme:**
 - At the Central level, NITI Aayog** is anchoring the programme and individual Ministries have assumed responsibilities to drive the progress of the districts.
 - The **state governments are the main drivers of change**. Each state has formed a committee under their respective Chief Secretaries to implement as well as track the programme.
 - For each district, a central Prabhari Officer** of the rank of Additional Secretary/ Joint Secretary has been appointed to provide feedback and recommendations based on their local level findings.
- Under the programme, NITI Aayog releases Delta Ranking** that ranks districts based on the monthly improvement achieved in the six focus areas through the Champions of Change dashboard (an online Dashboard).



AVERAGE DISTANCE TO FRONTIER ACROSS SECTORS

Findings of the report

- Disparities across sectors are high:** Health and Education are the sectors in which the districts are closest to achieving their targets. While Agriculture and Financial Inclusion are the main areas of concern where most of the districts are 40-90 percent away from their targets.
- ADP is generating economic as well as social impact:** In Health and Nutrition, for example, the economic impact of reducing Severe Acute Malnutrition (SAM) among children is felt through the effects on productivity and lifetime learning. The overall economic impact for all the states (only looking at Aspirational Districts) of reducing SAM is estimated to be a mammoth Rs.1.43 lakh cr.

- **Aligning the objectives of ADP with that of SDGs** is crucial to establish a time-bound assessment framework. The ADP and Sustainable Development Goals (SDGs) both emphasise on the provisioning of basic services through sustainable means to the most marginalised communities and people.
- **Concrete best practices are emerging** from the programme: Three key areas of best practice have emerged from the ADP programme are **Awareness** (several districts have used awareness campaigns to reach out to populations which have been detached from the development process) **Collaboration** (between tiers and agencies of government and with the private and civil society sectors) and **Data-based interventions** (the use of data to measure impact, locate nodes for improvement, as well as to identify policies and interventions).

Existing challenges with ADP

- **Insufficient budgetary resources.**
- Multiple ministries leading to a **lack of coordination.**
- **Lack of high-quality administrative data** impacting implementation and design at the local level.
- The **Delta rankings are largely focused on assessing quantity** (that is, coverage of access) rather than quality.

Best Practices across districts

- **Health and Nutrition:**
 - **Hailakandi (Assam):** an innovative practice of gifting 5 saplings (coconut, litchi, assam lemon, guava, amla) to the parents of a new born girl child. The rationale being that the fruit from the trees can be used to feed the child, which would help in building immunity and warding off malnutrition.
- **Education:**
 - **Rajnandgaon (Chattisgarh)** has ensured access to sanitation facilities for every girl child, for which toilets were installed in schools.
 - **Banka (Bihar)** has launched a programme, 'Unnayan Banka – Reinventing Education using Technology', which is an effort to leverage technology to improve the learning environment.
- **Financial Inclusion domain:**
 - **Gajapati (Odisha):** mini banks have been opened under Odisha Livelihood Mission in panchayats that did not have banking facilities. These mini banks also functioned as common service centres and bank accounts of 27,463 SHG members were opened, while 23000 were linked with Adhaar.
- **Agriculture and water resources:**
 - **Kupwara (Jammu and Kashmir)** introduced high density farming to improve agricultural productivity and make optimum utilisation of resources. The traditional seedling-based orchards were converted into high density orchards. This gave the producers success in cultivation of crops such as apples and walnuts and increased the harvest by up to three times.
- **Skill Development:**
 - **Gajapati (Odisha)** started enrolment of people for skill development under Deen Dayal Upadhyaya Grameen Kaushalya Yojana (DDU-GKY). As a result of the efforts, 11,600 candidates were mobilised, and over 450 were trained in different crafts.
- **Basic infrastructure:**
 - **Kupwara (Jammu and Kashmir),** a network of 176 water-harvesting tanks was strengthened that has aided in enhancing farmers income through water conservation.
 - **Dahod (Gujarat),** installation of solar powered community tube wells has benefitted a hundred households across five villages.

Recommendations given by the study

- **Streamlining data collection and ensuring effective feedback loop:** a more real-time mechanism of data collection and dissemination is needed as currently, there is a gap of a few months between survey collection and accessibility of the data by districts.
- **Updating plan of action based on new learnings:** The districts can modify the learnings made from these best practices based on their local requirements across different parameters and assessment of districts should be done based on the standing of comparative peer groups.
- **Engaging in customised local level interventions:**
 - **Collaboration with the individual local functionaries** opens the door for the introduction of community-based intervention models, which facilitates stakeholder participation. For instance, women-driven institutions such as Self-Help Groups and Anganwadis have been particularly crucial in the delivery of schemes.
 - **Involving young professionals** within grass-root administration that promotes continuity of engagements.
- **Focused interventions** with higher degrees of intensity are required in the north eastern part of the country owing to its specific niche challenges.

Conclusion

- Uneven distribution of economic gains across regions and individual citizens has only served to highlight the need for a broader agenda aimed at inclusive growth and social progress.
- By focusing on “what works” in advancing inclusive growth and social progress, ADP has the potential to serve as a model for India’s future economic and social development strategy.

8.7. NATIONAL RECRUITMENT AGENCY

Why in news?

The Union Cabinet recently approved setting up of National Recruitment Agency, an independent body to conduct examination for government jobs.

More on news

- NRA will conduct the Common Eligibility Test (CET) for recruitment to **non-gazetted posts in government and public sector banks**.
- Government has **sanctioned a sum of INR 1500 crore** for the NRA which will be undertaken over a period of three years.

Key Features

- NRA will be a Society registered under the **Societies Registration Act**, headed by a Chairman of the rank of the Secretary to the Government of India.
- It will have **representatives of** Ministry of Railways, Ministry of Finance, Staff Selection Commission (SSC), Railway Recruitment Board (RRB) & Institute of Banking Personnel Selection (IBPS).
- CET will be held **twice a year** with different CETs for **graduate level, 12th Pass level and 10th pass level** to facilitate recruitment to vacancies at various levels.
- Initially CET will be conducted for 3 agencies only— **RRB, IBPS and SSC**, but later it will be extended to all future recruitments.
- The examinations will be **conducted in 12 languages**.
- CET will be a first level test to shortlist candidates and the **score will be valid for three years**.

Advantages for students

- CET aims to **replace multiple examinations** conducted by different recruiting agencies for selection to government jobs advertised each year, with single online test. Thus, CET **removes the hassle of appearing in multiple examinations**.
- CET will be **held in 1,000 centres across India** in a bid to remove the currently prevalent urban bias. **There will be an examination centre in every district of the country**. This would **encourage more women candidates** to apply. Also, Central government will invest in the necessary infrastructure for 117 aspirational districts.
- There will be a common registration, single fee. This would **reduce financial burden** that multiple exams imposed.
- Also, planned **outreach and awareness facility** to assist candidates in rural and far flung areas to familiarize them with the online examination system will ensure more participation.

Advantages for Institutions

- It will **reduce the cost of spending on setting up an exam centre for every exam** conducted throughout the year with expected savings of Rs 600 crore.
- Currently, approximately 1.25 lakh government jobs are advertised every year for which 2.5 crore aspirants appear in various examinations. A **single eligibility test would significantly reduce the recruitment cycle** leading to efficient administration by filling vacancies quickly.
- **NRA will bring in transparency and efficiency to the recruitment cycle** by conducting single exam and taking onetime fee from candidates.

8.8. CIVIL SERVICES REFORMS

Why in news?

Mission Karmayogi was launched as part of civil services reforms.

The need for civil services reforms

- **Accountability:** The traditional measures of accountability that rely upon line or top-down measures do not necessarily provide a good guide to the accountability culture as a whole. Thus, the need is the recognition that multi-dimensionality of accountability.
- **Emphasize Performance:** The present promotion system in civil service is based on time-scale and is coupled by its security of tenure. These elements in our civil service are making the dynamic civil servants complacent and many of the promotions are based upon the patronage system.
- **Need for Specialist Knowledge for Senior Level Appointments:** The task of policy making is becoming increasingly complex and needs specialist knowledge of the subject. Under the existing system, the most senior level appointments in the Central secretariat as well as top field level posts are made from amongst the Indian Administrative Service (IAS) officers who are generalists.
- **Effective Disciplinary Regime:** Presently, the provisions of discipline rules are so cumbersome that it becomes very difficult to take action against a delinquent employee for insubordination and misbehavior. Thus, once appointed, it is almost impossible to remove or demote an employee.
- **Transforming Work Culture:** Most government departments suffer from poor work culture and low productivity.
- **Streamline Rules and Procedures:** A large number of rules and procedures relating to citizen's day to day interface with government are outdated and dysfunctional and give opportunity to public servants to delay and harass.
- **Stability of Tenure:** The ever-present threat of transfer also affects the morale of the officers and their capacity to stand up to undesirable local pressures.

8.8.1. MISSION KARMAYOGI

Why in news?

Recently, the Cabinet approved "**Mission Karmayogi**"- National Programme for Civil Services Capacity Building (NPCSCB).

Salient Features

- **Financial Allocation:** To cover around 46 lakh Central employees, a sum of **Rs.510.86 crore** will be spent over a period of 5 years from 2020-21 to 2024-25. The expenditure is **partly funded by multilateral assistance** to the tune of USD 50 million.
- The **core guiding principles** of the Programme will be-
 - **Transition from 'Rules based' to 'Roles based' Human Resource (HR) Management** by aligning work allocation of civil servants by matching their competencies to the requirements of the post.
 - **Emphasizing on 'on-site learning'** to complement the 'off-site' learning.
 - To create an ecosystem of **shared training infrastructure** including that of learning materials, institutions and personnel.
 - To calibrate all Civil Service positions to a **Framework of Roles, Activities and Competencies (FRACs)** approach.
 - To make available to all civil servants, an opportunity to continuously build and strengthen their **Behavioral, Functional and Domain Competencies**.
 - To enable all the Central Ministries and Departments to **directly invest their resources towards co-creation** of common ecosystem.
 - To encourage and partner with the **best-in-class learning content creators** including public training institutions, universities etc.
- The Programme will be delivered by setting up an **Integrated Government Online Training-iGOT Karmayogi Platform**. It will provide curated digital e-learning material for capacity building. Other service matters like confirmation after probation period, deployment, work assignment and notification of vacancies etc. would eventually be integrated with it.
- **Institutional framework:**

Some other Civil Services Reforms introduced

- **Lateral entry:** Lateral Entry refers to the direct induction of domain experts at the middle or senior levels of administrative hierarchy, rather than only appointing regular recruits through promotion. Department of Personnel and Training (DoPT) had invited applications for 10 joint secretary-level posts to be hired on a short-term contract for three to five years depending upon the performance.
- **"360 degree" performance appraisal mechanism:** It was introduced for senior bureaucrats, whereby officers are graded based on comprehensive feedback from their superiors, juniors and external stakeholders.

- **Prime Minister's Public Human Resources (HR) Council:** It will serve as the apex body for providing strategic direction to the task of Civil Services Reform and capacity building under the **Chairmanship of Prime Minister**.
- **Capacity Building Commission:** The role of Commission will be –
 - ✓ To assist the PM Public Human Resources Council in approving the Annual Capacity Building Plans and coordinate and supervise the implementation of these plans with the stakeholder Departments.
 - ✓ To exercise functional **supervision over all Central Training Institutions** dealing with civil services capacity building.
 - ✓ To suggest policy interventions required in the areas of HR Management, training and Capacity Building to the Government.
- **Special Purpose Vehicle:** It will be set up under Section 8 of the Companies Act, 2013 for owning and operating the digital assets and the **iGOT-Karmayog** platform for online training.
- **Coordination Unit headed by the Cabinet Secretary**

Concerns related to the programme

- **Challenges related to incentives-linked training:** Previous methodologies for performance assessment have not remained consistent, credible and transparent.
- **Over-centralization of the system:** A diverse public sector workforce needs a decentralised training and learning ecosystem.
- Distance self-learning can build supplementary skills and update knowledge at the frontlines but may not be well suited for **core knowledge development**.
- The whole **burden of self-learning may get transferred** to already **overloaded individuals** which can lead to a decline in overall motivation and morale.
- **Resistance:** Indian bureaucracy is largely status-quo and stands for conservatism. It resists reforms and innovations. Hence, a reform at this scale may face several resistances within the bureaucracy.

Intended Benefits

- **Ensuring efficient service delivery:** as work will be assigned to civil servants with specific role-competencies and appointing authorities will have readymade data available for choosing the right candidate for the right job.
- **Accountability and Transparency in Governance:** through real time evaluation and goal driven and constant training will ensure “Ease of Living” for common man and “Ease of Doing Business” for all.
- **Citizen-Centricity approach:** 'On-site learning' can reduce the gap between the government and the citizens.
- **Preparing the Indian Civil Servant for the future:** through technology driven learning and Standardization of training priorities and pedagogy across institutes, making him more innovative, professional, progressive and technology-enabled.
- **Collaborative and common ecosystem:** will end the culture of working in silos, reduce duplication of efforts and bring out a new work culture that will focus on individual as well as institutional capacity building.
- **Bridging the gap between generalization and specialization:** which exists due to lack of mid-level training at all levels.

Conclusion

The centralised institutional architecture of the proposed reform must be balanced by an understanding of the contexts and needs of diverse workers and learners. A framework for credible assessment with total transparency should be developed to link training and incentives successfully. Training must be supplemented with shared vision development, purposeful work and the empowerment of employees to improve organizational culture.

8.9. SELF- HELP GROUPS

Why in news?

Recently, the government has planned to create a total of **75 lakh Self Help Groups by 2022** to enable more women to get a livelihood.

About Self Help Group:

- The Self-Help Group has been defined by NABARD as a group of about 20 people from a homogeneous class who come together for addressing their common problems. They use their pool resources to make small interest-bearing loans to their members.

- **Functioning of the SHGs**

- The SHGs members **meet at fixed interval** and **collect their savings** of a predetermined amount at these meetings.
- The groups usually **create a common fund** by contributing their small savings on a regular basis.
- The pooled savings are then use to make **small interest-bearing loans among themselves**.
- The process of **linkage of the SHG with a bank** begins when the bank opens its savings bank account. The bank lends to the SHG, which in turn, gives loans to its members in accordance with the group's policy.
- The loan is **granted in the name of the SHG** and all members of the group are collectively responsible for the repayment to the bank.
- These loans have **no collateral security** as group cohesion and peer pressure act as security for the bank loan.

Understanding SHG Movement in India

- The **self-help group movement in India began in the 1980s** when several NGOs mobilized and organized poor communities in rural areas to provide formal channels for social and financial support.
- The **setting-up of National Bank for Agriculture and Rural Development (NABARD) enacted as a catalyst** for the development of SHGs. Recognizing the role of SHGs, the RBI issued a circular permitting the banks to lend SHGs of women.
- The program gained momentum with NABARD linking a small number of groups with banks, called as the **Self-Help Group Bank Linkage Program (SBLP)**.
- The linking of SHGs with banks aims at using the intermediation of the SHGs between the banks and the rural poor for cutting down the transaction costs for both banks and their rural clients.
- **National Rural/ Urban Livelihoods Mission (DAY-NRLM) and (DAY-NULM)**: Objective is organizing the rural/ urban poor women into Self Help Groups (SHGs) and continuously nurturing and supporting them to take economic activities till they attain appreciable increase in income over a period of time to improve their quality of life and come out of abject poverty.

Significance of Self-Help Groups

- **Grassroot empowerment**: The implicit objective of SHGs is to combat unjust social relationship by increasing people's participation through their empowerment.
- **Addressing gender equality**: Women's Self-Help Groups are the backbone of poverty alleviation programmes as currently there are over 60 lakh SHGs across the country mobilizing more than 6 crore women.
- **Inculcating financial discipline**: **As per a study**, households with self-help group members were 8% more likely to have formal loans and 9% less likely to have informal loans.
- **Rural and Human Resource development**: The SHGs are seen as more than just a conduit for credit – they also act as a delivery mechanism for various other services ranging from entrepreneurial training, livelihood promotion activity etc.

Challenges with SHGs

- **Stagnant growth**: Despite early success, however, the growth of SBLP has slowed in the last few years. Several factors have contributed to the deceleration such as:
 - less than ideal average loan size,
 - lack of monitoring and training support by **self-help group federations**.
- **Wide disparities between states in the growth of SHGs**: There is an uneven growth of SHG movement across the states, and wide disparities in SHGs' credit linkage with banks.
- **Governance issues**: Various studies suggests that SHGs, are grappling with quality, transparency and irregularity in their functions. Low levels of literacy among the rural women also pose challenges.
- **Dissolution of SHGs**: Over time groups are disintegrating on account of coordination issues. Few members knew how to maintain the group's required financial documentation, so if those members left, the groups would also dissolve.

Way forward: The future of self-help groups

- **Handholding and Monitoring**: Self-help groups should be regularly monitored, and their promoters must reinforce structures that ensure the members have the requisite help for at least the first five years.
- **Leveraging in financial inclusion**: Government should leverage the self-help group platform to expand the financial inclusion agenda of the country.

- **Using SHG Network for delivering Government services:** Government programs like Social Security schemes etc. can be implemented through SHGs. This will not only improve the transparency and efficiency but also bring our society closer to Self-Governance as envisioned by Mahatma Gandhi.
- **SHGs as tool for combating Social Problems:** The Social capital of SHGs could be an asset for solving various social issues. This growing social capital can be channelled to iron out existing social menaces. For example, there are many successful cases where SHG women have come together to close liquor shops in their village.
- **Modernization drive:** With the Indian Government's recent focus on digital financial inclusion, several efforts are underway to digitize the self-help group platform.

8.10. REPEAL OF OBSOLETE LAWS

Why in News?

Recently, Parliament has repealed several old central laws which have become "irrelevant".

Reasons to repeal of obsolete laws

- The subject matter of the law in question is **outdated, and a law is no longer needed to govern that subject;**
- The **purpose of the law in question has been fulfilled** and it is no longer needed
- There is **newer law or regulation governing the same subject matter.**
- There are several laws which **are derogatory to a particular group**

Repealing of laws in India

- In India, a law can be repealed or **amended only by the legislature that is competent to pass a law on that subject - the Centre or a state.**
- **Recently government of India has** repealed 1,175 laws through four repealing Acts in 2015, 2016, 2017 and 2019.
- **This is based on** The Law Commission recommendation and Ramanujam Committee, set up by PMO in September 2014 to identify Union-government statutes that could be repealed.

Issues with repealing of laws

- **Identification of obsolete laws:** As per Ramanujam Committee, 2,781 Central Acts were in existence as on 15 October 2014. Presence of such large number of laws makes the task of identification difficult. Although despite efforts, several obsolete laws are still in force.
- **Time consuming:** Rare is the case when one can repeal a statute in its entirety. Therefore, it requires a scrutiny of the statute, section by section and is time-consuming.
- **To inform citizen:** Common citizen would find it difficult to check whether a particular Act or provision has been repealed or not. Individual Repealing and Amendment Bills would have to be scanned through to see what has been repealed. This makes the public prone to exploitation.

Steps to be taken

- **Periodic repeal of laws:** The government should establish a mechanism where the lawmakers at the Centre, state legislatures and municipalities to update, amend and annul obsolete laws and regulations.
- **Sunset clause for future laws:** For future laws, Government should add a "sunset clause" to ensure periodic check of obsolete laws.
- **Judicial activism:** Court should adopt the practice of desuetude, a norm that laws that have not been used or enforced for a long period would lapse automatically.

Conclusion

It is only with strict adherence to practices of repealing of obsolete laws that India can promote "ease of doing business" for its economy and "ease of living" for its society.

9. LOCAL GOVERNANCE

9.1. PANCHAYATS AND PANDEMIC

Why in news?

Prime Minister in an interaction with Panchayats on National Panchayati Raj Day lauded the local governments for their proactive approach to fight the crisis.

Introduction

- The **73rd Constitutional Amendment** mandates the constitution of panchayats at the district, intermediate and village levels as devolved institutions of self-government.
 - It provides for the **endowment of powers and responsibilities** to plan and implement programmes for social justice and economic development at grassroot level.
- With **more than three million elected representatives**, India's local government, or the Panchayati Raj are in the **forefront of the country's fight against the pandemic**.
 - They are proactive in **readying the infrastructure** to treat people, to arrange massive movements of **food grains** for community kitchens and also to maintain **hygiene and "social distancing"** at village level.
 - They have emerged as the **bridge between the decision makers and the community** that would have to adapt or implement such decisions.

On the occasion of National Panchayati Raj Day, 2020

Prime Minister interacted with Sarpanchs of Gram Panchayats throughout the country through Video Conferencing. He launched a unified e-GramSwaraj Portal and Svamitva Scheme.

- **e-GramSwaraj** will help prepare and execute Gram Panchayat Development Plans. The portal will ensure real time monitoring and accountability. The portal is a major step towards digitization down to the Gram Panchayat level.
- **Svamitva Scheme** provides for an integrated property validation solution for rural India; the demarcation of inhabited land in rural areas would be done by the use of latest surveying methods – Drone's technology with the collaborated efforts of the Ministry of Panchayati Raj, State Panchayati Raj Department, State Revenue Department and Survey of India.

Role of Panchayats in Pandemic

- **Practical consideration of local level knowledge.**
 - Due to their proximity, panchayats are usually the **first point of contact** for most citizens and thus best placed to know about mobility, as well as, social security needs.
 - **Community-level engagement and dissemination of information** become an easier task than deploying resources from the state level.
 - Additionally, **tracing individuals** who have crossed states or districts, make it imperative to have coordination efforts continuing till the last mile, with **panchayats being the eyes and ears** on the entry and exit of individuals and families, especially during community quarantine.
- **Administrative consideration**
 - Administratively, while their functions vary, panchayat members are the **nodal point** across most social welfare programmes and have the **power of direct reach** in their hands.
 - With **2.6 lakh rural local bodies** (or gram panchayats) and over **10 lakh frontline functionaries** (ASHAs, ANMs etc.), they can play a vital role in ensuring that **welfare services get delivered** on the ground and **no person is left behind** from accessing relief packages for want of documentation or lack of knowledge.
 - **Reservation for women** in three-tier Panchayati Raj Institutions (PRI) gives the PRIs extra advantage to work in coordination with lakhs of members of **women self-help groups (SHGs)** who are engaged in the fight against COVID-19.
- **Level of Trust**
 - From the citizen's perspective, the **panchayat represents the quintessential community**. Citizens have a **comparatively higher trust in their local governments** and thus, are most likely to approach them rather than other officials for their needs.

Panchayati Raj Institutions (PRIs) fighting at the forefront

- The Health Ministry's '**Micro Plan for Containing Local Transmission of Coronavirus Disease (COVID-19)**' has **placed panchayats at forefront** in increasing community mobilisation and ensuring active surveillance.

- The government **allowed the panchayats to use the earmarked funds under the 14th Finance Commission for COVID-19 related activities**. It made a special exemption for these works.
 - Constitutionally, **sanitation is the function of the local government**. COVID-19 related works have been brought under this function.
- Many states too have made **panchayats the nodal agency for coordination** – from ensuring health activities, information dissemination, and determining that all vulnerable communities have access to food supplies.
- **Kerala**
 - With its **long history of decentralisation** and both primary and secondary healthcare having placed under the purview of the third-tier institutions, panchayats in Kerala are on the forefront of coordinating government in tracing, organising health checkup camps, sanitation, social distancing messages among others.
 - Nearly a **third of Kerala's plan funds have been given to the panchayats** as flexible development and maintenance funds.
 - The **Kudumbashree system**, which encourages women to form self-help groups and their federations, acts as an organised civil society counterpoint to the panchayats, **collaborating with and yet holding to account** the latter for their performance.
- **Odisha**
 - It delegated **sarpanchs with the powers of a district collector** to impose quarantine at a village level.
 - To ensure a **decentralised way of tackling pandemic**, Odisha government has ensured every Gram Panchayat with registry facility and mechanisms for community-based monitoring.

- **Andhra Pradesh**

- Village volunteers (nearly 2.5 lakh) have **helped survey 14.1 million** of the 14.3 million households in the state.
- They have conducted a survey to help the state **trace people with travel history to foreign countries** and prevent the spread of COVID-19 infections in the state.

Village Volunteer System of Andhra Pradesh

- Under the system, a new department of Gram Volunteers/ Ward Volunteers and Village Secretariat/Ward Secretariat was created.
- Each **Village Secretariat** has been set up for a population of 2,000, with each one comprising close to a dozen village officials.
- Each volunteer is **paid Rs. 5,000 per month** and the person has to ensure that benefits reach the people in the **50 households** in the village. (In towns, ward volunteers have been appointed)

Rationale for creating such a system

- The system was created to ensure **better delivery** of various benefits to the public **under welfare schemes**. These volunteers coordinate and implement government welfare programmes in more than 11,000 villages of the state.
- The system indirectly **creates employment** in the rural hinterland and simultaneously creates an **accessibility and accountability chain**. This in turn increases **decentralization** in implementation of schemes and also ensures **capacity building of local functionaries**.

Way forward to strengthen the PRIs

- While many functions have been transferred to Panchayats as mandated by the Constitution, we are **yet to fully transfer the right funds and functionaries** to them to effective function like an elected government. It is time to give these governments their constitutional rights to better handle such crisis.
- The starting point could best be **Entry 23 of the Eleventh Schedule** (under Article 243G) that reads, **“Health and sanitation, including hospitals, primary health centres and dispensaries”**.
- Until the full resumption of normal economic activity, there would be a need to provide free or heavily subsidised food to millions of villagers, including repatriated migrant labour.
 - **Entry 28 of the Eleventh Schedule** mentions the **“public distribution system”** as among the subjects for devolution.
- The most important requirement is **planning to receive the migrant labour influx**, including testing, quarantine, isolation, social distancing to the extent possible, and ensuring that all without exception are fed and housed and receive the monetary grants.
 - **Last mile delivery** can only be comprehensively ensured by empowered panchayats (and municipalities) reporting to their respective gram sabhas and ward sabhas mandated under **Articles 243A and 243S**.
- Planning for withstanding the ingress of COVID-19 requires the full deployment of the mechanisms for **district planning envisaged in Article 243 ZD** involving all three tiers of the panchayats and the municipalities brought together in the **district planning committee**.

9.2. FINANCIALLY EMPOWERING URBAN LOCAL BODIES

Why in news?

Low finances of urban local bodies has been a persisting problem in India.

Current status of Municipal Finances in India

A study commissioned by the 15th Finance Commission highlighted the following concerning trends in Municipal finances:

- **Low Municipal revenue to GDP ratio:** Municipal revenue to GDP ratio in India has remained stagnant at around 1 per cent of GDP during the period from 2007-08 to 2017-18.
- **Declining own revenue:** The share of Municipal own revenue (revenue generated through own tax and non-tax resources) in total Municipal revenues has declined significantly from approx. 55% in 2007-08 to 43% in 2017-18.
- **Low diversification of tax resources:** At present, property tax remains the only major tax in the municipal portfolio in India and it contributed about 60 per cent to municipal tax revenue in India in 2017-18.
- **Insufficient growth in Property tax:** In 2017-18, property tax revenue as a share of GDP in India was **0.15 per cent which is far below the level of 1 per cent** estimated for recurrent taxes on immovable property in OECD countries.
- **Inadequate Intergovernmental transfers:** In comparison with 6.0 per cent in Norway and 9.9 per cent in United Kingdom, such transfers account for a meagre 0.45 per cent of GDP in India.
- **Low Borrowing:** Municipal borrowings (including municipal bonds) account for only 2 to 3 per cent of municipal revenue.
- **Poor finances of Smaller Municipalities:** In 2017-18, per capita own revenue of Municipal Corporations was about four times and more than six times that of Municipal Councils and Nagar Panchayats respectively.

Challenges faced by urban local bodies in accessing finance

- **Attitude of state governments:** While State governments had devolved only a limited number of taxes to the ULBs to begin with, in several states, most local taxes, other than property tax, have been taken over by the state governments over the years.
- **Poor cost recovery of services by urban local governments:** In India user charges and service provision seem to be caught in a vicious circle with poor quality of services leading to a lack of willingness to pay for these and hence poor collection of user charges and fees.
- **Improper Maintenance of Accounts:** CAG reports on local governments point out several lacunae in the preparation of municipal accounts related to lack of budget preparation etc.
- **Shortcomings of State Finance Commissions:** Inefficient functioning of SFCs has affected their ability and that of CFCs to augment financial resources of ULBs.
- **Inability to borrow from market sources:** Most municipal bodies require the state governments' permission to borrow from market sources. Growth in market financial instruments such as **Municipal bonds has largely been inadequate.**
- **Impact of GST:** Introduction of the GST has taken away critical sources of tax revenue such as octroi, local body tax, entry tax and advertisement tax for urban local governments.
- **Hidden Urbanization** due to unplanned urbanization in India and a large number of settlements becoming part of urban agglomerations beyond the municipal boundaries.

Steps taken to improve urban local bodies finances

- **Recommendations of 15th finance commission:** The total grants recommended for urban local bodies for 2020-21 were enhanced to Rs 29,250 crore against Rs 26,665 crore recommended for the year 2019-20 by the 14th FC.
- **Performance based grants:** Successive FCs have put in conditionalities on the disbursement of grants for improving fiscal position of ULBs.
- **National Municipal Accounts Manual (NMAM):** The Manual comprehensively provide details to all States/UTs in relation to the accounting policies, procedures and guidelines to ensure correct, complete timely recording of municipal transactions produce accurate relevant financial reports.
- **Allocation of funds through Schemes:** Several schemes of **Ministry of Housing and Urban Affairs** provide financial support to ULBs for undertaking projects for development of urban infrastructure and services etc. E.g. Atal Mission for Rejuvenation and Urban Transformation (AMRUT), Smart City Mission.

- **Promotion of Municipal Bonds:** In 2015, Securities and Exchange Board of India (SEBI) had released the **Issue and Listing of Debt Securities by Municipalities (ILD) Regulations** and since then seven municipalities have raised nearly Rs 1,400 crore by issuing their debt securities (commonly known as 'muni bonds').

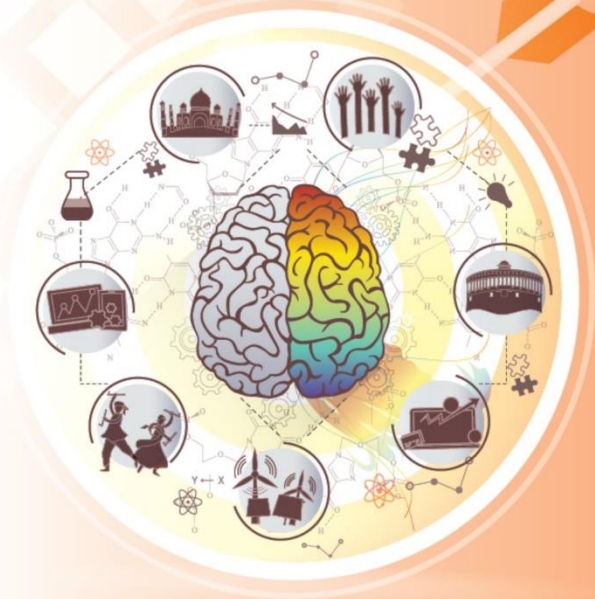
Way forward

- **Enhanced Devolution by States:** Municipal bodies can be given access to **Profession Tax, Local Body Entertainment Tax, motor vehicles tax** etc.
- **Unlocking land value:** Land value can be monetized by ULBs using Benefit charges such as impact fees, betterment levy, vacant land tax etc.
- **Property Tax Reforms:** E.g. Property Tax Boards, as recommended by the 13th Finance Commission, Use of GIS etc.
- **Strengthening Municipal Bonds** through local capacity building, financial empowerment, rationalization of the state-local fiscal relationship etc.
- **Capacity building of ULBs** through technical assistance, help in financial planning such as identifying internal and external sources of mobilizing funds for capital investments, improving accounting standards etc.

Why the Municipal Bond Market in India has failed to grow as expected?

- Municipal bonds are issued when a **government body wants to raise funds for projects** such as infra-related, roads, airports, railway stations, schools, and so on. They have existed in India **since the year 1997** and Bangalore Municipal Corporation was the first urban local body to issue municipal bonds in India.
- However, the municipal bond market in India has not taken off despite several attempts made by governments, due to several factors, namely:
 - **Poor credit ratings**
 - **Perceived as Risky**
 - **Unrealistic planning**
 - **Poorly developed government securities market**
 - **Constraints on Institutional investors**

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