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POLITY AND CONSTITUTION

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1. CENTRE STATE RELATIONS

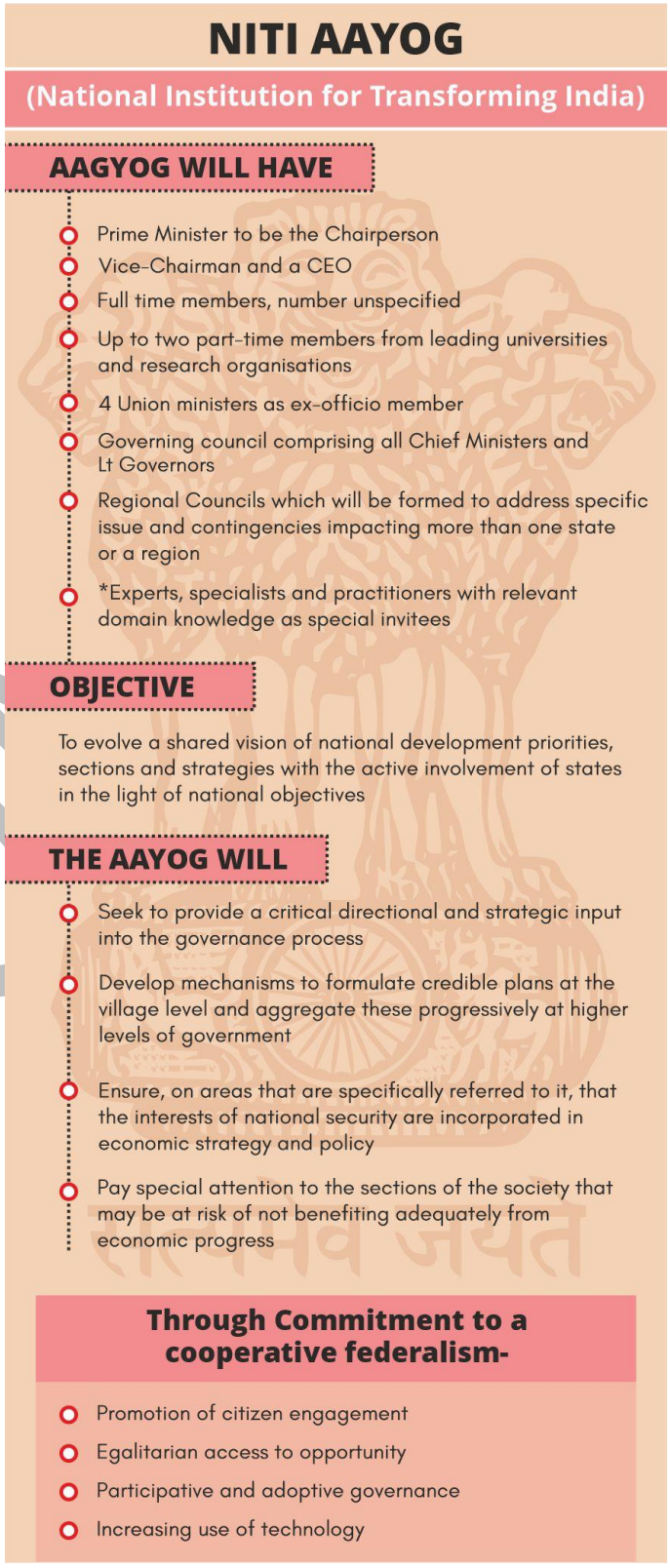
1.1. NITI AAYOG

Why in news?

Recently Government has **reconstituted NITI Aayog,** renaming Rajiv Kumar as its vice chairman and appointing Home Minister as ex-officio member.

Background

- **Planning Commission** was initially set up in 1950 as an **agency to direct investment activity in a country.**
- Planning Commission had **two key duties to perform i.e.; to implement five-year plan and second was to provide the finances to the state.**
- **The disenchantment with the Planning Commission could be traced on two important fronts:**
  - the perception that it was not able to capture the new realities of macro-economic management at the national level,
  - it had not been conducive to sound fiscal relations between the Union and the States.
- This **did not fit well with the imperative for an inclusive and equitable path of economic development in India.**
- In this context, **National Institution for Transforming India (NITI Aayog)** was constituted in 2015 as a **think tank and advisory body of the government.**



Relevance of NITI Aayog

- **Cooperative federalism:** Due to its composition, NITI Aayog gives better representation of states which facilitates direct interactions with the ministries & helps to address issues in a relatively shorter time.
- **Competitive Federalism:** Various reports of NITI Aayog like **Healthy states Progressive India etc.** which give performance-based rankings of States across various verticals to foster a spirit of competitive federalism. It helps to identify the best practices in different States in various sectors and then try to replicate them in other States.
- **Greater Accountability:** NITI Aayog has established a **Development Monitoring and Evaluation Office** which collects data on the performance of various Ministries on a real-time basis. The data is then used at the highest policymaking levels to establish accountability and improve performance.

- Earlier, India had 12 **Five-Year Plans**, but they were mostly **evaluated long after the plan period had ended**. Hence, there was no real accountability.

- **Think tank of innovative ideas:** NITI Aayog is visualised as a funnel through which new and innovative ideas come from all possible sources — industry, academia, civil society or foreign specialists — and flow into the government system for implementation.
  - By collecting fresh ideas and **sharing them with the Central and State governments**, it allows states to progress with these new ideas.
  - Hence it helps in **improving governance and implementing innovative measures** for better delivery of public services.
- **Convergence for resolution:** Being a common point for similar issues faced by different sectors, states etc., it acts as a convergence point and platform to discuss these issues.

Concerns with NITI Aayog

- **Biasness towards government & private sector:** While generating new ideas, NITI Aayog should maintain a respectable intellectual distance from the government of the day. However, concerns have been raised regarding NITI Aayog offering rather uncritical praise of government's projects.
  - Concerns have also been raised regarding NITI Aayog's treatment of public sector while advocating private sector in almost every sphere as the savior of Indian economy.
- **Financial constraint:** NITI Aayog has no powers in granting discretionary funds to states, which renders it toothless to undertake a "transformational" intervention.
  - While during the Planning Commission days, it was easy for the commission to give a shape to the idea as it had the control over funds and hence over an agenda.
- **Only recommendatory body:** It acts as advisory body only which advices the government on various issues without ensuring enforceability of its ideas.
- **Lack of decentralization power**: One of the envisaged goals of the NITI Aayog was to develop mechanisms to formulate credible plans at the village level and aggregate these progressively at the higher level. Very little of this cherished goal has indeed been accomplished.
- **Missed opportunities for transformative change:** The body has missed some opportunities to make qualitative difference.
  - For instance, CSS had to be reformed in the light of the recommendations of the 14th Finance Commission. Instead of reforms in design and implementation of the Schemes that was promised when the Planning Commission was wound up, changes were made only to shift greater responsibility onto States in terms of financing.
  - A second opportunity arose when the distinction between Plan and non-Plan was removed. At that point, the organization had an opportunity to insist on taking a sector-wise comprehensive view of capital and revenue expenditures. However, that has not been done.
- **Inadequate support to states**: The major complaints of States in regard to the functioning of the Planning Commission remain unaddressed. The complaints have largely been on the perception that the Centre is encroaching upon States' responsibilities and is continuing to advocate a one-size-fits-all approach in administration.

Suggestions to improve working of Niti Aayog

- **Balancing with finance commission**: **NITI Aayog should be given a funding role** so that it can help deal with the development experience between states.
  - Another possibility is to **convert the Finance Commission into a permanent body** that can oversee fiscal transfer mechanisms rather than just give a tax sharing formula every five years.
- **Increasing accountability:** Bureaucracy will need to change from generalist to specialist, and its accountability will have to be based on outcomes achieved, not inputs or funds spent. NITI Aayog should spell out how these reforms will be implemented.
- **Allocation of more funds**: Towards the task of cooperative federalism, NITI Aayog 2.0 should receive significant resources (say 1% to 2% of the GDP) to promote accelerated growth in States that are lagging, and overcome their historically conditioned infrastructure deficit, thus reducing the developmental imbalance.
- **More stakeholder involvement**: It should invite research inputs and recommendations of expert members on identified areas. It should synthesize recommendations based on empirical weight of the research. This will cut time, cost and effort and will increase timely policy inputs for the government.

Achievements of NITI Aayog

- **Launching of various initiatives and programmes**
  - Measuring performance and ranking States on outcomes in critical sectors
  - Sustainable Action for Transforming Human Capital (SATH)
  - Ek Bharat Shrestha Bharat
  - Development Support Services to States (DSSS) for Development of Infrastructure
  - Public-Private Partnership in Health
  - Resolution of pending issues of States with Central Ministries
  - 'Aspirational District Programme (ADP)': to realise the vision of 'SabkaSaath, SabkaVikas', and ensure that India's growth process remains inclusive
- **Enabling evidence-based policy making and enhancing productive efficiency with long-term vision**
  - Three Year National Action Agenda and the Strategy for New India @75 which allows better alignment of the development strategy with the changed reality of India.
  - Reform of Central Public Sector Enterprises (CPSEs)
  - Balanced Regional Development
    - ✓ Development support to the North East
    - ✓ NITI Forum for North East
  - Health & Nutrition Sector Reforms
    - ✓ Launch of the POSHAN Abhiyaan
    - ✓ Evolving the National Nutrition Strategy
    - ✓ Pushing Reforms in Pharmaceuticals Sector
  - In energy sector
    - ✓ NITI has prepared and launched a report on 'India's Renewable Electricity Roadmap 2030.'
    - ✓ Roadmap for revising the National Mineral Policy, 2018
- **Partnerships with National and International Organisations and Promote Stakeholder Consultation in Policy Making**
- **Promote entrepreneurial and innovation ecosystem**
  - **Atal Innovation Mission**, which established Atal Tinkering Labs in India, has already done commendable work in improving the innovation ecosystem in India.
  - Global Entrepreneurship Summit 2017: Women First: Prosperity for All
  - Women Entrepreneurship Platform
- **Promoting adoption of frontier technology like Artificial Intelligence, blockchain, Methanol economy etc.**

1.2. SPECIAL STATUS OF JAMMU AND KASHMIR

Historical background

- When the State of Jammu and Kashmir (J&K) became independent on 15 August 1947, its ruler, Maharaja Hari Singh, decided not to join India or Pakistan and thereby remain independent.
- However, on 20 October 1947, when the intruders supported by the Pakistan army attacked the frontiers of the state, the ruler of the state decided to accede the state to India and signed **'Instrument of Accession of Jammu and Kashmir to India'**.
- Under this, the state surrendered only three subjects (defence, external affairs and communications) to the Dominion of India. At that time, the Government of India made a commitment for their own Constituent Assembly, to determine the internal Constitution of the state.
- In pursuance of this commitment, Article 370 was incorporated in the Constitution of India.

What is article 370?

- Under **Part XXI of the Constitution of India**, which deals with **"Temporary, Transitional and Special provisions"**, the state of Jammu & Kashmir has been accorded special status under Article 370.
- According to article 370, except for **defence, foreign affairs, finance and communications**, Parliament needs the state government's concurrence for applying all other laws.

How it can be revoked?

- According to the clause 3 of Article 370, **"The President may, by public notification, declare that this article shall cease to be operative, 'provided that he receives the "recommendation of the Constituent Assembly of the State (Kashmir)."**
- However, since the last **Constituent Assembly was dissolved** in January 1957 after it completed the task of framing the state's Constitution, so if the parliament agrees to scrap Article 370, a fresh constituent Assembly will have to be formed.

Arguments on why Article 370 should be revoked

- **Obstacle to Integration:** Article 370 prohibits the non-residents from outside the state to buy immovable as well as movable property here, set any industry or manufacturing unit.
- **Inhibits flow of investment**: As Article 370 acts as obstacle in attracting the flow of investment from big business houses, thus limiting employment opportunities for youth of Kashmir.
- **Unemployment and poverty** in J&K has promoted militancy.
- Constitution says it is a **temporary** provision and it has been seven decades since Independence.
- Though **constituent assembly** no longer exists, the body succeeding it i.e. J&K government or Assembly shall be able to give consent.

Arguments on why Article 370 should not be revoked

- **SC Judgement:**
  - In 2018 a petition was filed in Supreme Court (SC) that sought a declaration that Article 370 was a temporary provision that lapsed with the dissolution of the J&K Constituent Assembly.
  - In that SC held that Article 370 of the Constitution which gives special status to Jammu and Kashmir is **not a temporary provision.** It further observed that it had acquired permanent status through years of existence, making its **abrogation impossible.**
- **Effective erosion of Article 370:** Over the years through Presidential orders provisions of Indian constitution were extended to J&K. For example, Ninety-four of 97 entries in the Union List, 260 of 395 Articles have been extended to the state. Thus, effectively Article 370 is eroded.
- **Fear of alienation:** Article 370 was brought because people were deeply vulnerable about their identity and insecure about the future. In the current context of J&K abrogation would further alienate J&K people.
- **Link between Union and state:** Article 370 has been the pillar acting as effective link between Indian union and J&K. If it is abrogated the relationship may become uncertain pushing back the progress achieved over the years through Presidential orders.

Other important provisions under article 370

- **Own constitution:** The **State of J & K has its own Constitution.** Hence, Part VI of the Constitution of India (dealing with state governments) is not applicable to this state. **Its name, area or boundary cannot be changed** by the Union without the consent of its **legislature**.
- **Legislative powers:**
  - The **residuary power belongs to the state legislature** except in few matters like prevention of activities involving terrorist acts, questioning or disrupting the sovereignty and territorial integrity of India and causing insult to the National Flag, National Anthem and the Constitution of India.
  - Further, the power to make **laws of preventive detention** in the state belongs to the state legislature.
  - An **amendment** made to the Constitution of India does not apply to the state unless it is extended by a presidential order.
- **Fundamental Rights are** applicable to the state. The Fundamental Right to Property is still guaranteed in the state. While **Part IV (dealing with Directive Principles of State Policy)** and **Part IVA (dealing with Fundamental Duties)** are **not applicable** to the state.
- **Emergency provisions:**
  - **National Emergency** declared on the ground of internal disturbance will not have effect in the state except with the concurrence of the state government.
  - The President has no power to declare a **financial emergency** in relation to the state.
  - The **President's Rule** can be imposed in the state on the ground of failure of the constitutional machinery under the **provisions of state Constitution and not Indian Constitution**.
  - Also, it provides for **Governor's Rule** under the state Constitution.
- **Constitutional bodies:** The special leave jurisdiction of the **Supreme Court** and the jurisdictions of the **Election Commission** and the **Comptroller and Auditor General** are applicable to the state.
- **Power of High Court:** The High Court of J&K can issue writs only for the enforcement of the of the fundamental rights and not for any other purpose.

Way forward

Separatism grows when people feel disconnected from the structures of power and the process of policy formulation. Devolution ensures popular participation in the running of the polity. Thus, any decision on Article 370 shall be taken only after wider public dialogue. Meanwhile it is important to address genuine grievances and concerns of people of J&K to address unrest and alienation.

1.2.1. ARTICLE 35A

Why in news?

The Supreme Court is currently hearing pleas challenging constitutional validity of Article 35A, which provides special rights and privileges to natives of Jammu and Kashmir.

What is article 35 A?

- Article 35A of the Indian Constitution gives the Jammu and Kashmir Legislature the power to define **'permanent residents'** of the State and confer on them:
  - special rights and privileges in public sector jobs,
  - acquisition of property in the State,
  - scholarships and other public aid and welfare.
- The provision mandates that no act of the legislature coming under it can be challenged for violating the Constitution or any other law of the land.
- It was incorporated into the Constitution in 1954 by a **Presidential order** issued under Article 370 (1) (d) of the Constitution.

Significance of Article 35A

- It limits the **privileges** to Kashmiris alone in the state of Kashmir, thus ensuring that Kashmiri demography and culture of Kashmiriyat remains intact.
- It ensures that the property, jobs and other state welfare schemes are not abused by the outsiders thus facilitating developmental opportunities for the Kashmiris.
- It helps the state of J&K exercise autonomy that the state of India agreed with, through the instrument of accession, thus limiting the secessionist tendencies and providing incentives for integration and cooperation of J&K with the Indian state.

Arguments for removing Article 35A

- **Bypassing Parliament:** Article 368 (i) of the Constitution empowers only Parliament to amend the Constitution. The parliamentary route of law-making was bypassed when the President incorporated Article 35A into the Constitution.
- **Denial of rights of women:** It protects certain provisions of the J&K Constitution which denies property rights to native women who marry from outside the State. The denial of these rights extends to her children also.
- **Violation of fundamental rights:** under Article 14, 19 and 21 as it is discriminatory against non-residents as far as government jobs and real estate purchases are concerned.
- **Article 370** was only a **'temporary provision'** and the Constitution-makers did not intend Article 370 to be a tool to bring permanent amendments, like Article 35A, in the Constitution. Thus the Article 35 A is against the "very spirit of oneness of India" as it creates a "class within a class of Indian citizens".

Counter arguments

- If article 35A is not upheld, the **legality of many presidential orders** issued under art 370 may become questionable.
- Though it was not passed as per the amending process given in Article 368, but was inserted on the **recommendation of J&K's Constituent Assembly** through a Presidential Order.
- Since Article 35A **predates basic structure theory** of 1973, it cannot be tested on the touchstone of basic structure.
- Also, **similar provisions are also in place in several other states,** including some in the Northeast and Himachal Pradesh. Domicile-based reservation in admissions and even jobs is followed in a number of states, including under Article 371D for undivided Andhra Pradesh.
- Supreme Court **in Puranlal Lakhanpal vs. The President of India** 1961 judgement observed that the President may **'modify an existing provision in the Constitution under Article 370.'** However, the judgment is silent as to whether the President can, without the Parliament's knowledge, introduce a new Article.

1.3. 6TH SCHEDULE

Why in news?

Recently, Constitution (125th Amendment) Bill, 2019 was introduced in Rajya Sabha to increase the financial and executive powers of the 10 Autonomous Councils in the Sixth Schedule areas.

Background

What is 6th schedule?

Article 244 of the Constitution envisages a special system of administration for certain areas designated as **'scheduled areas' and 'tribal areas.'** Sixth Schedule contains special provisions for the administration of tribal areas in the four north-eastern states of **Assam, Meghalaya, Tripura and Mizoram.**

Rationale for inclusion in 6th schedule

- The tribes in Assam, Meghalaya, Tripura and Mizoram have **not assimilated** with the life and ways of the other people in these states.
- The tribal people in other parts of India have more or less adopted the culture of the majority of the people in whose midst they live. The tribes in Assam, Meghalaya, Tripura and Mizoram, on the other hand, **still have their roots in their own culture, customs and civilization.**
- These areas are, therefore, treated differently by the Constitution and sizeable amount of autonomy has been given to these people for self-government.

Amendments proposed under Constitution (125th Amendment) Bill
Following are the issues the bill seeks to address:

- **Need for village level bodies:** The provision for village councils indicate that these councils established by ADCs are envisaged to be institutions for the dispensation of justice. However, there is a need of a 'village community body' to harmonize with the traditional village body.
  - The bill provides for elected village municipal councils which will be empowered to prepare plans for economic development and social justice.
- **Lack of financial self-sufficiency:** The councils are dependent on their respective state governments for funds which denies them the flexibility required to emerge as a vibrant institution for local development.
  - The bill proposes that Finance Commission will now recommend the financial devolution to the council.
- **Non-Representation of some tribes:** It is observed that some councils are not able to represent the numerous major and minor tribes within their jurisdiction in 30 members of the council.
  - The bill increases the number of members in some council considering demands for the same.
- **Inadequate representation of women:** There is very less participation of women in tribal administration.
  - The bill reserves at least one-third of the seats will be reserved for women in the village and municipal councils.

Provisions in 6th schedule

The tribal areas under 6th schedule are given various powers through following provisions:

- **Autonomous districts:** The tribal areas in these states have been constituted as **autonomous districts**, each of which has an **autonomous district council and** each autonomous region has a separate **regional council** consisting of 30 members**.** Currently, there are **10 such councils.**
- **Legislative power:** To make laws on certain specified matters like land, forests, canal water, shifting cultivation, village administration, inheritance of property, marriage and divorce, social customs and so on. These require assent of the governor.
- **Judicial power:** The councils can constitute village councils or courts for trial of suits and cases between the tribes where the jurisdiction of high court over these suits and cases is specified by the governor.
- **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-tribals. 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.

Issues with autonomous councils in 6th schedule areas

- **Overlapping functional responsibilities between the States and the District councils:** Despite the fact that Sixth Schedule has declared that certain matters stand fully transferred to District and Regional Councils, some matters are not fully transferred to the Councils.
- **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.

- **Lack of clarity in the role of Governor**: certain special provisions have been inserted into the Sixth Schedule which highlights matters where discretionary powers of Governor is applicable. However, there is conflicting opinion on whether the Governor should exercise his role on the basis of individual discretion or on the advice by the Council of Ministers of the State concerned.
- **Lack of codification of customary law**: Customary laws need to be codified and brought into practical use to ensure protection of tribal cultural identity.
- **Misuse of funds:** Some ADCs misuse government funds since there is no expert inspecting officers and proper auditing of the initiatives undertaken by ADCs.
- **Lack of efficient usage of existing powers:** Although the ADCs have power to make laws for land development and land revenue, hardly any significant steps have been taken to initiate land reforms which hold the key to prosperity in tribal society.

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

The **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. Provisions under 6th schedule are considered better from 5th schedule because:

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

Way forward

Apart from the amendments proposed some more steps need to be taken with respect to 6th Schedule:

- **Recognize Gram Sabha** under law and specify its powers & functions and ensuring accountability of Village Councils to Gram Sabha
- **Bring transparency** in planning, implementation and monitoring of developmental programmes.
- Ensure many **ethnic minorities are not excluded** from representation in council**.**

1.4. DEMANDS FOR SMALL STATES

Why in news?

The demand to carve a separate Gorkhaland out of West Bengal arose again recently.

Gorkhaland Movement

- The Gorkhaland movement is a long-standing quest for a **separate State of Gorkhaland** out of State of West Bengal for **Nepali-speaking Indian citizens** (often known as 'Gorkhas').
- **Gorkhaland Territorial Administration (GTA)** was created in 2012 through a tripartite agreement signed by governments of centre and state and Gorkha Janmukti Morcha (GJM), replaced the earlier Darjeeling Gorkha Hill Council. It is a semi-autonomous administrative body. It has administrative, executive and financial powers but no legislative powers.

Why demand?

- **Ethnic differences** from Bengali community.
- Aspiration of **Indian Gorkha Identity.**
- **Economic deprivation** such as the low levels of employment, while outsiders own the tea industry.
- The **imposition of Bengali language** by the state government.

Reasons for demands for smaller states

- **Culture and Ethnicity**: Some culturally distinct groups feel 'culturally subjugated and victimized'. So, for preserving ethnic identity demands for a new state are made. For instance, Gorkhaland out of West Bengal, Nagalim demand in North East, Bodoland in Assam.
- **Economic backwardness:** The sentiment of being deprived even after being rich in natural resources are grounds for the demand of a separate state e.g. Telangana and Vidarbha.
- **Better governance:** Cumbersome administration in some bigger states have given rise to the perception that splitting large states into smaller chunks will improve administration by bringing power centres closer to the people. **E.g.** proposal to split Uttar Pradesh into smaller states.
- **Political reasons:** Some sections dominating a region demand separate state for more political clout. E.g. some groups dominated western UP region demanding Harit Pradesh.

Arguments in favour of smaller states

- **Economic development and efficiency** when the new states get 'a territory of their own' unleashes the untapped/suppressed growth potentials of the hitherto peripheral regions. E.g. Chhattisgarh in Madhya Pradesh, Telangana in Andhra Pradesh.
- **Democratic decentralisation**: as comparatively smaller but compact geographical entities tend to ensure that there is better democratic governance, as there is greater awareness among the policy makers about the local needs.
- **Cultural homogeneity & linguistic compatibility**: allows for better management, implementation and allocation of public resources. A relatively homogeneous smaller state allows for easy communications, enabling marginal social groups to articulate and raise their voices.
- **Resolve the problem of identity crisis** among the ethnic groups and enable them to develop their own language and culture thus helping them in getting rid of the 'feelings of internal colonialism'.

Arguments against smaller states

- **Fear of threat to national unity and integrity** with the rise of regional and linguistic fanaticism.
- **No guarantee of development:**
  - Small state itself **cannot guarantee rapid economic development** of those backward regions which do not have the required material and human resources.
  - The agricultural growth, GDP growth, poverty reduction and IMR have not shown significant shift in case of **Uttarakhand, Chhattisgarh and Jharkhand**.
  - Some of the small States may not be having the potential for economic viability which may increase its dependence on centre.

History of state reorganization in India

- At the **time of independence** in 1947, India consisted of 571 disjointed princely states that were merged together to form 27 states. This grouping was done on the basis of historical and political considerations than social, cultural or linguistic divisions.
- The Government appointed **S.K. Dhar Commission** to examine the feasibility of reorganisation of states on a linguistic basis preferred reorganisation for administrative convenience rather than on linguistic basis.
- A Congress Committee under Jawaharlal Nehru, Sardar Patel and Pattabhi Sitaramayya **(the JVP Committee)** too did not favour a linguistic base.
- In 1953, Andhra Pradesh was created as first state on linguistic basis, by separating the Telugu speaking areas from the State of Madras.
- As there were several more demands for states on a linguistic basis, a commission was set up under **Justice F. Fazl Ali with H.N. Kunzru and KM. Panikkar which submitted its report in 1955.** Based on its suggestions **States Reorganisation Act** was passed in 1956 resulting in 14 states and 6 Union territories.
- In **1960s and 1970s** further states were created on ethnic basis (North East) and language (Punjab and Maharashtra).
- Jharkhand, Chhattisgarh and Uttaranchal were formed in **2000** on the grounds of tribal affiliations and lack of economic development.
- In **2014**, Telangana officially became India's 29th state after longstanding demand.

Procedure for formation of new state

- Under the **Article 3** of the Constitution, **the Parliament** is authorized to change the **name, boundary, area** of a state. It can:
  - form a new state by separation of territory from any state or by uniting two or more states or parts of states or by uniting any territory to a part of any state,
  - Increase or diminish the area of any state, and
  - Alter the name or boundaries of any state.
- Also, it lays down **two conditions**:
  - Such a bill can be introduced in the Parliament only with the **prior recommendation of the President**; and
  - Before recommending the bill, the President has to **refer the same to the state legislature** concerned for expressing its views within a specified period.
- The President (or Parliament) is **not bound by the views** of the state legislature and may either accept or reject them, even if the views are received in time.
- Also, it is not necessary to make a fresh reference to the state legislature if any amendment to the bill is moved and accepted in Parliament.
- In case of a **union territory, no reference** need be made to the concerned legislature.
- **Article 4** declares that laws made under Article 2 (admission or establishment of new states) and Article 3 (formation of new states, alteration of areas, boundaries or names states) are not to be considered as amendments of the Constitution under Article 368. This means that **such laws can be passed by a simple majority and by the ordinary legislative process.**
- It is for this reason that India is described as **'an indestructible union of destructible states.'**

- **Flawed model of development:**
  - The newly created small states being latecomers and backward, have **problems like lack of industry, agrarian crisis and a low level of infrastructural facilities**.
  - It results in a model of development based on **unprecedented exploitation** of raw materials such as the mining of minerals instead of the creation of industry, wanton land deals, the conversion of fertile agricultural land into speculative real estate transactions.
- **No real diffusion of power:** Creation of smaller states only transfers power from the old state capital to new state capital without empowering existing institutions like Gram Panchayat etc.
- **Political expediency and opportunism** rather than the objective evaluation of democratic and developmental potential are said to be involved in the making of new states.
- **Aggressive regionalism:** Small States could also **lead to the hegemony of the dominant community/caste/tribe** over their power structures. This could develop aggressive regionalism too in such States leading to the growth of the **sons of-the-soil** phenomenon and the consequent intimidation of the migrants.
- **Inter-state disputes** over water, power and boundary may increase.

Way forward

- **Good governance:** by better use of technology to reach remote regions, and better public service delivery and addressing the problems of displacement and discontent among people.
- **Democratic Decentralisation** of administration and strengthening local self-governments by implementing 73rd and 74th constitutional amendments in true spirit. Power should be decentralised based on the principle of subsidiarity.
- **Balanced socio-economic development** in equitable manner and addressing the true concerns of agrarian crisis, jobs will ensure that such demands for small states do not arise.
- **Political stability** is more important for continuity of policies than the size of the state.
- **Objective and scientific analysis** before taking decision on any demand for separate state.

1.5. GOVERNOR'S ROLE IN DISSOLUTION OF STATE ASSEMBLIES

Why in news?

Jammu and Kashmir Governor recently dissolved the State Assembly (which has been in suspended animation) when two political parties separately staked claim to form a government.

More about news

- The reasons for the dissolution were: the "**extensive horse trading**" and the possibility that a government formed by parties with "**opposing political ideologies**" would not be stable.
- The move is being seen as **harmful for democracy** as J&K's relationship with the Centre is rooted in constitutional safeguards as well as in the participation of its major parties in electoral politics and parliamentary democracy.

Constitutional provisions

- **Article 172** says that every Legislative Assembly of every State, unless sooner dissolved, shall continue for five years.
- **Article 174 (2) (b)** of the Indian Constitution merely states that the Governor may, from time to time, dissolve the Legislative Assembly.
- **Article 356 ("President's rule"):** In case of failure of constitutional machinery in State the President, on receipt of report from the Governor of the State or otherwise,
  - may assume to himself the functions of the Government of the State
  - declare that the powers of the Legislature of the State shall be exercisable by or under the authority of Parliament
- **With Respect to J&K Constitution:** The powers under **Section 92** (failure of constitutional machinery) and **Section 52** (provides for dissolution of assembly) were invoked for this move.

Issues related to Dissolution Powers

- **Lack of Objective Criteria for untimely dissolution:** While Article 174 gives powers to the governor to dissolve the assembly, but the **Constitution is silent on as to when and under what circumstances** can the House can be dissolved.

- **Political reasons being cited for Dissolution:** Potential for political instability in the future being cited as a reason in J&K to prevent emerging alliances is undemocratic in nature.
  - Moreover, describing an alliance as opportunistic is fine as far as it is political opinion but it cannot be the basis for constitutional action.
- **Missing Political Neutrality in Governor's Office:**
  - The post has been reduced to becoming a retirement package for politicians for being politically faithful to the government of the day. Consequently, the office has been used by various governments at the centre as a political tool to destabilise elected state governments.
  - **For e.g.** Bihar State Assembly was dissolved by the governor in 2005 on apprehensions of "horse trading. Later the Supreme Court called the decision to be illegal and mala fide.

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 central 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.

1.6. DEMAND FOR ABOLISHING THE CONCURRENT LIST

Why in news?

The CM of Telangana has pitched for **more autonomy to the states,** suggesting that the concurrent list be done away with.

Historical Underpinnings

- Time and again centre-state relations come under scanner due to rising demands from various corners of the country for more power devolution in favor of states.
- The Indian governance system though federal in nature has strong central tendencies which born out of a mix causes i.e. the inertia to stay within the guidelines set by the Government of India act of 1935, fear of cessation etc.

Centralization of power Vis a Vis Concurrent list

- Since 1950, the Seventh Schedule of the Constitution has seen a number of amendments. **The Union List and Concurrent List have grown** while subjects under the **State List have gradually reduced**.
- The **42nd Amendment Act** was implemented in 1976, restructured the Seventh Schedule ensuring that State List subjects like education, forest, protection of wild animals and birds, administration of justice, and weights and measurements were transferred to the Concurrent List.
- The Tamil Nadu government constituted the **PV Rajamannar Committee** to look into Centre-State relations. It spurred other states to voice their opposition to this new power relation born due to 42nd amendment act and Centre's encroachment on subjects that were historically under the state list.

- The **Sarkaria Commission** was set up to look into Centre-State relations after opposition shown by states. However, the recommendations of the Sarkaria Commission were not implemented by successive central governments.

Seventh Schedule (Article 246)

The Constitution provides a scheme for demarcation of powers through three 'lists' in the seventh schedule.

- The **union list** details the subjects on which Parliament may make laws e.g. defence, foreign affairs, railways, banking, among others.
- The **state list** details those under the purview of state legislatures e.g. Public order, police, public health and sanitation; hospitals and dispensaries, betting and gambling etc.
- The **concurrent list** has subjects in which both Parliament and state legislatures have jurisdiction e.g. Education including technical education, medical education and universities, population control and family planning, criminal law, prevention of cruelty to animals, protection of wildlife and animals, forests etc.
- The Constitution also provides federal supremacy to Parliament on concurrent list items i.e. in case of a conflict; a central law will override a state law.

Why Concurrent list?

- The aim of the concurrent list was to **ensure uniformity** across the country where independently both centre and state can legislate. Thus, a model law with enough flexibility for states was originally conceived in the constitution.
- Also, few concurrent list subjects required **huge finances** needing both centre and state to contribute.

Issues with Concurrent list

- **Limited capacity of states**: Some laws enacted by Parliament in the concurrent list might require state governments to allocate funds for their implementation. But due to federal supremacy while the states are mandated to **comply with these laws** they might **not have enough financial resources** to do so.
- **Balance between flexibility and uniformity**: Some laws leave **little flexibility for states to sync the laws** according to their needs for achieving uniformity.
  - A higher degree of detail in law ensures uniformity across the country and provides the same level of protection and rights.
  - However, it **reduces the flexibility for states** to tailor the law for their different local conditions.

Sarkaria Commission Recommendation on Concurrent List

- The residuary powers of taxation should continue to remain with the Parliament, while the other residuary powers should be placed in the Concurrent List.
- The Centre should consult the states before making a law on a subject of the Concurrent List.
- Ordinarily, the Union should occupy only that much field of a concurrent subject on which uniformity of policy and action is essential in the larger interest of the nation, leaving the rest and details for state action.

- **Infringement in the domain of states:** Some Bills may directly **infringe upon the rights of states** i.e. central laws on subjects that are in the domain of state legislatures. E.g. anti-terrorist laws, Lokpal bill, issues with GST and Aadhar etc. where states' power are taken away in a cloaked manner.

This asymmetry highlights the need for a detailed public debate on federalism and treatment of items in the concurrent list.

What can be done?

- **Strengthening of Inter-State Council**: Over the year multiple committees have recommended strengthening of Interstate Council where the concurrent list subjects can be debated and discussed, balancing Centre state powers. There is far less institutional space to settle inter-state frictions therefore a constitutional institution like ISC can be a way forward.
- **Autonomy to states**: Centre should form **model laws with enough space for states** to maneuver. Centre should give enough budgetary support to states so as to avoid budgetary burden. There should be least interference in the state subjects.

1.7. RATIONALISATION OF CENTRALLY SPONSORED SCHEMES

Why in News?

The chairman of the Fifteenth Finance Commission, N K Singh, has voiced that there needs to be further rationalization of the Centrally Sponsored Schemes.

Background

- **Centrally Sponsored Schemes (CSS)** are plan transfers to States by the Union Government, which are implemented through the State Governments and in sectors falling in the State and Concurrent Lists of the Constitution.

- CSS is the **biggest component of Central Assistance to state plans** (CA), where states don't have much flexibility.
- In the initial years of planning in India, the number of CSS was very large (190 at the end of Fifth Plan which increased to **360 at the end of Ninth Plan**).
- The CSS have remained a major **bone of contention** between the Union and State Governments. Consequently, various committees have looked into this matter and given recommendations on the same.
- The government accepted the recommendations of the **Sub-Group of Chief Ministers** and took various steps towards rationalization of CSS.

Need for CSS

- **Create a National framework of development-** to fulfill the important national objectives such as poverty alleviation or minimum standards in education.
- **Aid the states in financial resources-** as states have fewer resources compared to their responsibilities.
- **Inclusive growth-** Additional help is given to the Special Category States, which ensures a balanced development around the country.
- **Helps in better implementation of the schemes-** which can help demonstrate good features, research on different aspects and set the pace for other states to emulate reforms.

Current Structure of Centrally Sponsored Schemes

Type of CSS	Criteria	Funding Pattern (Centre: States)	Schemes
Core of the Core (6)	Have compulsory participation of states	• General Category states: Existing pattern • Special Category states: Existing pattern	• MGNREGA • National Social Assistance Program (For Senior citizens, widows etc.) • Umbrella Scheme for SC (All schemes for SC in one) • Umbrella Scheme for ST (All schemes for ST in one) • Umbrella Scheme for OBC (All schemes for OBC in one) • Umbrella Scheme for Minorities (All schemes for Minorities in one)
Core (20)	Have compulsory participation of states	• General Category states: 60: 40 • Special Category states: 90: 10	• Rashtriya Krishi Vikas Yojana, Rashtriya Pashudhan Vikas Yojana, Pradhan Mantri Gram Sadak Yojana, National Rural Drinking Water Mission, National Health Mission, Swachh Bharat Abhiyan, Integrated Child Development Scheme, National Education Mission, Forestry and Wild Life, Pradhan Mantri Awas Yojana etc.
Optional (2)	States could choose some or all of them	• General Category states: 50: 50 • Special Category states: 80: 20	• Border Area Development Program • National River Conservation Plan

Steps taken towards rationalization of CSS

- **States taken into deliberation-** From 2014-15 onwards, direct **transfers** to State implementing agencies have been done away with, and all transfers to States for Centrally sponsored schemes are now being routed through the Consolidated Fund of the State.
- **Reduced number of CSS-** from **66 to 28** and they were divided into three categories.
- **Increased choice given to states-** to select optional schemes they want to implement. Also, while designing the CSS, the Central Ministries shall permit flexibility in the choice of components to the States as available under the Rashtriya Krishi Vikas Yojana (RKVY).

Grievances of states towards CSS

- **Encroachment of State's functions-** as the CSS were framed on the subjects listed in the States list of the seventh schedule.
- **Proliferation of schemes-** A large number of Schemes results in spreading resources thin and thereby adversely impact-desired outcomes.
- **Problem of 'one size fit all'-** Given significant variation across States in terms of development indicators and resource endowments, many schemes are simply not relevant to many States.
- **Limited flexibility-** with the states in implementation of these schemes, despite the features of flexi funds introduced in recent history.
- **Inadequate deliberations with states-** before introduction of new schemes and often the states' financial health is not given due consideration.

- **Reduced rigidity in usage of funds-** The flexi-funds available in each CSS has been raised from 10% to 25% for the States and 30% for the UTs of the overall annual allocation under each Scheme.
- **Evaluation of CSS-** Approval of the schemes is being made co-terminus with the Finance Commission cycle. NITI Aayog is in process of evaluation of all the CSS.

Prospects of further rationalisation of CSS

- **Improving the process of transfer of funds-** since there are several difficulties state governments face in ensuring a smooth flow of funds.
- **Can help adopt performance linked financing model-** Performance of public schemes should be defined as a combination of immediate results (outputs) and long-term change (outcomes) in key indicators of interest. Given the greater flexibility that state governments have in choosing which components to invest their funds in, a performance-linked model can be designed.
- **Enables a comprehensive development of the sector-** as States do not undertake development of agriculture only in one area, example seed production, just because Central funds are available for this purpose. The Central funds can be used for a balanced development, which can be complementary to States' resources.

Way Forward

Centrally Sponsored Schemes are a crucial tool for cooperative and competitive federalism, which can go a long way in addressing the developmental needs of different regions in the country.

2. ISSUES RELATED TO CONSTITUTIONAL PROVISIONS

2.1. AADHAAR CONSTITUTIONALLY VALID

Why in news?

Recently a Constitution Bench of the Supreme Court led by Chief Justice of India by a 4:1 majority upheld the validity of Aadhaar but with certain caveats.

Background

- Aadhaar sought to make the requirement of demographic and biometric data of an individual mandatory. It was argued to be against the fundamental right to privacy.
- Aadhaar Act, 2016 was passed as Money Bill to give statutory backup to the Aadhaar and UIDAI. Its passage as Money Bill too was contested.
- Till now no exclusive Data Privacy Law exist in India giving rise to the **concerns of State surveillance and misuse of personal data** by the commercial entities.

Highlights of the Verdict

- **Constitutionality of Aadhaar:** Aadhaar scheme, which is backed by the Aadhaar Act, passed the **triple test** laid down in the Puttaswamy (Privacy) judgment to determine the reasonableness of the invasion of privacy (under Art 21) i.e.
  - **Existence of a law -** backed by the statute i.e. the Aadhaar Act, 2016
  - **A legitimate state interest –** ensuring social benefit schemes to reach the deserving and poor
  - **Test of proportionality -** balances benefits of Aadhaar and the potential threat it carries to the fundamental right to privacy.
- **No fear of Surveillance state:** Provisions of the Aadhaar Act "do not tend to create a surveillance state".
  - Aadhaar collects minimal biometric data in the form of iris and fingerprints, and the Unique Identification Authority of India (UIDAI) — which oversees the Aadhaar enrolment exercise — does not collect purpose, location or details of the transaction.
  - To ensure non tracking, the Court ordered that Authentication logs should be deleted after six months, instead of the five years required under the existing Regulation 27(1) of the Authentication Regulations.
- **Security of the biometric data:** UIDAI has mandated only registered devices to conduct biometric-based authentication transactions.
  - There is an **encrypted, unidirectional relationship** between the host application and the UIDAI. This rules out any possibility of the use of stored biometric, or the replay of biometrics captured from another source.
  - Further, as per the regulations, authentication agencies are not allowed to store the biometrics captured for Aadhaar authentication.
- **Linking of Aadhaar with Financial transactions:** The 2017 amendment to Rule 9 of the Prevention of Money Laundering Act (Maintenance of Records) Rules, 2005 which made linking of bank accounts and all other financial instruments such as mutual funds, credit cards, insurance policies, etc. with Aadhaar mandatory, is declared unconstitutional. Because **the amendment did not stand the proportionality test in the triple test**, thus violating the right to privacy of a person which extends to banking details.
- **Aadhaar Act as Money Bill:** Section 7 being the main provision of the Act, the Supreme Court has upheld the validity of the Aadhaar Act being passed as a Money Bill.
  - Section 7 of the Aadhaar Act, demands for Aadhaar based authentication to receive a subsidy, benefit or service etc. It is very clearly declared in this provision that the expenditure incurred in respect of such a subsidy, benefit or service would be from the Consolidated Fund of India.

Aadhaar: where's it required and where's it not

- Welfare schemes (PDS, LPG, MGNREGA etc.) ☑
- I-T returns ☑
- Linking to PAN card ☑
- Banks accounts ☒
- SIM cards ☒
- Private companies ☒
- School admissions ☒
- NEET, UGC, CBSE ☒

- On a similar issue, the court has upheld the validity of Section 59 that also validates all Aadhaar enrolment done prior to the enactment of the Aadhaar Act, 2016. The court has said that since enrolment was voluntary in nature, those who specifically refuse to give consent would be allowed to exit the Aadhaar scheme.

Impact of the Judgement

- **Striking down of Regulation 27(1)**: It has reduced storage period of authentication data from five years to six months which will **ensure personal data is not misused**.
  - There are also other amendments to **prevent fake profiling** of an Aadhaar holder.
- **Striking down of Section 47:** It means that **citizens can file a complaint** in case of data theft, which earlier could be done by the government (i.e. UIDAI) alone.
- That portion of **Section 57** of the Aadhaar Act which enables body corporate and individual to seek authentication is held to be unconstitutional. This makes it clear that **Aadhaar may only be used by the government, and not by private parties.**
- The ruling **clears the ambiguity** over several aspects of Aadhaar and unleashes its potential for good governance and effective distribution of social welfare services.
- The constitution bench strikes down the National security exception (Section 33(2)) under the Aadhaar Act while giving citizens the opportunity of being heard before disclosure of information under section 33(1) of the Aadhaar Act. This will indirectly ensure greater privacy of individual's Aadhaar data while restricting the government accessibility to it.
- Aadhaar's role in education and admissions is also restricted now. It upheld the Fundamental Right to Education (Art 21A) of children (6-14 yrs. age) and observed that admission is neither a service nor subsidy.
- The court has struck a delicate balance between the social welfare imperative and the citizen's fundamental right to privacy.

Section 33 of the Aadhaar Act refers to disclosure of information in certain cases

- **Section 33(1)** allows disclosure of information, including identity and authentication records, if ordered by a court not inferior to that of District Judge.
- **Section 33(2)** allows identity and authentication data to be disclosed in the interest of national security on direction of an officer not below the rank of Joint Secretary to the Government of India.

Section 47 of the Aadhaar Act refers to cognizance of offences. Under this section, no court is allowed to take cognizance of any offence punishable under this Act, except on a complaint made by the authority of officer or person authorised by it.

Challenges that still remain

- **For the Fintech companies**, where fraud and impersonation is a high risk, Aadhaar was a substantial support. It allows online authentication of customers leading to quick issuance of financial services and improves the service aspect. Verdict makes it like **removing an enabler** instead of ensuring protection of privacy of data.
- **Impact of mandating Aadhaar on the poor:** Rather than enabling easier access, it may end up harming them by denying them their rights due to technical authentication problems.
- **Privacy:** We need a strong data protection law that prevents the government and private parties from non-consensually using Aadhaar—the **Justice Srikrishna Committee recommendations** provide a good starting point for that.
- The issue of the **right to be forgotten**, in case of Aadhaar data that have been collected, remains a grey area. The judgment does not clearly state that entities such as banks and mobile companies will have to delete the collected information.
- **Aadhaar as a single identifier:** If the Aadhaar number is 'seeded' into every database (bank account, mobile phone, employment history etc.), it becomes the bridge across the hitherto disconnected data silos.
  - People in government will be able to 'profile' the citizens, by pulling in information from various databases using that single identifier.
  - Just the possibility of such profiling is likely to lead to self-censorship and, is likely to stifle dissent.
- **Minority Judgment:** Contrary to the majority judges, Justice Chandrachud rejected all the arguments and held Aadhaar Act as unconstitutional on the basis of invasion of privacy, all-pervasive state control, and exclusion. Moreover, he held that passing the Aadhaar Act as a money bill was a "fraud on the constitution."

2.2. RESERVATION

Background

- The **objective of reservation** as envisioned by the founding fathers of the Constitution was to ensure **social justice** by giving special status to backward castes as they were denied equal opportunities for generations and required special assistance to catch up with the other forward castes.
- Later, reservation was extended to other backward classes (OBCs) under the recommendation of the **Mandal Commission.** The Mandal Commission through collection of the necessary data and evidence identified castes that are **socially, educationally and economically backward**. OBCs were granted reservation in education and employment, but no reservation in the state assemblies or parliament.
- However, in recent years **dominant castes, which were historically rich, landowning, politically influential** communities (**Marathas in Maharashtra, Patidars in Gujarat, Jats in Haryana, Kapus in Andhra Pradesh**), have turned towards the state and the public sector, demanding quotas in jobs and higher education.
- Reservation is now being **increasingly seen as the only tool available for upward social mobility**, as a tool for good jobs and stable sources of livelihood for the youth.

Why demand for reservation by dominant castes?

- **Economic marginalisation** of upper castes which were engaged in trade or manufacturing process which became obsolete.
- **Agrarian distress:** The castes demanding reservation are predominantly agricultural communities. Due to the declining importance of agriculture, and growth of corporatized agriculture and water shortages affecting productivity, these groups feel increasingly vulnerable.
- **Perception of loss of power:** There is feeling among powerful farming communities that real economic power lies in the hands of the big corporations, and the state acts in their interest. So, these communities feel their power slipping away.
- **Perception of being worse-off:** When a community feels other communities in their region, economically and socially in similar conditions, are getting the benefits of reservation, they also claim for the same status.
- **For a secure future:** The only way for secure future is government jobs or entry into professional courses. For later, one needs an admission in better educational institute. For both there is tough competition in open category.

2.2.1. RESERVATION IN PROMOTIONS

Why in News?

A five-judge Constitution bench allowed for grant of **quota for promotions in the government jobs to SCs and STs without the need to "collect quantifiable data"** reflecting the backwardness among these communities as mandated by the Nagaraj judgement of 2006.

Background

- **Reservation** was introduced in the Constitution of India, through **Article 16(4),** to give **protection to deprived sections of society**, who have been facing discrimination since ages.
- However, the debate over whether it should be limited to **initial appointments or extended to promotions** has been a bone of contention.
- **Indra Sawhney & Others Vs. Union of India 1992** (covered in "Reservation for Economically Weaker Sections")
- **M. Nagaraj vs. Union of India Case 2006**

Related cases, constitutional provisions and amendments

- **Article 15(4)** allows State to make special provision for the advancement of any socially and educationally backward classes of citizens or for SCs and STs.
- **Article 16(4B)**- provides that reserved promotion posts for SCs and STs that remain unfilled can be carried forward to the subsequent year. It ensures that the ceiling on the reservation quota – capped at 50% by Indra Sawhney Case – for these carried forward unfilled posts does not apply to subsequent years.
- **Article 335** mandates that reservations have to be balanced with the **'maintenance of efficiency'**.
- In the **Indira Sawhney case** (1992), the Supreme Court held that the reservation policy cannot be extended to promotions.
- However, **77th Constitutional Amendment** (CA), inserted **Clause 4A in Article 16,** which enables the state to make any law regarding reservation in promotion for SCs and STs.
- The court in 1990s restored their seniority once promoted at par with the SC/ST candidates who got quick promotions ahead of their batch mates.
- However, **85th CA Act, 2001** gave back "**consequential seniority**" to SC/ST promotees.

- The Supreme Court validated the state's decision to extend reservation in promotion for SCs and STs, but gave direction that the state should provide proof on the following three parameters to it-
  - ✓ **Empirical Data on Backwardness-** of the class benefitting from the reservation.
  - ✓ **Empirical Data on Inadequate Representation-** in the position/service for which reservation in promotion is to be granted.
  - ✓ **Impact on efficiency-** how reservations in promotions would further administrative efficiency.

More about the recent judgement

- The Centre had alleged that the verdict in the M Nagraj case put unnecessary conditions in granting quota benefits.
- The bench **did not make changes about the two other conditions** given in the 2006 Nagaraj verdict which dealt with adequacy of representation and administrative efficiency.
- The court said that the requirement to collect quantifiable data showing backwardness of SCs and STs was "contrary" to the nine-judge bench judgement in the Indra Sawhney verdict of 1992.
- The apex court also turned down the Centre's plea that overall population of SC/ST be considered for granting quota for them.
- The court also **asked the government to examine the possibility of introducing creamy layer** for Scheduled Castes (SCs) and Scheduled Tribes (STs) says that if some sections bag all the coveted jobs, it will leave the rest of the class as backward as they always were. This observation has led to criticism of the judgement in some quarters.
- It declined the demand to refer the case to a 7 judges' bench to reconsider its 2006 Nagaraj judgement.

Arguments against Reservation in promotion

- **Not a fundamental right-** Provisions under articles 16(4), 16 (4A) and 16 (4B) of the Constitution are **only enabling provisions**, and not a fundamental right. Neither was it ever envisaged by the constitutional makers, as can be made out from the debates and statements during the drafting of constitution.
- Gaining employment and position **does not ensure the end of social discrimination** and, hence, should not be used as a single yardstick for calculating backwardness.
- **Hurts efficiency of administration:** This aspect becomes important in highly technical domains such as Nuclear research, space program, etc.
- **Cornering of Benefits**: Critics point out that like the reservation aspect, even the promotions will be cornered by a select few castes and tribes.
- **Already adequate reservation:** There should not be quota in promotions for higher services as the measure of backwardness of SC and ST employees is removed once they join government service.

Arguments in favor of Reservation in promotion

- **False notion of "efficiency"**
  - The 'loss in efficiency' argument is largely the result of an extremely conservative understanding of 'merit'.
  - The basis for that argument has never been articulated in any of the Supreme Court's judgments and has always been stated as a self-evident truth and not grounded in any sort of empirical study.
  - No person can be promoted unless they obtain a good rating in their annual confidential report which is currently the measure of efficiency.
- **Skewed SC/ST representation at senior levels**
  - The representation of SCs/STs, though, has gone up at various levels, representation in senior levels is highly skewed against SCs/STs due to prejudices.
  - There were only 4 SC/ST officers at the secretary rank in the government in 2017.
- **Large number of Vacant posts:** There was no definition of the expression "backward" of which "quantifiable data" was to be collected. As a result, all promotions made post-Nagraj were struck down on the ground that there was no quantifiable data.
- **Historical disadvantage:** Given that the marker of identity of Scheduled Castes is the historic disadvantage of the untouchable, the question of proving backwardness by quantifiable data for promotion does not arise.

Way forward

- With regards to the Supreme court observation about introduction of creamy layer with respect to SC/ST reservations, talks should be conducted with all stakeholders before moving ahead on such a contentious issue.
- The Constitution envisages not just a formal equality of opportunity but also the achievement of substantive equality. Currently, there is ambiguity in promotion process. Thus, there is a need for a new, comprehensive law to be enacted.

2.2.2. RESERVATION FOR ECONOMICALLY WEAKER SECTIONS

Why in news?

President gave assent to **The Constitution (103rd Amendment) Act, 2019** (124th Constitution Amendment Bill) to provide **10% reservation** in government jobs and educational institutions to the **economically weaker sections (EWS)** among those who are not covered under any reservation plan.

Key features of the amendment

- The Act **amends Article 15** to enable the government to take special measures (not limited to reservations) for the advancement of "economically weaker sections" (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 **amendment adds Article 16(6)** which permits the government to reserve up to 10% of all posts for the "economically weaker sections" of citizens.
- The 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.
- **Constitutional recognition to Economically Weaker Section (EWS):** For the very first time, economic class is constitutionally recognized as vulnerable section & would form the basis of affirmative action programme. It is a departure from traditional centrality of caste in deciding affirmative action.

Arguments in favour of reservation based on economic status

- **Need for new deprivation assessment criteria:** Caste, while prominent cause of injustice in India, should not be the sole determinant of the backwardness of a class. This is because of the weakening links between the caste and class in changing circumstances.
- 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, so that the list remains dynamic and most distressed can get benefit of affirmative action.
- **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:

- **Against equality norm:** To balance the equality of opportunity of backward classes 'against' the right to equality of everyone else, a cap of 50% was put on the reserved seats. When the quota exceeds 50% limit, it breaches the equality norm.

- 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.
- **No under-representation:** The upper caste is adequately represented in public employment. It is not clear if the government has quantifiable data to show that people from lower income groups are under-represented in its service.
- **Problem with the ceiling:** By fixing income ceiling for eligibility at ₹8 lakh a year — same as the 'creamy layer' limit above which OBC candidates become ineligible for reservations — a parity has been created between socially & economically backward classes with limited means.
- **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.
    - Reservation for SCs/STs and non-creamy layer amongst OBCs has correlation with their respective populations. While there is no such clarity on arriving at the 10% EWS quota.
- **Challenges in the identification of beneficiaries:** In a country where taxable population is still very low due to misrepresentation of income, implementing economic eligibility criteria would be a bureaucratic nightmare.
- **'Pandora's box' of demands:** There may be demand from sections of the SCs/STs and OBCs to introduce similar sub-categorization, based on economic criteria, within their respective quotas.
- **Shrinking public sector:** With steadily shrinking jobs pool in the Central Government, Central Public Sector Enterprises (CPSEs) and even banks, 10% reservation will not fulfill expectations.
- **Anti-Merit:** In common perception, reservation has also become synonymous with anti-merit. With extension of reservation, this opinion might get further ingrained in public psyche.
- **Tool of populism:** Offering reservations has increasingly become tool for political gains in politics. This affects their credibility as a tool for social justice.
- **Passage of the Bill:** The Bill was not circulated ahead of being introduced, it was not examined by a parliamentary committee & there was hardly any time between its introduction and final discussion.
    - Also, the **Sinho Commission report of 2010**, which the Centre has been citing as the basis for its legislation to grant 10 % reservation to the EWS, never explicitly recommended a reservation for EWS but was only emphatic about ensuring that the EWS get access to all welfare schemes.

Way Forward

- **Adequate institutional measures:** 50% ceiling (Indra Sawhney Case) was put in place to **check populism in granting quotas** by the political class. There must be an **institutional mechanism that recommends classes for reservation**.
- **Independent and transparent verification:** Based on the affidavits furnished by the candidates, **independent, transparent and non-intrusive verification methods** have to be devised so that reservation provisions cannot be misused easily.
- The logic of providing reservation to economically backward people can further be carefully extended to **exclude the creamy layers among SC/ST groups**.
- **Improving job creation in private sector:** The demand for reservation must be seen in light of the quality of private sector jobs and wages available to aspirational India. The only way out of the quota quagmire is to **create an enabling environment for the formalization and creation of more and better jobs in the private sector**.

2.3. CITIZENSHIP AMENDMENT BILL

Why in news?

The Citizenship (Amendment) Bill 2016 which recently lapsed saw opposition from various quarters of the country.

Provisions of the Bill

- **Definition of Illegal Migrants:** The Bill amends the Citizenship Act, 1955 to provide that **'persecuted' non-Muslim minorities** (Hindu, Sikh, Buddhist, Jain, Parsi & Christian communities) from Pakistan, Afghanistan and Bangladesh, who have arrived in India **on or before December 31, 2014** & living in India without valid travel documents to obtain Indian citizenship, will not be treated as illegal migrants.

- **Citizenship by naturalization:** The amendment reduces the aggregate period of residential qualification for acquiring citizenship by naturalization from 11 years to 6 years, along with continuous stay for last 12 months.
- **Cancellation of registration of Overseas Citizens of India (OCIs):** Bill adds one more provision for cancellation of registration of OCIs for violation of any law in the country.

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. An OCI is entitled to a multiple-entry, multi-purpose life-long visa to visit India.
- It allows central government to cancel the registration of OCIs on grounds such as fraudulent registration, imprisonment for more than 2 years within 5 years of registration, sovereignty & security of the country etc.

How will the amendment benefit 'persecuted' minorities?

- The Bill is said to be **addressing religious discrimination** committed during the partition. Also, in the aftermath of partition religious minorities faced widespread discrimination, particularly in Muslim majority countries.
- The Bill is said to **benefit many people** by allowing them to take up **self-employment**, **buy property**, open **bank accounts** and get **driving licences**, **PAN** card and **Aadhaar**. For example, it will be of immense benefit to communities like Chakma and Hajongs of Bangladesh.

Opposition to the Bill

- **Religious Discrimination:** The Bill provides **differential treatment to illegal migrants on the basis of their religion**, which may violate Article 14 of the Constitution guaranteeing equality to all persons, citizens and foreigners.
  - Another issue with listing out non-Muslim minorities is that it **excludes various persecuted minorities** for example **Rohingyas of Myanmar and Ahamadiya in Pakistan**.
- **Choice of countries:** Many have questioned the rationale for adding Afghanistan with countries like Bangladesh and Pakistan, which were a part of India in the pre-independence era and reasons for leaving out other neighbouring countries like Sri Lanka, Myanmar etc.
- **In conflict with other government initiatives**: like National Register of Citizens (NRC) and Assam Accord 1985. On one hand NRC and the Assam Accord marks the line of eligibility for Indian citizenship in (March) 1971, the bill marks the eligibility line at (December) 2014, thus enlarging the scope and number of people who can be eligible for Indian citizenship.
  - It also goes **against the spirit of Clause 6 of the Assam Accord**, which requires the government to provide safeguards to protect the culture & socio-linguistic identity of the Assamese people.
- **Threat to local demography:** The local community fears that the prospect of citizenship will encourage migration from Bangladesh and might lead to 'outsiders' dominating indigenous population.
- **Rise of religious sub-nationalist politics:** The Bill has divided the residents of Assam in Brahmaputra Valley (majority of Muslim settlements & mostly anti-Bill) and Barak Valley (Hindu Bengali settlements & pro-Bill). Until now, the sub-nationalist narrative of the North-East focused on opposition to the "foreigners" to preserve ethno-linguistic identities.
- **Wide ground for cancelling OCI registration:** It grants the central government wide discretion to cancel OCI registration, even for minor offences like violation of a traffic law (such as parking in a no-parking zone or jumping a red light).

Assam Accord 1985

- It is a Memorandum of Settlement (MoS) signed between representatives of the Government of India and the leaders of the Assam Movement.
- All those foreigners who had entered Assam between 1951 and 1961 were to be given full citizenship, including the right to vote;
  - Those who had done so after 1971 were to be deported,
  - Also, the entrants between 1961 and 1971 were to be denied voting rights for ten years but would enjoy all other rights of citizenship.

Steps taken by the Centre to address concerns of indigenous groups

- **High level committee to operationalize Clause 6 of the Assam Accord:** The Committee will **define the "Assamese people"** eligible for the proposed safeguards, which includes reservation of seats in Assembly & local bodies, reservation in government jobs, land ownership rights, etc. It would also examine the effectiveness of actions since 1985 to implement Clause 6.
- **Scheduled Tribes Status:** It has announced the proposal to accord Scheduled Tribe status to six major communities (Koch Rajbongshi, Tai Ahom, Chutia, Matak, Moran and Tea Tribes) that are currently classified as OBC. The ST status could turn Assam, with a 34% Muslim population, into a tribal State with a majority of seats reserved.
- **Distribution of immigrants:** The Center has promised that the regularized immigrants would not be settled in Assam alone, but be distributed among various states.

Conclusion

- It is important for the government to balance its larger vision of providing a homeland to persecuted minorities in the immediate neighbourhood and its promise of non-dilution of indigenous identity of the citizens of North-East.
- The government must seek to address the larger question of illegal migration, which is, now, not limited to the North-East, particularly with respect to Rohingyas.

2.4. NATIONAL SECURITY ACT

Why in news?

Recently, the Madhya Pradesh Government invoked the National Security Act (NSA) against three men accused of killing a cow.

About National Security Act, 1980

- The National Security Act was promulgated on September 23, 1980, **"to provide for preventive detention** in certain cases and for matters connected therewith".
- The **grounds for preventive detention** of a person include:
  - Acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.
  - Regulating the continued presence of any foreigner in India or with a view to making arrangements for his expulsion from India
  - Acting in any manner prejudicial to: the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community.
- A detenu may be held for up to **three months** and in certain circumstances **six months**, without any review.
- A **three person Advisory Board** made up of high court judges or persons qualified to be high court judges determines the legitimacy of any order made for longer than three months. If approved, a person may be held extra-judicially for **up to 12 months**. The term can be extended if the government finds fresh evidence.
- The state government needs to be intimated that a person has been detained under the NSA.
- It extends to the whole of India **except the State of Jammu and Kashmir**.

History of Preventive Detention laws in India

- **Pre-independence laws-** Bengal Regulation III of 1818, Defence of India Act 1915, Rowlatt Acts of 1919
- **Post-independence laws-**
  - **Preventive Detention Act** (1950-1969)
  - **Unlawful Activities (Prevention) Act** (1967)
  - **Maintenance of Internal Security Act** (MISA) (1971-1978)
  - **Conservation of Foreign exchange and Prevention of Smuggling Activities (COFEPOSA)** (1974)
  - **National Security Act** (1980)- amended in 1984, 1985 and 1988
- **Recent Cases-**
  - UP government arrested three persons under the NSA in connection with an alleged cow-slaughter incident in Bulandshahr
  - A Manipur journalist, who had posted an alleged offensive Facebook post on the Chief Minister, was detained for 12 months under the NSA.

Concerns

- **Accused is denied basic rights available to others arrested in normal course such as-**
  - **Under Criminal Procedure Code (CrPC)**

- ✓ The person arrested has to be informed of the grounds of arrest, and the right to bail. Under NSA, a person could be kept in the dark about the reasons for his arrest for up to five days, and in exceptional circumstances not later than 10 days.
- ✓ Even when providing the grounds for arrest, the government can withhold information which it considers to be against public interest to disclose.
- ✓ It further provides that a person has to be produced before a court within 24 hours of arrest.

- **Article 22(1) of the Constitution-** an arrested person cannot be denied the right to consult, and to be defended by, a legal practitioner of his choice. Under NSA, the arrested person is not entitled to the aid of any legal practitioner in any matter connected with the proceedings before the advisory board.
- **Violates due process of law-** such as presumption of innocence

- **Over-reliance of governments on preventive detention-** In recent times, different State governments have invoked the stringent provisions of the NSA to detain citizens for questionable offences, which has brought the focus back on the potential abuse of the controversial law.
- **No figures available for the exact number of detentions under the NSA-** National Crime Records Bureau (NCRB), which collects and analyses crime data in the country, does not include cases under the NSA in its data as no FIRs are registered.
- **Against Constitutionalism –** as government's arbitrariness is not checked and is prone is misuse.
- **Can be used by the state to avoid other provisions of law-** Many provisions like imperil the defence of state, relations with foreign powers etc. are already punishable under several sections of the IPC. NSA allows the government to keep such offenders in custody without charging them.

Arguments in favor of such a law

- **Presence of anti-national forces-** including terrorists, extremists, radical elements among others which threaten the unity and integrity of the nation.
- **Intelligence gathering-** Terrorists may use the provisions of innocence under the law to evade crucial details required immediately by the law enforcement agencies.
- **Misuse is not an excuse for repeal-** Mere allegation of misuse in particular cases should not undermine the efficacy in majority cases.
- **Application is a part of reasonable restriction-** provided under the Article 19 (2).

Way Forward

- There needs to be a balance drawn between security of the state and ensuring rights of the people.
- The law enforcement agencies must be sufficiently guided as to where the section must be imposed and where not. Standard Operating Guidelines must be put in place to ensure wrongful application of NSA does not take place.

2.5. SEDITION

Why in news?

A legal opinion was sought by the Union Government on a Law Commission report on the Sedition law (Section 124-A of the Indian Penal Code).

Background

- The section 124A of Indian Penal Code is a pre-independence provision, which covers sedition charges against government.
- Various verdicts by Indian Judiciary have led to re-interpretation and re-examination of 'sedition' in light of Article 19 of the Constitution.
- There has been an effort to strike a balance between right to free speech and expression and power of State to impose reasonable restrictions (Article 19(2)).

Section 124-A

- As per Section 124A of IPC, Sedition is an act that brings or attempts to bring into hatred or contempt, or excites or attempts to excite disaffection towards the Government established by law in India by words, either spoken or written, or by signs, or by visible representation, or otherwise.
- As per this Section, a person is liable to be punished with imprisonment for life or imprisonment up to three years with fine.
- Popular cases where sedition law was used recently-
  - Dr. Vinayak Binayak Sen v. State of Chhattisgarh
  - Kanhaiya Kumar v. State (NCT of Delhi)
  - V.A. Pugalenthi v. State (Tamil Nadu)

- These verdicts have narrowed the ambit of 'Sedition' making its meaning more explicit, precise and unambiguous.
- Government is currently seeking views from various stakeholders including state government.
- Its dilution seems unlikely, as majority including law enforcement agencies, have expressed the need to retain the law without changes. Hence, the focus now is to check its misuse.

Arguments in favor of Section 124A

- **Not really a draconian law-** Now after the Supreme Court directions, its jurisdiction has been narrowed down. It can be applied only on grounds laid down by the court.
- **Application is a part of reasonable restrictions-** provided under the Article 19 (2)
- **Does not really curb free speech-** One can use any kind of strong language in criticism of the government without inviting sedition. However, such dissent should not be turned into some kind of persuasion to break the country.
- **Threats to unity and integrity of nation** due to presence of anti-national elements and divisive Forces such as naxals, separatists who are receiving support from inside and outside the country.
- **Mere misuse cannot be a ground of repeal**- rather provisions should be made where such misuse is eliminated.

Views of the Supreme Court

- In 1962, the Supreme Court in **Kedar Nath Singh vs. State of Bihar** upheld Section 124A and held that it struck a "correct balance" between fundamental rights and the need for public order.
- The court had significantly reduced the scope of Sedition law to only those cases where there is incitement to imminent violence towards overthrow of the state.
- Further, the Court held that it is not mere against government of the day but the institutions as symbol of state.
- Various verdicts in Romesh Thappar, 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

Views of the Law Commission

- While it is essential to protect national integrity, it should not be misused as a tool to curb free speech. Dissent and criticism are essential ingredients of a robust public debate on policy issues as part of vibrant democracy.
- Hence, Section 124A should be invoked only in cases where the intention behind any act is to disrupt public order or to overthrow the government with violence and illegal means.

Argument against Section 124A

- **Against democratic norms-** It stifles the democratic and fundamental right of people to criticize the government.
- **Inadequate capacity of State Machinery -** The police might not have the "requisite" training to understand the consequences of imposing such a "stringent" provision.
- **Possibility of Misuse-** It has been used arbitrarily to curb dissent. In many cases the main targets have been writers, journalists, activists who question government policy and projects, and political dissenters.
- **The draconian nature of this law**—as the crime is non-bailable, non-cognisable and punishment can extend for life—it has a strong deterrent effect on dissent even if it is not used.
- **Used to gag press-** The press should be protected so that it could bare the secrets of government and inform the people. Only a free and unrestrained press can effectively expose deception in government.

Way Forward

- The guidelines of the SC must be incorporated in Section 124A as well by amendment to IPC so that any ambiguity must be removed. A private member bill was introduced in 2015 to amend this section. The Bill suggested that only those actions/words that directly result in the use of violence or incitement to violence should be termed seditious.
- The state police must be sufficiently guided as to where the section must be imposed and where not.
- Need to include provisions where the government can be penalized, if it misuses the section. This will ensure that section 124 A of IPC strikes a balance between security and smooth functioning of state with the fundamental right of freedom of speech and expression.

3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATUTE AND EXECUTIVE

3.1. BREACH OF PRIVILEGE

Why in news?

- Claiming they had misled Parliament on the Rafale fighter jet deal issue, a breach of privilege motion was moved against Prime Minister and Defence Minister.
- A claim of 'breach of privilege' was raised against chairman of the Parliamentary Standing Committee on finance, for "lowering the dignity and ethics of the Finance Committee" by tweeting about the committee's deliberations

Concept of privileges and types of privileges

- The concept of privileges **emerged from the British House of Commons** when a nascent British Parliament started to protect its sovereignty from excesses of the monarch.
- 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.
- 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
- 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.
- Following **procedure** is followed in privilege cases:
  - A notice is moved in the form of a motion by any member of either house against those being held guilty of breach of privilege.
  - The Speaker/ Rajya Sabha chairperson is the first level of scrutiny of a privilege motion. They can take a decision themselves or refer it to the privileges committee of parliament. Privilege committee in Parliament as well as in state legislatures decides upon such cases.
  - An inquiry is conducted by the committee and based on findings a recommendation is made to the legislature.
  - A debate can be initiated on the report in the House and based on the discussion, the Speaker can order the punishment as defined by the privileges committee.

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.

Committee on Privileges

- Standing committee constituted in each house of the Parliament/state legislature.
- Consists of 15 members in Lok Sabha (LS) and 10 members in Rajya Sabha (RS) to be nominated by the Speaker in LS and Chairman in RS.
- Its function is to investigate the cases of breach of privilege and recommend appropriate action to the Speaker/Chairperson.

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.

- Judicial scrutiny is barred in cases of privileges, which is **against the doctrine of judicial review.**
- Discredits **separation of powers**, as speaker acts as complainant, advocate and the judge. Used as a substitute for legal proceedings.
- **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. Violation of FR of expression and personal liberty.
- **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 (Justice Shah Committee report). Subsequently, she was expelled from the house.
- Expulsion of Subramanyam Swami from Rajya Sabha in 1976 on charges of bringing disrepute to the Parliament.
- 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.** Indian & British Parliament have different political and legal status (popular sovereignty vs parliamentary sovereignty). 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.**
- Higher judiciary must **set limits** on punitive powers.
- 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.**

Various recommendations regarding codification of privileges

- **Recommendations of the National Commission to Review the Working of the Constitution (NCRWC)**
  - The privileges of legislators should be **defined and delimited** for the free and independent functioning of Parliament and state legislatures.
  - Article 105 and 194 may be amended to clarify that the immunity enjoyed by members under parliamentary privileges **does not cover corrupt acts committed by them in connection with their duties in the House or otherwise**.
  - No court would take cognizance of any offence arising out of a member's action in the House without prior sanction of the Speaker / Chairman.
- **2nd ARC** also endorsed the recommendations of NCRWC.
- The 16th **All India Whips Conference** recommended to consider codification of privileges to remove the uncertainty surrounding them and address the anxieties of the people and the press.

3.2. FALLING PRODUCTIVITY OF RAJYA SABHA

Why in news?

Rajya Sabha Chairman recently presented a "report to the people", highlighting the below-par performance of the Upper House and need to hold legislatures accountable.

Highlights of report

- Since June 2014, the Rajya Sabha has held 18 sessions and 329 sittings and **passed 154 Bills** — which comes to **less than one Bill in two sittings**.
- The **legislative output** of the Rajya Sabha has been falling. In 2009-2014, it cleared 188 Bills and in 2004-09 it cleared 251 Bills.
- Since 2014, the Upper House has been **unable to function for 40% of its allotted time** due to disruptions.

Reasons for low productivity of Rajya Sabha

- **Political Tussle** between the government and opposition leads to stalling of its functioning, adjournments etc.
- **Lack of consensus:** It also reflects that there is lack of consensus on many issues and government is not able to take opposition in confidence on such matters.
- **Politicization of Rajya Sabha** deviating it from being a serious deliberative body providing important insights on matters of public importance.

- Out of 48 hours in the Budget session, the house functioned only for eight hours.

Relevance of Rajya Sabha

- **Permanent House:** Rajya Sabha is never dissolved. Hence it provides the nation leadership and stability in the times when Lok Sabha is not constituted. It also acts as a check against any abrupt changes in the composition of the Lower House.
- **Guard against populist measures:** While Lok Sabha may work under populist compulsions; Rajya being the permanent and less political house can take a deeper and non-populist look at bills and issues at hand. It also provides a second opinion on crucial issues of national interest.
- **Representation of States:** Rajya Sabha has representatives from State, hence interests of states are reflected and guarded by the Rajya Sabha.
- **Space for Experts:** Rajya Sabha provides a space for experts in their fields to voice their opinion on crucial legislative matters.
- **Sharing the legislative burden**: Legislatures, the world over, are grappling with increasing demand to legislate on newer areas. The Upper House thus becomes much more useful in sharing the burden of the Lower House.

Other issues in Parliamentary functioning

- **Decline in parliamentary sittings:** The Parliament sittings have reduced from 120 days/year to 65-70 days/year due to various reasons including disruptions leading to adjournment.
- **Passage of bills and budgets without due diligence and debate**: For example, the time spent on discussing the Budget has reduced from an average of 123 hours in the 1950s to 39 hours in the last decade.
- **Lack of Accountability:** In the 16th Lok Sabha, question hour has functioned in Lok Sabha for 77% of the scheduled time, while in Rajya Sabha it has functioned for 47%. Time lost indicates a lost opportunity to hold the government accountable for its actions.
- **Disruptions:** Between 2012-2016, disruptions took away 30% of the time in the Lok Sabha and 35% of the time in the Rajya Sabha which undermines the delicate system of checks and balance essential for a functioning democracy.

Criticism of Rajya Sabha

- **Reduced Significance:** On the matters of importance like the money bill and the budget, Rajya Sabha has little say which reduces its significance compared to Lok Sabha.
- **Chamber for political end seekers:** The Upper House has become a ground for party fund-raisers, those who lost in elections, crony capitalists, journalists, retired CEOs and civil servants.
- **Hindrance to speedy Legislation:** Given the competitive politics today, Rajya Sabha is also used by opposition parties to hinder speedy legislation, which is detrimental to the growth of the nation.
- **Frequent disruptions** in recent times is also undermining the deliberative and accountability functions of the upper house.

Some recommendations to ensure the federal character of the Rajya Sabha

- **Having fixed number of seats for each state in Rajya Sabha,** like the U.S. Senate, where every state has two senators—irrespective of population size. This will transform the upper house into a real venue for debate of states' interests. This could potentially soften the opposition to a reallocation of seats in the lower house.
- Ending the indirect election of Rajya Sabha members and instituting a process of **direct election**. This approach is adopted by the United States.
- NCRWC suggested to keep the **domicile requirement** for eligibility to contest elections to Rajya Sabha from the concerned state. In 2003 this domicile requirement was eliminated.

Way forward

- **Legislative Measures: Parliament (Enhancement of Productivity) Bill, 2017** should be taken up which seeks to fix the minimum number of days (100 days for Rajya Sabha) in which parliament shall be in session.
  - National Commission to Review the Working of the Constitution (NCRWC) has also recommended the minimum number of working days to be 120 and 100 respectively for Lok sabha and Rajya Sabha.
- **Performance related pay:** There is also a call for linking salaries of legislators to their performance and attendance in Rajya Sabha.
- **Stricter Rules of Procedure and conduct of business** to deal with the unruly behavior – shouting, sloganeering of certain members so that time of the Rajya Sabha is not lost.
- **Reviewing the Anti-Defection Law** as it gives sweeping powers to the political parties. If the party decides to not let parliament function then MPs cannot deviate from their decision even if they think differently.

- **Sustained Evaluation of performance** of our parliament and the MPs on regular intervals can be undertaken by Citizen's pressure groups to put pressure on MPs to perform and let parliament do its designated work.

3.3. CABINET COMMITTEES

Why in news?

Recently the central government has reconstituted eight key cabinet committees including **creation of two new committees**, one on investment and growth and another on employment and skill development.

About Cabinet Committees

- They are **extra-constitutional** bodies, which are provided by the **Governments of India Transaction of Business Rules, 1961.**
- They are **set up by the Prime Minister** according to the exigencies of the time and requirements of the situation. Hence, their number, nomenclature, and composition varies from time to time.
- **Classification-** They are of two types—**standing and ad hoc**. The former are of permanent nature while the latter are of temporary nature.
- **Composition-** They usually **include only Cabinet Ministers**. However, the **non-cabinet Ministers are not debarred** from their membership. They not only include the Ministers in charge of subjects covered by them but also include other senior Ministers. Their membership varies from three to eight.

The reconstituted cabinet committees are:

- **Appointments Committee of the Cabinet:** It decides all higher-level appointments in the Central Secretariat, Public Enterprises, Banks, the three service chiefs etc. It also decides on the tranfer of officers serving on Central deputation.
- **Cabinet Committee on Economic Affairs:** It reviews economic trends, problems and prospects for evolving a consistent and integrated economic policy.
  - It also deals with fixation of prices of agricultural produce and prices of essential commodities.
  - It deals with industrial licensing policies and review rural development and the Public Distribution System.
  - It considers proposals for investment of more than Rs 1,000 crores.
- **Cabinet Committee on Parliamentary Affairs:** It draws the schedule for Parliament sessions and monitors the progress of government business in Parliament.
  - It **scrutinises non-government business** and decides which official Bills and resolutions are to be presented.
- **Cabinet Committee on Political Affairs (CCPA):** deals with all policy matters pertaining to domestic and foreign affairs.
- **Cabinet Committee on Security**: It deals with issues relating to **law and order**, **internal security** and policy matters concerning **foreign affairs** with internal or external **security implications**.
  - It also looks into economic and political issues related to national security. It considers all cases involving capital defence expenditure more than Rs 1,000 crore.
  - It considers issues related to the **Department of Defence Production** and the **Department of Defence Research and Development**, Services Capital Acquisition plans and schemes for procurement of security-related equipment.
- **Cabinet Committee on Accommodation:** It determines the guidelines or rules with regard to the allotment of government accommodation, including that to Members of Parliament.

- **Head of the Committee-** They are **mostly headed by the Prime Minister**. Sometimes other Cabinet Ministers also acts as their Chairman. But, in case the Prime Minister is a member of a committee, he invariably presides over it.
- **Prime Minister is part of six panels** except for the Committee on Accommodation and Committee on Parliamentary Affairs.

Significance of the Cabinet Committees

- **Reduce workload:** They are an **organisational device to reduce the enormous workload** of the Cabinet. They also **facilitate in-depth examination of policy** issues and effective coordination. The **Cabinet can review** their decisions.
- **Take important policy decisions:** e.g. CCPA takes decisions on Centre-state relations or economic issues with political implications or policy matters concerning foreign affairs. For this reason, CCPA is referred to as **Super Cabinet.**
- **Take decision in exigency when PM cannot be reached:** The CCPA can take decisions if, for some reason, the PM cannot be reached like in cases when (s)he is travelling abroad and beyond contact. At that time, the committee could take a decision on a sensitive matter.

- **Their decisions are quite final** and does **not need the stamp of approval of the full Cabinet.** This is different from a Group of Ministers, which has to place its decision before the Cabinet for clearance.

Limitations

- **Overlap of functions** like in case CCEA and the Cabinet Committee on Investment. The two bodies have a different set of ministers and could take differing views on similar issues.
- **Large and unwieldy** as they have representation from allies in coalition, which makes them large and unwieldy, also, sometimes leading to **disagreements**.

The two new committees are:

- **Cabinet Committee on Investment and Growth:**
  - It will **identify key projects required to be implemented on a time-bound basis**, involving investments of Rs 1,000 crore or more, or any other critical projects, as may be specified by it, with regard to infrastructure and manufacturing.
  - It will prescribe time limits for giving requisite approvals and clearances by the ministries concerned in identified sectors. It will also monitor the progress of such projects.
- **Cabinet Committee on Employment and Skill Development:**
  - It is supposed to **provide direction to all policies**, **programmes**, **schemes** and **initiatives** for skill development aimed at **increasing** the **employability** of the workforce for effectively meeting the emerging requirements of the rapidly growing economy and mapping the benefits of **demographic dividend**.
  - It is required to **enhance workforce participation**, foster employment growth and identification, and work towards removal of gaps between requirement and availability of skills in various sectors.
  - The panel will set targets for expeditious implementation of all skill development initiatives by the ministries and to periodically review the progress in this regard.

4. CONSTITUTIONAL REGULATORY AND OTHER BODIES

4.1. COMPTROLLER AND AUDITOR GENERAL OF INDIA

Background

- The Comptroller and Auditor General of India (CAG) constituted under **Article 148**, is the guardian of the public purse and controls the entire financial system of the country at both the levels—the Centre and the state.
- Under **Article 149,** the Constitution empowers the Parliament to prescribe the duties and powers of the CAG and accordingly the **CAG's (Duties, Powers and Conditions of Service) Act, 1971** was enacted.

Role of CAG

- The accountability of the executive to the Parliament in the sphere of **financial administration** is secured through audit reports of the CAG.
- CAG audits the accounts related to all expenditure from the following:
  - **Consolidated Fund** of India, **Contingency Fund** of India and the **Public Account** of India
  - **Consolidated fund** of each state and **Consolidated fund** of each union territory having a Legislative Assembly.
  - **Contingency fund** of each state and the **public account** of each state.
- CAG audits all trading, manufacturing, profit and loss accounts, balance sheets and other subsidiary accounts kept by **any department of the Central Government and state governments**.
- CAG audits the receipts and expenditure of the:
  - All bodies and authorities **substantially financed** from the Central or state revenues;
  - **Government companies**; and
  - Other corporations and bodies, when so **required by related laws.**
- The CAG submits **three audit reports** to the President
  - audit report on appropriation accounts,
  - audit report on finance accounts,
  - audit report on public undertakings.

The President lays these reports before both the Houses of Parliament. After this, the Public Accounts Committee examines them and reports its findings to the Parliament.

- CAG acts as a guide, friend and philosopher of the **Public Accounts Committee** of the Parliament.

Independence of CAG is ensured by following provisions:

- **Security of tenure:** CAG can be removed by the president on same grounds and in the same manner as a judge of the Supreme Court.
- **Bar on taking up office post-retirement**: CAG is not eligible for further office, either under the Government of India or of any state, after he ceases to hold his office.
- **Salary and other service conditions:** are determined by the Parliament and these cannot be altered to his/her disadvantage after his/her appointment.
- **Expenses charged upon the Consolidated Fund of India (CFI):** The administrative expenses of the office of the CAG, including all salaries, allowances and pensions of persons serving in that office are charged upon the CFI.
- **Administrative powers:** Conditions of service of persons serving in the Indian Audit and Accounts Department and the administrative powers of the CAG are prescribed by the president after consultation with the CAG.

Types of Audits conducted by CAG

- **Compliance Audit:** focuses on assessing whether activities, financial transactions and information are, in compliance laws, rules and regulations etc.
- **Financial Attest Audit:** Focuses on whether an entity's financial information is presented in accordance with the applicable financial reporting and regulatory framework.
- **Performance Audit:** focuses on whether institutions are performing in accordance with the principles of **economy, efficiency and effectiveness** and whether there is room for improvement.

While, **first two audits are obligatory, the performance audit is discretionary.**

Criticism of CAG

- **Appointment:** The present selection process for the CAG is entirely internal to the Government machinery. This goes against its role of ensuring executive accountable.
- **Post facto audit: Its report is post-facto,** unlike in UK where no money can be drawn from the public exchequer without the approval of the CAG. Thus, CAG of India only performed the role of an Auditor

General and not of a Comptroller but in Britain it has the power of both Comptroller as well as Auditor General.

- In India, CAG is **not a member of the parliament** while in Britain; CAG is a member of house of the Commons.
- **Exceeding mandate**: Some sections criticised CAG's reports on 2G, Coal blocks allocation as beyond its jurisdiction and mandate.
- **Promoting risk averse attitude:** as auditors may not take into consideration the practical problems in the administration. Thus, when CAG look into 'wisdom, faithfulness, economy' of policy, administrators may not will to take risk.
- **Conflict of interest:** when former secretaries are appointed as CAG, that compromise the independence of the institution because of apparent/perceived conflict of interest. E.g. Appointment of former defence secretary Shashi Kant Sharma as the CAG.
- The **secret service expenditure** is a limitation on the auditing role of the CAG. In this regard, the CAG cannot call for particulars of expenditure incurred by the executive agencies, but has to accept a certificate from the competent administrative authority that the expenditure has been so incurred under his authority.
- **Delay in supply of documents**: Usually delayed and more often, the crucial documents are supplied to the auditors at the end of the audit programme. This is done with objective of obstructing meaningful audit of crucial records.

Way forward

- In 2015, an all-India conference of PACs of Parliament and State/Union Territories legislatures discussed the need for complete independence of the CAG, **making it a part of the PAC**, like in the UK and Australia.
- A **multi-member body** to appoint CAG on the lines of CVC.
- From climate change to PPPs, there are new developments which make auditing complex task. In 2016, CAG came out with a **Big Data management policy** to meet new challenges. This is a welcome step.
- Auditors should be provided **access to records on priority basis** within limited time. In case of failure to do so, heads of departments should be required to explanation for delay.

4.1.1. REDACTIVE PRICING AUDIT

Why in news?

The Supreme Court's observations in connection with the **Rafale fighter aircraft** deal by citing the Comptroller and Auditor General of India's (CAG's) report on **redacted pricing** brought back into the spotlight the role of the supreme audit institution of India.

Background

- In an unprecedented move, the CAG in the preface of its **'Performance Audit Report of the Comptroller and Auditor General of India on Capital Acquisition in Indian Air Force'**, stated that **redactive pricing** had been done but it had to be accepted due to the **Ministry's insistence citing security concerns**.
- **Redaction** is the selection or adaption by **'obscuring or removing sensitive information'** from a document prior to publication. Consequently, the full commercial details were withheld and the figures on the procurement deal were **blackened** in the report.
- Hence, it was unprecedented that an audit report submitted by the CAG to the President under **Article 151** of the Constitution suppressed relevant information. It has generated a discussion on the constitutional mandate of CAG and whether redactive pricing could be included in it.

Implications of redactive pricing in the audit

- **Defeats the rationale of audit**- A performance audit is done to establish whether the procurement activity was executed keeping in mind economy, efficiency, effectiveness, ethics and equity. Only a thorough pricing audit can bring out the credibility and integrity of a purchase decision.
  - Whereas under redactive pricing, **critical details have been left out.** E.g. in the Rafale deal, details like the reduction in the original **requirement to 36 aircrafts**; cost escalation due to inclusion of bank guarantee and performance guarantee **were not compared properly** to arrive at the audit conclusion.

- **Lack of further scrutiny to uphold accountability-** e.g. in the Rafale deal, the Parliament, its committees, the media and other stakeholders of the CAG's reports cannot obtain complete, accurate and reliable information due to redactive pricing.
- **Could become a loophole in anti-corruption efforts-** as CAG reports are often the source of further investigation by anti-corruption bodies like the Central Vigilance Commission, Central Bureau of Investigation.

Way Forward

- **Pricing decisions must be subjected to detailed analysis**, without resorting to redactive pricing. Parliament is constitutionally privileged to know what the executive had done and how and under what conditions procurement was decided.
- CAG plays a vital role to help deter, detect, and take remedial and preventive action to provide good governance. While performing the mandated duties, the CAG highlights deficiencies in internal controls, segregation of powers, defective planning, implementation and inadequate monitoring.

4.2. LOKPAL

Why in news?

PM-led selection panel recently cleared and recommended the former Supreme Court Judge Pinaki Chandra Ghose as **first Lokpal** of India.

Background

- The Lokpal and Lokayukta Act, 2013 was enacted after the Indian anti-corruption movement of 2011 with series of protests for the Jan Lokpal Bill.
- However, the appointment of the Lokpal was **delayed because of absence of leader of opposition,** who is a member of selection panel to recommend Lokpal.
- After this the Supreme Court intervened and set deadlines for appointing the Lokpal at the earliest.

Salient features of The Lokpal and Lokayukta Act, 2013

- **Institutional mechanism:** Establishment of **Lokpal for the Union and Lokayukta for States** to inquire into allegations of corruption against certain public functionaries.
- **Composition:** Lokpal will consist of **a chairperson and a maximum of eight members**, of which 50% shall be judicial members and 50% shall be from SC/ST/OBCs, minorities and women.
- **Appointment process:** It is a two-stage process.
  - A **search committee** which recommends a panel of names to the high-power selection committee.
  - The **selection committee** comprises the Prime Minister, the Speaker of the Lok Sabha, the Leader of the Opposition, the Chief Justice of India (or his nominee) and an eminent jurist (nominated by President based on the recommendation of other members of the panel).
  - President will appoint the recommended names.
- **Jurisdiction:** The jurisdiction of Lokpal extends to
  - Anyone who is or has **been Prime Minister, or a Minister in the Union government, or a Member of Parliament, as well as officials of the Union government under Groups A, B, C and D.**
  - The chairpersons, members, officers and directors of any board, corporation, society, trust or autonomous body either **established by an Act of Parliament or wholly or partly funded by the Centre.**
  - Any society or trust or body that receives **foreign contribution above ₹10 lakh.**
- **Exception for Prime Minister**
  - It does not allow a Lokpal inquiry if the allegation against the PM relates to international relations, external and internal security, public order, atomic energy and space.
  - Complaints against the PM are not to be probed unless the full Lokpal bench considers the initiation of inquiry and at least 2/3rds of the members approve it.
  - Such an inquiry against the PM (if conducted) is to be held in camera and if the Lokpal comes to the conclusion that the complaint deserves to be dismissed, the records of the inquiry are not to be published or made available to anyone.

- **Salaries, allowances and service conditions** of the Lokpal chairperson will be the same as those for the Chief Justice of India; those for other members will be the same as those for a judge of the Supreme Court.
- **Inquiry wing and prosecution wing:** Inquiry Wing for conducting **preliminary inquiry** and Prosecution Wing for the purpose of prosecution of public servants in relation to any complaint by the Lokpal under this Act.
- **Power with respect to CBI**: Power of superintendence and direction over any investigation agency including CBI for cases referred to them by Lokpal. Transfer of officers of CBI investigating cases referred by Lokpal would need approval of Lokpal.
- **Timelines for enquiry, investigation:** Act specifies a time limit of **60 days for completion of inquiry and 6 months for completion of investigation** by the CBI. This period of 6 months can be extended by the Lokpal on a written request from CBI.
- **Confiscation of property:** The act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending.
- The administrative expenses of the Lokpal, including all **salaries, allowances and pensions of the Chairperson, Members or Secretary or other officers or staff of the Lokpal**, will be charged upon the **Consolidated Fund of India** and any fees or other money taken by the Lokpal shall form part of that Fund.
- **Suspension, removal of Chairperson and member of Lokpal:** The Chairperson or any Member shall be removed from his office by order of the President on **grounds of misbehaviour after the Supreme Court report.** For that a petition has to be signed by at least one hundred Members of Parliament.
- **Special Court** shall be setup to hear and decide the cases referred by the Lokpal.

Positive features of the Act

- **It has a wide jurisdiction including Prime Minister of the country.**
- **It empowers citizens to complain** to the Lokpal against corruption by public officials, thus Lokpal is a powerful tool for citizens to hold authorities accountable.
- It is applicable to public servants in and outside India. This indicates that Act has **extraterritorial operation.**
- **Special courts and clear timelines** at each stage can ensure that investigation is completed in time bound manner.
- Provisions for **prosecution and punishment for filing false and frivolous or vexatious complaint** will ensure that Lokpal is not misused for political gains or to settle other scores.
- Lokpal can **issue directions to agencies in India like CBI, CVC** while investigating, and prosecuting cases under the direction of Lokpal. This ensures **independent** functioning free from government interference.

Issues with the Act

- **Requirement of Government Approval:** The Act does not vest power of prior sanction with Lokpal for enquiry and investigation of government officials.
- **Timeframe limitation:** The Act envisages that the Lokpal **shall not inquire into any complaint, made after seven years from the date** on which the offence has been committed. This restricts the scope, especially in relation to some of the large and complex scams that are exposed from time to time.
- **No Suo Moto power with Lokpal:** The Lokpal has been deprived of the authority of taking suo moto cognizance of the cases of corruption and maladministration.
- **Constitution of Lokayukta**: The Act mandates establishment of the Lokayukta in every state within a period of one year from the date of commencement of this Act. However, there are many states who have not taken action in this regard.
- **Power and Jurisdiction of the Lokayuktas in States:** State legislatures are free to determine the powers and jurisdictions of the Lokayukta which may establish weak Lokayuktas.

Way forward

- Lokpal can be given **constitutional status** to make it truly independent of political intervention.
- To prevent **Leader of Opposition** issue in future, an amendment to treat the leader of the largest Opposition party as the Leader of the Opposition for this purpose can be brought as done in respect of appointments of CBI Director and Central Vigilance Commissioner.

- Strict **guidelines and norms need to be setup to ensure** that the institution of Lokpal does not get buried into day to day complaints regarding administrative inefficiency, corruption etc.
- Provisions for the **protection to whistleblowers** shall be included in the Act, which was demanded in Jan Lokpal Bill.

4.3. CENTRAL BUREAU OF INVESTIGATION (CBI)

Why in News?

Andhra Pradesh and West Bengal have withdrawn the "**general consent**" granted to the Central Bureau of Investigation (CBI), effectively curtailing the agency's powers in the States.

General Consent

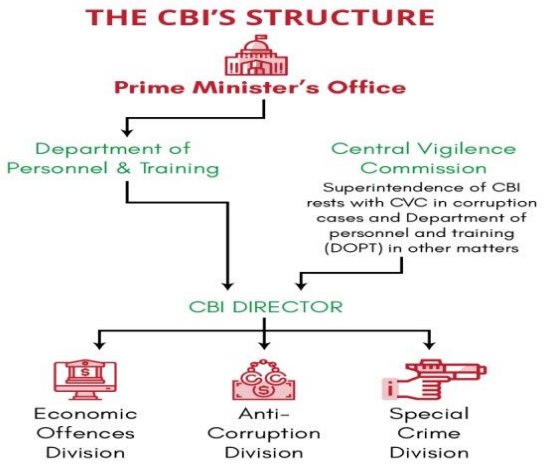
- Given that the CBI has jurisdiction only over central government departments and employees, it can investigate a case involving state government employees or a violent crime in a given state only after that state government gives its consent. Thus, it gets a general consent instead of a case-specific consent to **avoid taking permission each time**.
- The general consent is normally given for periods ranging from six months to a year.

More about news

- The CBI which is under the Delhi Special Police Establishment (DSPE) Act, 1946**, will now have to approach the State government for permission** for investigation on a case by case basis.
- It is not the first time. Over the years, several states had also withdrawn consent for some time.
- **What can the CBI do now?**
  - The CBI would still have the power to investigate **old cases** registered when general consent existed. (as decided by the Supreme Court in Kazi Lhendup Dorji of 1994)
  - Withdrawal of consent will only bar the CBI from registering a case within the jurisdiction of Andhra and Bengal. Thus, for **new cases** the CBI could still file cases in Delhi and continue to probe people inside the two states.
  - Moreover, cases registered anywhere else in the country, but involving people stationed in Andhra Pradesh and West Bengal would allow CBI's jurisdiction to extend to these states.
  - Also, if the Supreme Court or a High Court directs that a particular investigation be handed over to the CBI, there is no need for any consent under the DSPE Act.

Central Bureau of Investigation

- It is the main investigation agency of the central government for cases relating to corruption and major criminal probes.
- It is **not** a statutory body.
- The Lokpal Act 2013 prescribed that the CBI director shall be appointed on the recommendation of a committee comprising the **Prime Minister**, **Leader of the Opposition** in the Lok Sabha and **Chief Justice of India or a judge** of the Supreme Court nominated by him.
- The Central Government can authorize CBI to investigate such crime in a State only **with the consent** of the concerned State Government. The Supreme Court and High Courts, however, can order CBI to investigate such a crime anywhere in the country **without the consent** of the State.



Other Issues with CBI's functioning:

PROBLEMS	MEASURES
• **Legislative loopholes:** o Its functions are based merely on a government resolution that draws its powers from the DPSE Act 1946. o Its dependence on State governments' approval for investigation in certain cases also is a concern.	• **Committee suggestions** o The **Second Administrative Reforms** Commission (2007) also suggested that "a new law should be enacted to govern the working of the CBI". o The **parliamentary standing committees** (2007 and 2008) recommended that "the need of the hour is to strengthen the CBI in terms of legal mandate, infrastructure and resources"

	• CBI should be vested with the **required legal mandate and pan-India jurisdiction** and must have powers to investigate corruption cases against officers of All India Services irrespective the state they are serving.
• **Administrative Hurdles:** o The CBI does not have its own cadre and is run by officers on deputation which makes them prone to manipulation by the government of the day. o Additionally, lack of sufficient manpower often leads to delay in solving cases. o Internal conflicts such as the recent one between Director and Special Director and their public allegations against each other are a serious concern.	• **Manpower strengthening** o The CBI should develop its **own cadre** of officers who are not hindered by deputation issues and abrupt transfers. o The manpower of CBI should be enhanced for effective and timely investigation. o **The service conditions** for direct recruitment to the CBI can be improved to attract a wider talent pool. The process of direct recruitment through UPSC which was stopped in 2000 can be restarted.
• **Overlapping jurisdictions:** There is an overlap in jurisdictions of CVC, CBI and Lokpal in certain cases leading to problems. In corruption cases the rates of conviction are just 3%.	• The **anti-corruption wings** of CBI and CVC can be **brought under Lokpal** which should utilize both the organisations for investigation and prosecution. Such an integrated setup would lead to a more potent body.
• **Political Pressure**: The CBI has often been criticized as acting at the government's behest. In 2013, the Supreme Court called it a "caged parrot speaking in its master's voice".	• It should be **granted more autonomy** by making it accountable only to the Parliament like the office of CAG.
• **Lack of Transparency:** CBI is exempt from the provisions of the RTI Act of 2005	• There has been suggestion from an information commissioner that agencies like NIA, CBI, IB and paramilitary forces should come **under the purview of RTI** as there are adequate safeguards in the Act to keep sensitive information outside the public domain.

4.4. INDEPENDENCE VS ACCOUNTABILITY OF RBI

Why in news?

Recently Deputy Governor of Reserve Bank of India (RBI) Viral Acharya warned the government against curbing the independence of the central bank.

Background

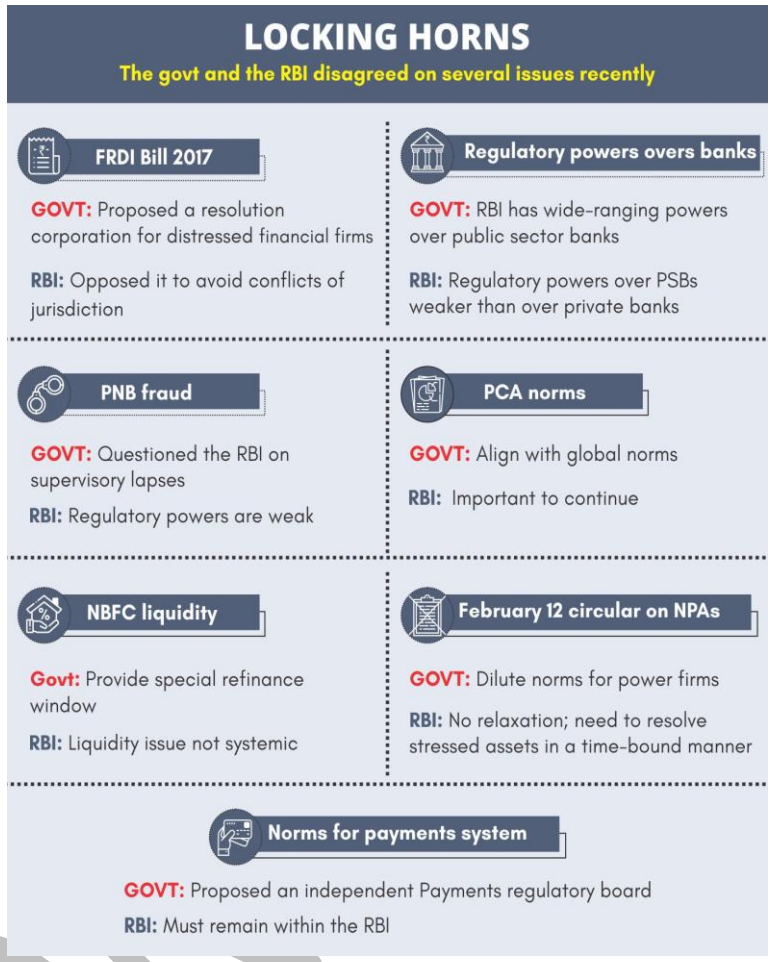
- Various RBI governors had earlier raised the issue of more autonomy for RBI.
- The government might invoke so far never-used **Section 7 of the RBI Act 1934**, in which it will issue an order to the RBI to take into account the government instructions in the public interest which might impact autonomy of RBI.

Why Independence of RBI is important?

- **For implementing policies:** The RBI has multiple policy objectives that serve the public interest from price stability, growth, development to financial stability that also have political consequences. The central bank has to have a clear mandate and simultaneously the necessary operational freedom to fulfil its mandate.
- **Free from Political interferences:** Important for the functional autonomy of RBI in order to discharge crucial roles like credit authorization policies among others
- **Regulation:** It is also important that RBI is statutorily limited in undertaking the full scope of actions against public sector banks (PSBs) as also in case of PNB fraud which eroded credibility of RBI.
- **Separate institute:** The central bank is set up as an institution separate from the government. It is not a department of the executive function of the government. Its powers are enshrined as being separate through relevant legislation.
- **Ensuring Sustainable Economic Growth:** Central bank autonomy fosters price and financial sector stability that are conducive to sustainable economic growth.

Why Accountability of RBI is important?

- **Democracy:** In a democracy, sovereignty lies with the people. And government, not the central bank, is answerable to the people. If the Reserve Bank, for instance, fails to keep inflation low, it is the government that pays the price, not RBI.
- **Answerable in failures:** The flip side of autonomy is accountability and the RBI should be answerable if it fails to achieve these goals. The progressive widening and deepening of the activities of the RBI in different sectors of the economy affect the lives of millions. Hence any type of failure should be answerable by RBI.
- **More transparency:** The central bank can also make mistakes, and is generally held publicly accountable through parliamentary scrutiny and transparency norms. This ensure more transparency in the system with clearly defined roles.
- **Accountable through Government:** The RBI is autonomous but within the framework of the RBI Act. Hence Central bank cannot claim absolute autonomy. It is autonomy within the limits set by the government and its extent depends on the subject and the context.



Way forward

- **Balancing autonomy and accountability:** Institutional autonomy of RBI has to be respected and all institutions will have to work together to achieve the common goal.
  - There has to be a forum within our democratic structure where the RBI is obligated to explain and defend its position.
  - There is a need to pay due regard to both autonomy and accountability. For example - we have an inflation targeting model now and the central bank is accountable for its inflation targeting. Similarly, there can be such autonomy and accountability for financial sector regulation by creating some desirable objectives.
- **Implementing recommendations of Financial Sector Legislative Reforms Commission (FSLRC):** FSLRC sought to modernize governance and make regulators more independent as well as more accountable.
  - For example, it proposed to do away with the government's power to give directions, while it sought to make boards of regulators more accountable and transparent with agenda and minutes of board meetings to be public.
- **Separation of domains:** Since the goals of the government and the RBI coincide, both have to respect each other's operational space. While economic growth is impossible without adequate credit, the RBI needs to ensure that its policies do not hamper the growth of credit and investment.
- **Review of regulatory powers:** If regulatory powers need a review, Parliament should make law accordingly. There should be clarity on the regulatory powers of RBI as well as Government.

5. ELECTIONS IN INDIA

5.1. ELECTORAL REFORMS

A free, fair and unbiased electoral process along with greater citizen participation is fundamental to safeguarding the values of a democracy. Unfortunately, Indian electoral system is grappling with certain issues which have eroded the trust of many people in the country such as role of black money, issues related to power of Election commission of India (ECI), harassment of voters if voted against a party etc.

Thus, various reforms have been undertaken or proposed to be undertaken to maintain the purity of electoral process:

- **Provision of None of the Above (NoTA):** Supreme Court in the **People's Union for Civil Liberties v. Union of India case, 2013** paved the way for the introduction of NOTA.
- **De-criminalisation of Politics-** Under various judicial pronouncements, various measures including declaration of criminal records, disqualification from contesting elections etc.
- **Introduction of Electoral Bonds-** to bring transparency in electoral funding and reduction in use of black money in elections.
- **Tackling the menace of paid news-** ECI has taken various steps to scrutinize, identify and report cases of Paid News.
- **Proposal for totalizer machines:** through which consolidated result of the group of EVMs can be obtained without disclosing the votes polled by a candidate polling-station-wise, thus, preventing harassment and victimization of voters from pre and post poll intimidation.
- **Introduction of Voter Verifiable Paper Audit Trail (VVPAT) machines** to cross-check EVM results through a paper audit, completing another layer of accountability to the indigenously produced machines.
- **Imposition of additional norms for candidates contesting elections by Supreme Court:** In Lok Prahari case, SC has asked the Centre to amend the rules as well as the disclosure form filed by candidates along with their nomination papers, to include the sources of their income, and those of their spouses and dependants. Non-disclosure of assets and their sources would amount to a "corrupt practice" under Section 123 of the Representation of the People Act, 1951.
- **Other major reforms:** include proposal for restructuring the election cycle and establishing a hybrid electoral system.

5.1.1. ROLE OF ELECTION COMMISSION

Why in news?

In the recent General Election for the 17th Lok Sabha, the role of Election Commission of India has been debated over its various actions.

Background

- Recently, the **Constitutional Conduct group**, a group of retired civil servants wrote a letter to the President, raising doubts about the **credibility of the Election Commission** and the extent to which the **Model Code of Conduct** (MCC) is being followed by the ruling party.
- The ECI has drawn flak over its response to the MCC violations such as use of Indian Army in political rallies despite ECI giving warning against it, voter verifiable paper audit trail (VVPAT) audits, violations of the MCC by Rajasthan Governor etc.

Issues and Challenges faced by Election Commission

- **Allegation of partisan role-** The opposition alleged that the ECI was favoring the ruling government in giving clean chits to the model code violations made by the Prime Minister.
- **Lack of capacity-** The Election Commission is vested with absolute powers under Article 324, but still has to act according to laws made by Parliament and it cannot transgress the same. E.g. Despite being the registering authority for political parties under Section 29A of the Representation of the People Act, 1951, it has no power to de-register them even for the gravest of violations.
- **Lack of proactive use of authority-** The Election Commission had told the Supreme Court that its powers to discipline politicians who sought votes in the name of caste or religion were "**very limited**".

- **Ineffective control over political parties**- ECI is not adequately equipped to regulate the political parties. The EC has no role in enforcing inner-party democracy and regulation of party finances.

Implications

- **Breakdown of democratic principles-** such as free and fair elections, observation of common Model Code of Conduct among others.
- **Erosion of institutional integrity-** whereby the credibility and authority of the commission is undermined.
- **Loss of people's trust in elections-** If people lose faith in the institutions of democracy, the credibility of the consent obtained through electoral verdicts itself will be in doubt.
- **Degradation of political discourse-** where barriers of civility and decency are not respected by the politicians and abuse of power becomes a norm. This also results into issues of national/local importance taking a backseat and personal rivalries among candidates coming to fore.
- **Politicisation of the Election Commission-** since the Chief Election Commissioner is not barred from post service posts, the critics allege CEC's independence is prone to being compromised.

Election Commission of India (ECI)

- **Article 324** of the Constitution of India provides for an independent Election Commission.
- It has the powers of superintendence, direction and conduct of elections to the Parliament, the state legislatures, the office of the President and the office of the Vice-President.
- It currently consists of Chief Election Commissioner and two Election Commissioners.
- Parliament has been empowered to make provisions with respect to all matters relating to elections. However, the ECI can also take necessary measures under Article 324 to ensure free and fair elections.

Successes of the ECI

- **Voter Education and Participation-** The highlight of 2019 was the highest ever voter turnout in a general election so far (67.11%), which proves that the EC's voter education programme **SVEEP** (**Systematic Voters' Education and Electoral Participation**) is effective.
- **Credibility of voting-** After the counting was done, it was found that there wasn't a single case of a mismatch between the VVPAT slip and the EVM count.
- **Actions taken against politicians-** The ECI took strong and unprecedented action against some political leaders in the recent general elections, debarring them from campaigning for up to three days by invoking Article 324.
- **Action against money power-** The ECI cancelled the election to Vellore parliamentary constituency in Tamil Nadu after large unaccounted cash was unearthed during an income tax raid.

Way Forward

- Elections are the bedrock of democracy and the EC's credibility is central to democratic legitimacy. Hence, the guardian of elections itself needs urgent institutional safeguards to protect its autonomy.
- In its **255th report, the Law Commission** recommended a collegium, consisting of the Prime Minister, the Leader of the Opposition and the Chief Justice of India for the **appointment of the Election Commissioners.**
- **Suggestions to strengthen the ECI-**
  - Give **constitutional protection for all three-election commissioners** as opposed to just one at present.
  - **Institutionalize the convention** where the senior most EC should be automatically elevated as CEC in order to instil a feeling of security in the minds of the ECs and that they are insulated from executive interference in the same manner as CEC.
  - **Reducing the ECI's dependence** on DoPT, Law Ministry and Home Ministry. The ECI should have an independent secretariat for itself and frame its own recruitment rules and shortlist and appoint officers on its own.
  - Its **expenditures must be charged upon the Consolidated Fund of India** similar to other constitutional bodies such as the UPSC.

5.1.2. NONE OF THE ABOVE (NOTA)

Why in News?

Maharashtra State Election Commission (MSEC) recently made an order for local body polls that **fresh elections** should be held **if NOTA 'emerges winner'**.

About NOTA

- The NOTA option was introduced in India following a 2013 Supreme Court directive in the **People's Union for Civil Liberties v Union of India**.
- NOTA option aims to **allow voters to disapprove all the candidates** while delivering their vote. SC remarked that NOTA will indeed compel the political parties to nominate a sound candidate.

NOTA vs Right to Reject

- NOTA in India **does not provide for a 'right to reject'**. Election Commission currently has **no plenary power to call a fresh election** even if NOTA secures highest votes.
- The **candidate with the maximum votes wins** the election irrespective of the number of NOTA votes polled.
- Whereas in "**right-to-reject**" system, if the majority of voters opt for "none of the above" option, no candidate will be declared the winner and a **fresh election** will be called.
- Also, the NOTA votes have not been accounted while calculating votes polled by candidates for making them eligible (1/6th of valid votes) for getting back their security deposits.

NOTA voting pattern: What analysis show?

- **High NOTA Vote Recorded on Reserved Seats:** In 2019 Lok-Sabha elections, 1.76% of the voters in ST seats and 1.16% in the SC seats chose NOTA as opposed to 0.98% of the voters choosing NOTA on the general seats. The reason for this could be protest against caste-based reservation.
- **NOTA Vote-Share in Left Wing Extremism Areas:** Left-Wing Extremism have on an average seen a higher NOTA vote-share as compared to other parts of the country. This point to the possible use of NOTA as a means to oppose and protest against the state machinery.
- **Impact of Political Competition on NOTA Vote-Share:** States which witnessed a direct bi-polar contest between the two main parties, saw a high NOTA vote-share, as compared to states where the voters had a third alternative.
- **NOTA votes played a crucial role** in deciding winner in 26 constituencies where winning margin was less than NOTA votes.

Significance of re-elections

- **Freedom of expression**: NOTA emanates from our fundamental right of 'Right to liberty' and 'Freedom of Expression' as it gives a way for the voter to register her consent or discontent for candidates chosen by the political parties.
- **Conducive for democracy:** Participation of people is one of the crucial pillars of democracy thus in exercising the NOTA the voter is participating in the electoral process while not abstaining from voting altogether.
- **Promoting inner party democracy:** There is an opaqueness in the selection process of the candidates chosen for representing a political party. NOTA gives voters an opportunity to express their dissent and may also force parties to field better candidates known for their integrity.

NOTA in Rajya Sabha elections

- The Supreme Court scrapped the use of 'None Of The Above' (NOTA) option in Rajya Sabha polls.
- SC held NOTA option is meant only for universal adult suffrage and direct elections.
- So, it is **not for polls held by the system of proportional representation** by means of the single transferable vote as done in the Rajya Sabha.
- NOTA can harm an electoral process where open ballot is permissible and party discipline reigns.
- NOTA will destroy the concept of value of a vote and representation and encourage defection that shall open the doors for corruption which is a malignant disorder.

Challenges of conducting fresh election

- **Financial Pressure:** Fresh elections lead to massive expenditures by Government as it has to conduct re-election which put extra pressure on the public exchequer.
- **Disrupting democracy:** It leads to frequent elections which results in disruption of normal public life and impact the functioning of essential services.
- **Administrative pressure:** Election Commission of India has to take help of a significant number of polling officials as well as armed forces to ensure smooth, peaceful and impartial polls.
- **Governance issues:** Conducting fresh election impacts development programs and governance due to imposition of Model Code of Conduct by the Election Commission.

Way forward

- To give greater sanctity to NOTA and order a fresh election, **Rule 64 of Conduct of Election Rules will have to be amended** and can be done by the law ministry. It will **not require Parliament sanction**.
- The state election commissions in Haryana and MP have started **disqualifying candidates** that get less votes than NOTA in the local body elections. This is a step forward in right direction.

5.2. ISSUES RELATED TO FREE AND FAIR ELECTIONS

5.2.1. MODEL CODE OF CONDUCT

Why in news?

In the run up to the Indian General Election for the 17th Lok Sabha, various instances of violations of the Model Code of Conduct were witnessed.

About Model Code of Conduct (MCC)

- It is a set of guidelines laid down by the Election Commission to **govern the conduct of political parties and candidates** in the run-up to an election. This is in line with **Article 324** of the Constitution, which gives the Election Commission the power to supervise elections to the Parliament and state legislatures.
- It **comes into force the moment an election is announced** and remains in force till the results are declared. This was laid down by the Supreme Court in the **Union of India vs. Harbans Sigh Jalal and Others Case.**
- It is intended to provide a **level playing field** for all political parties, to keep the campaign fair and healthy, avoid clashes and conflicts between parties, and ensure peace and order. So, there are guidelines on general conduct, meetings, processions, polling booths, observers, election manifesto of political parties.
- Its main aim is to ensure that the ruling party, either at the Centre or in the states, **does not misuse its official position** to gain an unfair advantage in an election. There are guidelines on conduct of ministers and other authorities in announcing new schemes, using public exchequer for advertisements etc.

Evolution of Model Code of Conduct

- The origins of the MCC lie in the **Assembly elections of Kerala** in 1960, when the State administration prepared a **'Code of Conduct'** for political actors.
- Subsequently, in the Lok Sabha elections in 1962, the ECI circulated the code to all recognised political parties and State governments.
- Implementation of MCC up to 1991 was not up to the mark as it was largely ignored by the political parties who often resorted to corrupt electoral practices such as populist announcements and fielding pliant officials, in lieu of fierce political competition.
- **Implementation of MCC after 1991**
  - The ECI (spearheaded by then **CEC T.N. Sheshan**) used **new means to enforce** the MCC. The ECI rebuked prominent political actors publicly and even postponed elections, thereby re-interpreting the ECI's power to fix election dates.

Legal Status of Model Code

- The MCC is **not enforceable by law**. However, certain provisions of the MCC may be enforced through invoking corresponding provisions in other statutes such as the **Indian Penal Code, 1860, Code of Criminal Procedure, 1973, and Representation of the People Act, 1951.**
- The Election Commission has argued against making the MCC legally binding; stating that elections must be completed within a relatively short time (close to 45 days), and judicial proceedings typically take longer.
- On the other hand, in 2013, the Standing Committee on Personnel, Public Grievances, Law and Justice, recommended making the MCC legally binding and the MCC be made a part of the Representation of the People Act, 1951.

Impact of MCC on Development and Governance

- As there are restrictions on the working of the ruling governments when the MCC is in place, there is a debate whether it impedes the governance of state as-
  - The government cannot announce any new project, scheme or policy.
  - Politicians who hold portfolios cannot combine official visits with campaigns.
  - Any campaign by the government cannot be done at the cost of the public exchequer.
  - The ruling government cannot make any ad-hoc appointments in Government, Public Undertakings etc.
- Recently, the Law Commission raised such observations, but the ECI has brushed aside arguments that the model code of conduct brings governance to a halt during polls.
- Further, the ECI also highlighted that as and when government departments approach it with 'references' to clear proposals and schemes during poll time, it takes a fast decision understanding the urgency involved.

- The burgeoning electronic media of the time reported these initiatives with enthusiasm, while candidates were happy to capitalise on the mistakes made by their rivals. Consequently, political actors began to take the MCC seriously.

Contemporary Challenges in implementing Model Code of Conduct

- **Emergence of new forms of electoral malpractices-**
  - **Manipulation through the media**- The misuse of the media is difficult to trace to specific political parties and candidates.
- **Weakened capacity of the ECI to respond to violations of MCC-**
  - **Weak or Delayed Response-** to inappropriate statements by powerful political actors. Consequently, political actors are regaining the confidence to flout the MCC without facing the consequences.
  - **Digital Content-** Most of the [election-related] information flow does not happen via the IT cells of political parties, but through third-party contracts. Even though, the ECI has evolved a self-regulatory social media code for major players, still many platforms such as Telegram and WeChat are becoming increasingly relevant for political mobilization.
  - **Debate over some issues-** such as national security, disaster management. Some political parties alleged that the ruling party has misused such issues. But, the Election Commission has said that these issues do not fall under the ambit of MCC.

Implications of Poll Code Violations

- **Weakens the position of Election Commission-** whereby the credibility and authority of the commission is undermined.
- **Erodes the principle of free and fair elections-** whereby incidents such as use of money power or muscle power, does not allow equal competition between all participants.
- **Shifts the narrative from performance to identity-** whereby political parties ignore the MCC guidelines against using caste and communal feelings to secure votes.
- **Erosion of public trust in Indian democracy-** as the promise of free and fair elections is seemingly defeated.

Way Forward

- **Need to include people in the MCC-** through mobile apps such as **'cVIGIL'** to enable citizens to report on violation of election code of conduct. If people reject candidates and parties that violate MCC, it will create an inherent pressure on contestants to abide by MCC.
- **Fast Track Court for Election Dispute-** so that whenever, the ECI takes a punitive action, its final order is obtained as soon as possible.
- **Strengthening Election Commission of India-** by greater transparency in appointments and removal of the election commissioners, reducing dependency on Central Government for paramilitary forces among others.

5.2.2. ELECTRONIC VOTING MACHINE (EVM)

Why in news?

Recently, there have been controversies surrounding EVMs regarding their safety feature.

Safety Features within EVMs

- **Non-reprogrammable:** It consists of an integrated circuit (IC) chip that is one time programmable (software burnt at the time of manufacturing) and cannot be reprogrammed.
- **No external communication:** EVMs are not networked by any wired

About Electronic Voting Machine (EVM)

- An EVM consists of a "control unit" and a "balloting unit". The **control unit** is with the Election Commission-appointed polling officer; the **balloting unit** is in the voting compartment into where voter casts her vote in secret.
- It runs on a **single alkaline battery** fitted in the control unit, and can even be used in areas that have no electricity.
- They are manufactured by **Electronics Corporation of India Limited (ECIL) and Bharat Electronics Limited (BEL)**.

History of EVMs in Indian Elections

- EVMs were **1st used in 1982 Kerala Assembly** elections (by-election).
- However, SC struck down the election since Representation of People Act, 1951, and Conduct of Elections Rules, 1961, did not allow use of EVMs.
- **RP Act 1951 was amended in 1988** to allow usage of EVMs.
- In **1999**, they were used for the **1st time in the entire state for Goa** Legislative Assembly elections.
- **In 2004**, EVMs were used for the **1st time in Lok Sabha elections.**

or wireless system, nor do they have any frequency receiver and data decoder, so there cannot be any external communication. Control Unit (CU) accepts only specially encrypted & dynamically coded data from Ballot Unit (BU).
    - Other countries like Netherlands and Germany (which discontinued the use of EVMs) use computer based EVMs which are prone to hacking, while Indian **EVMs are standalone machines**.
- **Secure Source Code:** Software and source code developed in-house by selected group of engineers in BEL and ECIL.
- It allows a voter to **cast the vote only once**. The next vote can be recorded only after Presiding Officer enables the ballot on CU.
- **Time stamping of votes:** EVMs are installed with real time clock, full display system and time-stamping of every key pressing so there is no possibility of system generated/latent votes.
- **Secure against post-manufacturing tampering:** The machines with **self diagnostics** shut down automatically in case of tampering.
- There are also various **procedural checks and balances** (Standard Operating Procedure) like functional checks, trial run, random allocation, multi-stage testing, dry run and safe & secure storage post voting, included for ensuring free and fair elections.

Voter Verifiable Paper Audit Trail (VVPAT)

- VVPATs are an independent verification system designed to allow voters to verify that their votes were cast correctly, to detect possible election fraud/malfunction and to provide a means to audit the stored results in case of disputes.
- In VVPATs, a paper slip is generated bearing name and symbol of the candidate along with recording of vote in CU. The printed slip is visible (for 7 seconds) in a viewing window attached to BU in voting compartment.
- In **Subramaniam Swamy vs ECI (2014)**, SC said VVPAT is necessary for transparency in voting and must be implemented by ECI. In General Elections 2019, VVPATs will be used in all the constituencies.

Recent changes

- The Supreme Court recently increased VVPAT verification to **five random EVMs** in each Assembly segment/constituency **"to ensure the greatest degree of accuracy, satisfaction in election process**."
- Earlier, under the ECI guidelines, only the **VVPAT slips** from **one EVM in every Assembly** segment/constituency was subjected to **physical verification**.
- The Conduct of Election Rules say that a voter who has complained his vote went to wrong party can be allowed a **test vote.** However, if the VVPAT shows no error, the voter can be penalized with six months' imprisonment and a fine.
- VVPAT slip **counting** takes place in specially erected VVPAT counting booths under the close monitoring of the returning officer and direct oversights of the observer.

Arguments for going back to ballot system

- In terms of the three pillars of free and fair elections (**transparency, verifiability** and **secrecy**) the EVMs face following issues-
    - **Not transparent:** An electronic display of the voter's selection may not be the same as the vote stored electronically in the machine's memory. To bridge this gap, VVPATs were introduced.
    - **Not verifiable:** Only the vote number can be verified and not the voting choice.
    - **Not secret:** Counting in EVMs is equivalent to booth-wise counting, which allows one to discern voting patterns & renders marginalized communities vulnerable to pressure.
- **Possibility of hacking:** Accusations of EVMs getting hacked or even the possibility of them being hacked creates a mistrust about electoral processes in the minds of the public.
- **Malfunctioning EVMs:** Though provided with specific training for correct usage of EVMs, officers sometimes don't pay attention & connect machines in wrong order.

Arguments in favor of continuing with EVMs

- **Ease of use and accessible**: EVMs are found to be easy to use, even by illiterate voters who just need to recognize the symbols of the parties. Electronic voting makes voting more accessible for e.g. enabling disable people to vote independently.
- **Safe and secure:** The instances of booth capturing, rigging and stuffing ballot boxes with ink have been checked by the use of EVMs.
    - Further, the EVMs in itself is a secure machine which is highly improbable to be hacked.
- **Faster results and build trust:** For other countries, particularly large ones like Brazil, India and the Philippines, electronic voting and electronic counting means that people can get official election results within hours, instead of weeks.
- **Completely auditable**: One of the reasons our electronic voting system has been praised so highly is that it's designed around the idea that all parties, citizens and election commissions are able to audit the electoral process at every stage, including before an election has even begun.

- **Other** benefits include
  - elimination of the possibility of invalid and doubtful votes which, in many cases, are the root causes of controversies and election petitions.
  - reduction in the use of paper during the elections.

Way Forward

- While there have been cases of "malfunction" (which suggests a technical defect), there has not been any case of proven "tampering"" (manipulation aimed at fraud). In 2017, EC even held an 'EVM Challenge', where it invited political parties to demonstrate/proof any allegations of tampering.
- However, cost and efficiency considerations are secondary to the integrity of the election. EC must ensure that any unjustified suspicion in the minds of public is removed through:
  - **100% deployment of VVPAT** in all elections and by-polls and on **detection of any faulty EVM** in a constituency must entail the VVPAT hand-counting of all the EVMs in that constituency.
  - EC must introduce **Totalizer Machines** for counting of votes. It increases the secrecy of voting by counting votes polled at 14 polling booths together, as against the current practice of announcing booth-wise results.
  - **Regular demonstrations** must be organized by EC in all the poll-going States to reduce information gap on EVMs.
  - EC should provide training to officers in small batches and focus on hands-on-learning. As a long-term structural reform, EC must be provided with **an independent secretariat** so that it can have a dedicated cadre of officers.

5.3. ISSUES RELATED TO RPA

5.3.1. PAID NEWS IN ELECTIONS

Why in news?

The Election Commission of India has moved the Supreme Court to take on the menace of paid news during elections.

What is paid news?

Press Council of India, defines paid news as **"any news or analysis appearing in any media (print & electronic) for a price in cash or kind as consideration"**. It is considered a "grave electoral malpractice" on the part of candidates to circumvent expenditure limits. However paid news is not an electoral offence yet.

Reasons for rise in paid news

Parliamentary Standing Committee on Information Technology in its report titled "**Issues Related to Paid News**" identified following reasons for paid news:

- **Reasons related to media:** Corporatization of media, desegregation of ownership and editorial roles, decline in autonomy of editors/journalists due to emergence of contract system and poor wage levels of journalists.
- **Issues with regulators:**
  - The above committee found voluntary self-regulatory industry bodies like the News Broadcasting Standards Authority and Broadcasting Content Complaints Council as an 'eye wash'.
  - **Inadequate punitive powers** of statutory regulators like the PCI and Electronic Media Monitoring Centre (EMMC).
  - The **conflict of interest** inherent with appointment of media-owners as members of the PCI or self-regulatory bodies.
- **Inaction by Government:** on various recommendations of the PCI and Election Commission of India (ECI).
- **Lack of clarity on penal provisions and jurisdiction:** due to existence of multiple bodies like the MoIB, PCI, EMMC and ECI.
- **Concentration of media ownership:** The lack of restriction on ownership across media segments (print, TV or internet) or between content and distribution gives rise to monopolistic practices.
- **Distribution of government advertisements:** The Directorate of Advertising and Visual Publicity (DAVP) is responsible for execution of advertisements on behalf of government agencies. It is alleged that the government uses advertisements to arm-twist media houses for favourable coverage.

Consequences of paid news

- Paid news plays a very **vitiating role in the context of free and fair elections**. As electors attach greater values and trust news reports more compared to clearly specified advertisements.
- Paid News **misleads** the public and hampers the ability of people to form correct opinions.
- Paid News causes undue influence on voters and also **affects their Right to Information**.
- Paid News seeks to **circumvent election expenditure laws/ ceiling.**
- It also vitiates the **principle of level playing field** among candidates.

Steps taken by Election Commission of India (ECI)

- Starting in 2010, ECI has **issued instructions** to state and district officers to scrutinize, identify and report cases of Paid News.
- The Commission has appointed a **Media Certification & Monitoring Committee** (MCMC) at District and State level for checking Paid News.
  - It will scrutinise all media within its jurisdiction to identify political advertisement in the garb of news.
  - MCMC shall also actively consider paid news cases referred to it by the Expenditure Observers.

Challenges in dealing with paid news

- There is circumstantial evidence, but little proof about paid news. Establishing transaction of cash or kind is indeed not very easy, as it is usually done without any record and promptly denied by both sides, when enquired.
- Media violations, surrogate advertisement and unreported advertisements are often mistaken as Paid News by MCMC.
- Timelines are quite tight. However, if these are not maintained, it is not possible to account expenditure on Paid News in a particular election process.

Way forward

- **Law commission recommendations: Report on "Electoral Reforms" 2015**
  - The **definitions** of "paying for news", "receiving payment for news" and "political advertisement" **should be inserted in the Representation of the People Act, 1951.**
  - Making paid news an **electoral offence** will lead to disqualification**.**
  - **Disclosure provisions for all forms of media:** This would help
    - ✓ the public identify the nature of the content (paid content or editorial content),
    - ✓ to keep the track of transactions between the candidates and the media.

A new section should be inserted in the RPA to deal with the non-disclosure of interests in political advertising.

- **Recommendations by Parliamentary Standing Committee on Information Technology in its report titled "Issues Related to Paid News"**
  - Examination of financial accounts of the media houses, especially the revenue source for a suspected paid news case.
  - Disclosure of 'private treaties' and details of advertising revenue received by the media houses.
  - Establishment of a **single regulatory body** for both print and electronic media or enhancing **punitive powers of the PCI** and setting-up a similar statutory body for the electronic media.
  - Regulators should not include media owners/interested parties as members.
  - Transparent and unbiased policy for distribution of advertisements by the central and state governments, with provisions for scrutiny. Also, DAVP should disclose details about disbursements of advertisements expenditure on its website.
- The **PCI** has sought amendment in the Press Council Act, 1978, to make its directions binding on government authorities and bring the electronic media under its purview.
- The **ECI** has recommended inclusion of abetting and publishing of such paid news as an electoral offence with minimum punishment of two years imprisonment.
- Measures to ensure the **self-regulation** by political parties, candidates and media houses. **Preventive measures** rather than punitive, like undertaking educational campaign on Paid News involving political parties, media houses and other stakeholders.
- **Adoption of international best practices:** On the lines of the Justice Leveson Report on the press and existing regulatory structure in the UK.

5.3.2. CRIMINALIZATION OF POLITICS

Why in news?

In **Public Interest Foundation Case** a five-judge Constitution bench headed by Chief Justice issued directions aimed at decriminalization of politics.

Background

- According to the prevalent law, the lawmakers and candidates are barred under the Representation of Peoples Act (RPA) from contesting elections only after their conviction in a criminal case.
- The current verdict was pronounced on a question whether lawmakers facing criminal trial can be disqualified from contesting elections at the stage of framing of charges against them.

Legal and Judicial 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.
- The Supreme Court in **Lily Thomas case (2013)** held that chargesheeted MPs and MLAs, on conviction for offences, will be immediately disqualified from holding membership of the House without being given three months' time for appeal, as was the case before.
- In **March 2014 SC judgment**, court directed all subordinate courts to give their verdict on cases involving legislators within a year, or give reasons for not doing so to the chief justice of the high court.

Data (ADR)- 2014 Lok Sabha elections

- Out of the 542 winners analysed, 185(34%) winners have declared criminal cases against themselves.
- 112 (21%) winners have declared serious criminal cases including cases related to murder, attempt to murder, communal disharmony, kidnapping, crimes against women etc.
- The chances of winning for a candidate with criminal cases in the elections are 13% whereas for a candidate with a clean record it is 5%.

Supreme Court Observations/Recommendations

- Problem of criminalization of politics is "not incurable" but **requires urgent attention** before it becomes "fatal" to the democracy.
- The Apex court recommended that the **Parliament must make law** to ensure that persons facing serious criminal cases do not enter into the political stream.
- The Court directed **disclosure of criminal cases** pending against the candidate by himself/herself through Election Commission of India 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.
- Court also made **observations on political parties**. The SC said that it is the political parties that form the government, man the parliament and run the governance of the country. It is therefore, necessary to introduce internal democracy, financial transparency and accountability in the working of the political parties.

Reasons for Criminalisation of Politics

- **Vote Bank:** As the SC has observed that we as a voter are not yet organically evolved, therefore, majority of the voters are maneuverable, purchasable. Expenditure for vote buying and other illegitimate purposes through criminals leads to nexus between politicians and criminals.
- **Corruption:** The past three Lok Sabhas have seen an increasing number of legislators with criminal background or pending cases against them — 124 in 2004, 162 in 2009 and 182 in 2014.
- **Loop Holes in The Functioning of Election Commission:** For the past several general elections there has existed a gulf between the Election Commission and the voter. Common people hardly come to know the rules made by the commission. Model Code of Conduct is openly flouted by candidates without any stringent repercussions.
- **Denial of Justice and Rule of Law:** Toothless laws against convicted criminals standing for elections further encourage this process. Only 40 percent of pending cases have been transferred to special courts — of which **judgments have been pronounced in just 136 cases (11%).**
- 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 he may continue to hold high positions within his party.

Impact of Criminalization

- **The law-breakers get elected as law-makers-** 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. This brings in the culture of muscle and money power in the politics.

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.

- **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.

Way Forward

- There is a need to **curb the high cost of campaigning** to provide a level playing field for anyone who wants to contest elections.
- As recommended by the **Law Commission of India's report on Electoral Disqualifications**, by effecting disqualification of tainted politicians at the stage of framing of charges, with adequate safeguards, the spread of criminalisation of politics may be curbed.
- Filing of a false affidavit should qualify as a 'corrupt practice' under the Act. Conviction on the charge of filing of a false affidavit must be grounds for disqualification as recommended by the Law Commission.
- The Election Commission must take adequate measures to break the nexus between the criminals and the politicians.

5.4. ELECTORAL FUNDING REFORMS

Money is central to the issue of political corruption in India and political parties are suspected to be the largest and most direct beneficiaries. Corruption in elections reduces accountability, distorts representation, and introduces asymmetry in policymaking and governance. This necessitates transparency in electoral funding. The issues in electoral funding in India are:

- **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.
- **Unlimited corporate donations:** The maximum limit of 7.5% on the proportion of the profits a company can donate to a political party has been lifted, thus opening up the possibility of shell companies being set up specifically to fund parties.
- **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.

Consequences of lack of transparency in electoral funding

- **Quid pro quo:** Donors to political campaigns can demand for favourable laws and policies, favourable government contracts, and exceptionalism in law enforcement as returns on their investments.

- **Hampers political equality:** Lobbying for advantageous laws can simply redistribute advantages to particular groups instead of allocating them more fairly and productively. This hampers political equality as money power determine legal rules which could otherwise be formulated with broader concern for all the members of an electorate.
- **Criminalization of politics:** When black money becomes the source, it brings the criminal elements into the fold of politics.
- **Free and fair elections** cannot happen if political outcomes are determined by the financial capacity of candidates. This discourages genuine candidates from contesting, and winning elections.

The case for state funding of elections

Various committees have suggested state funding of elections as a way to reduce role of money in elections. Recently, a private member's bill has also been introduced that seeks implementation of state funding of elections.

Arguments in favor of state funding of elections

- State funding increases **transparency inside the party** and also in candidate finance, as certain restrictions can be put along with state funding.
- State funding can **limit the influence of wealthy people** and rich mafias, thereby purifying the election process.
- It will **check quid-pro-quo** and can help curb corruption.
- Through state funding the demand for internal democracy in party, women representations, representations of weaker section can be encouraged as it gives **level playing field to all**.
- In India, with high level of poverty, ordinary citizens cannot be expected to contribute much to the political parties. Therefore, the parties depend upon funding by corporate and rich individuals.
- Various committees including Ind**rajit Gupta Committee 1998, Law Commission of India, 2nd ARC, National Commission to Review the Working of the Constitution,** have favored state funding.

Arguments against state funding of elections

- Through state funding of elections, the **tax payers are forced to support** even those political parties or candidates, whose view they do not subscribe to.
- State funding **encourages status quo** that keeps the established party or candidate in power and makes it difficult for the new parties and independent candidates.
- State funding **increases the distance between political leaders and ordinary citizens** as the parties do not depend on the citizens for mobilization of party fund.
- Political parties tend to **become organs of the state**, rather than being parts of the civil society.
- It may lead to **candidates running for elections just for the sake of availing monetary benefits**.
- There is a possibility of state funding being used as a **supplement and not as a substitute** of candidate's own expenditure.

5.4.1. ELECTORAL BONDS

Why in news?

The Supreme Court of India in its **interim order** has asked all political parties to disclose, the **details of the donations** received by them through **anonymous electoral bonds**, in sealed covers to the Election Commission of India.

Background

- Electoral bond scheme was announced in **Union Budget 2017-18** in an attempt to "**cleanse the system of political funding in the country**."
- The electoral bonds were introduced by amendments made through the Finance Act 2017 to the **Reserve Bank of India Act 1934, Representation of Peoples Act 1951, Income Tax Act 1961** and **Companies Act**.
- However, there are certain provisions in the scheme, which raised an objection on **transparency of political funding itself**.
- Some petitioners had move to the Supreme Court for a plea to stay the Electoral Bonds Scheme.
- The Election Commission also filed an affidavit to the SC on some provisions in the scheme, which can have serious repercussions on political funding in the country.

Petitioner's arguments against the Electoral Bonds Scheme

- **Brings Opacity in the Political Funding-** Ordinary citizens are not able to know who is donating how much money to which political party, and the bonds increase the anonymity of political donations-
  - The rules for declaring sources of funding for political parties are outlined in **Section 29C** of the **Representation of the People Act, 1951.** Prior to 2017, the Act said all registered parties had to declare all donations made to them of over Rs.20,000. However, an amendment in finance act has

kept electoral bonds out of the purview of this section. Therefore, parties will not have to submit records of electoral bonds received to the Election Commission for scrutiny.

- 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 exempt from IT Act**. Thus, removing the need to maintain records of names, addresses of all donors.

- **Opens up possibility of corporate misuse-** with the removal of the 7.5% cap on the net profits of the last three years of a company, corporate funding has increased manifold, as there is now no limit to how much a company, including loss-making ones, can donate. Hence, companies can be brought into existence by unscrupulous elements primarily for routing funds to political parties through anonymous and opaque instruments like electoral bonds.
- **Favors ruling party-** SBI being a government own ed bank will hold all the information of the donors which can be favorable to the party in power and also deter certain entities from donating to opposition due to fear of penalization. E.g. the data revealed through the Right to Information shows that State Bank of India issued a whopping **Rs.1, 716 crore** in electoral bonds in just **two months of 2019** and the ruling party has received **94.6% of all the electoral bonds sold in 2017-18.**

Election Commission's arguments against the Electoral Bonds Scheme

- **Does not allow ECI to check violation of provisions in the Representation of the People Act-** as any donation received by a political party through an electoral bond has been taken out of the ambit of reporting under the Contribution Report. E.g. the Representation of the People Act, 1951 prohibits the political parties from taking donations from government companies.
- **Allows unchecked foreign funding-** An amendment to the Foreign Contribution Regulation Act (FCRA) allow political parties to receive funding from foreign companies with a majority stake in Indian companies. It can lead to Indian policies being influenced by foreign companies.

Government's arguments for the Electoral Bonds

- **Limits the use of cash in political funding-** as earlier, massive amounts of political donations were being made in cash, by individuals/corporates, using illicit means of funding and identity of the donors was not known. Hence, the 'system' was wholly opaque and ensured complete anonymity.
- **Curbs black money-** due to the following reasons-

- 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". Hence, no black money can be used for the purchase of these bonds.
- Buyers of these bonds must comply with KYC requirements, and the beneficiary political party has to disclose the receipt of this money and must account for the same.
- Limiting the time for which the bond is valid ensures that the bonds do not become a parallel currency.

- **Protects donor from political victimization-** as non-disclosure of the identity of the donor is the core objective of the scheme. Further, the records of the purchaser are always available in the banking channel and may be retrieved as and when required by enforcement agencies.
- **Has sufficient safeguards-** such as donations through bonds received from a domestic company having a majority stake is permitted, subject to its compliance with KYC norms and FEMA guidelines.
- **Eliminate fraudulent political parties-** which are formed on pretext of tax evasion, as there is a stringent clause of eligibility for the political parties in the scheme.

Some measures which can complement Electoral Bonds

- Switch 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**.**
- Establish a **national electoral fund** where donors contribute and funds are distributed among different parties.

Conclusion

The electoral bonds scheme is a process in the right direction, however, the points raised by the petitioners and the ECI should be addressed so as to ensure that the intent behind their introduction is achieved completely.

5.5. SELF-REGULATION OF SOCIAL MEDIA IN ELECTIONS

Why in news?

Social media platforms and the Internet and Mobile Association of India (IAMAI) have presented a **'Voluntary Code of Ethics for the General Election 2019'** to the Election Commission.

Details

- The 'Code of Ethics" has been developed to ensure free, fair & ethical usage of Social Media Platforms to maintain the integrity of the electoral process for the General Elections 2019.
- The purpose of this voluntary Code is to identify the measures that Participants can put in place to increase confidence in the electoral process.
- It will enter into force on 20 March 2019, until the duration of the 2019 Indian General Elections.

Issues arising from unregulated social media in elections

- **Menace of Fake News-** As per a report of IAMAI, just 2.7% of Indians believe the information they receive on social media platforms like Facebook, Twitter, and WhatsApp.
- **Disparity of information available-** Owing to the limited knowledge about the source of news and fact check mechanisms.
- **Data Mining-** Recently, a company named Cambridge Analytica was involved in an alleged breach of Facebook user data seeking information about its clients and harvesting their profiles.
- **Can fan violence-** especially against religious and ethnic groups. E.g. Muzaffarnagar riots

Commitments made under the Voluntary Code of Ethics

- **Facilitate access to information regarding electoral matters-** by voluntarily undertaking information, education and communication campaigns to build awareness on electoral laws. They will also train nodal officers at the Election Commission of India on their products/ services.
- **Reporting Mechanism-** by appointing dedicated persons/ teams during the period of General Elections to interface with regarding any violation of rules.

- **Act on the complaints within specified time-** A notification mechanism has been developed by which the ECI can notify any violation of the Section 126 of the Representation of the People Act, 1951. The valid legal orders will be acknowledged within 3 hours by the platforms (in accordance with the Sinha Committee recommendations).
- **Regulation of Political Advertisements-** by necessitating the political participants to first submit pre-certificates issues by the ECI and/ or Media Certification & Monitoring Committee of the ECI. Further, the platforms commit to facilitate transparency in paid political advertisements.
- **Update on the action taken-** to provide an update on the measures taken by them to prevent abuse of their respective platforms.

Recommendations of Umesh Sinha Committee Report on Revisiting the Section 126 of the RPA

- **Section 126** of the Representation of People's Act prohibits advertising and campaigning on TV and other electronic media during the silent period, which is 48 hours before the end of polling.
- **Extend this provision-** to print and social media, Internet and online version of print media.
- **Provision to flag content violating electoral law-** where the social media sites can take it down as soon as possible.

Significance of Social Media in Indian Elections

- **Help the ECI in Voter Participation-** through online voter registration and transparency campaigns
- **Increase voter outreach of political parties-** Political parties use social media to promote their candidates, create a buzz about their social work, reveal their agendas, promote their rallies etc.
- **Create level playing field-** Owing to its low cost and extensive reach it helps new political parties to match the organizational might of established political parties. E.g. rise of the new Aam Aadmi Party in Delhi.
- **Can help raise awareness about issues neglected by parties-** such as environment conservation, electoral reforms etc.

Conclusion

- As per various surveys and reports, after 2014 elections, 2-5% of budget is set for every elections' political campaign on social media. Thus, role of social media and its regulation is crucial.
- Here, the role of every stakeholder in a democracy should be to spread information as well as curb misinformation. The users should also have responsibility towards proper usage of social media platforms.
- Also, it is important that the reach, awareness and education of social media reaches to the bottom and marginalized section also, as to improve the efficacy of social media in influencing the elections in an appropriate manner.

5.6. CHANGING NATURE OF ELECTIONS IN INDIA

Why in news?

Recent elections to the Indian parliament raised the debate of Indian elections becoming more personality centric.

What shift is happening?

- **Electoral campaigning** is becoming more personality based where political parties are focussing on individual leadership rather than local issues and local representatives.
- **Narrative capture** where election outcome is decided by "artificial issues" rather than state specific or local issues and diversion of attention from genuine public concerns.
- **Change in voters' attitude** as issue of national leadership is central in determining voter decisions. Voters know which individuals it wants but not necessarily which parties or policies.
- **Weak political culture**, weak opposition also limit the scope for genuine public debate.

Why this shift is a matter of concern?

- **Undermining parliamentary system** where voters elect local representatives, on the basis of local concerns, to make laws.
- **No genuine separation of powers-** The legislature cannot truly hold the executive accountable since electors have won in the name of their leader. It leads to undermining of legislature. Frequent disruptions in the Parliament further aggrevate this problem.

- **Turncoat candidates (persons changing parties)** who found it difficult earlier to get elected are now overpowering personality of leader makes it easier for them to get elected. This leads to corruption, criminalisation, fall in ethical values in politics.
- **Populism and personality-based politics** weaken the spirit of democracy and reduce space for critical debate.

Way forward

- The ills of Indian political system can be solved by **reforming the processes** like electoral processes, transparent electoral funding etc.
- Systemic reforms like **intra party democracy** which reduces scope for top down decision making within parties and created democratic environment.
- **Role of media**, as a pillar of democracy to educate voters on genuine public issues rather than biased reporting. Better monitoring of usage of platforms like **social media**, which often spread false information creating attraction for a strong leader.

5.7. ISSUES IN DELIMITATION

Why in news?

In the wake of General Elections 2019, a debate has again surfaced on unequal representation in Indian democracy. As per studies, India has the **lowest number of MPs relative to its population** across democracies.

Delimitation Commission

- Delimitation is the **redrawing of the boundaries of parliamentary or assembly constituencies** to make sure that there are, as near as practicable, the same number of people in each constituency.
- Equally populous constituencies allow voters to have an equally weighted vote in the Legislature.
- It is a high power body whose orders has the force of law and **cannot be called in question before any court**. These orders come into force on a date to be specified by the **President** of India in this behalf.
- The orders are laid before the Lok Sabha and the respective State Legislative Assemblies. However, modifications **are not permitted.**
- Delimitation commissions have been set up **four times** in the past — **1952, 1963, 1973 and 2002** — under Delimitation Commission Acts of 1952, 1962, 1972 and 2002
- The Delimitation Commission in 2002, undertook **readjustment and rationalization** of territorial constituencies in states based on Census 2001, **without altering the number of seats** allotted to each state.

Background

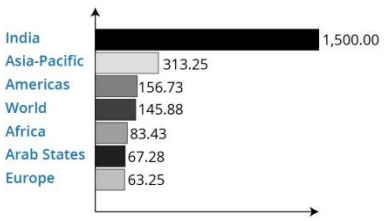
- **Article 81** of the Constitution of India prescribes that every state and Union territory (UT) would be allotted seats in the Lok Sabha in such a manner that the **ratio of population to seats should be as equal as possible** across states.
- **Article 82,** stipulates that a delimitation of parliamentary constituencies be carried out **after every census.** This task is carried out by the **Delimitation Commission** established by the Government of India under the provisions of **Delimitation Commission Act**. It was done after every census until 1976.
- However, government froze delimitation in **1976** until after 2001 Census by the **42nd constitutional amendment** (1976). This freeze was extended to **2026** by the **84th constitutional amendment** (2002)**.**
- The aim of this move was to promote **family planning and population stabilization** in the country. Thus an incentive was given to states towards working for family planning programs, without worrying about changing their **political representation** in the Lok Sabha.
- As a result the Delimitation Commission could not increase the total seats in the Lok Sabha or Assemblies. It may be done only after 2026.
- 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.

INDIA HAS HIGHEST POPULATION PER MP

Inhabitants per MP (thousands)



- **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. This means the voter in Tamil Nadu and Kerala has more say than the one in Rajasthan
- **Skewed Representation across constituencies-** In 2014, the five smallest constituencies together had just under 8 lakh voters while the five largest had 1.2 crore voters, 15 times more than the smallest five.
- **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
- **Representation Crisis-** If candidates cannot reach out to enough voters, then elections may become less about hearing the voices of the voters and addressing the issues they care most about. It has also resulted in lower voter turnouts of people during elections.

IF POPULATION DECIDED LS SEATS THIS IS HOW STATES WOULD BE REPRESENTED...

State	Current Seats	2019 Estimate	2071 Estimate	Gain/ Loss 2071
Uttar Pradesh	80	93	109	29
Bihar	40	44	58	18
Rajasthan	25	31	38	13
Madhya Pradesh	29	33	35	6
Haryana	10	12	12	2
Odisha	21	18	15	-6
West Bengal	42	40	34	-8
Kerala	20	15	12	-8
Andhra+ Telangana	42	37	31	-11
Tamil Nadu	39	29	23	-16

Gain Loss

- **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.**

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.

5.8. VOTE-BANK POLITICS

Why in news?

Recently, various political parties have been criticized for using vote bank politics during their election campaigns.

Background

- The term 'vote-bank politics' was first used in a research paper in **1955** by noted sociologist **MN Srinivas**. He used it in the context of **political influence exerted by a patron over a client.**
- But in contemporary times, the domains of this term have broadened. Now, it denotes voting on the basis of caste, class, sect, language, religion, region etc. So, it refers to a **group of voters** in the society that usually votes **'en masse'** in favour of a party/ candidate in democratic elections.
- It denotes the **voting behavior** of the people on the basis of their **identity** and how political parties try to influence voters on such basis.

Negative Side of Vote Bank Politics

- **Reduces the identity of a citizen-** No self-respecting citizen wants to be seen only as a voter with a community stereotype.
- **Used as a market tool-** where, a political party or leader sees the masses merely as voters, who are a tool to elect, re-elect or defeat the contestants during elections once in five years.
- **Ignores voting based on performance-** such as on promises, infrastructure, poverty alleviation, access to basic facilities among others for people of the constituency.
- **Allures parties towards win-ability of candidates-** as locally powerful individuals are approached by the political parties to mobilise voters of their caste/community. It has also led to criminalization of politics.
- **Voter Appeasement-** through the use of freebies, pampering of segments using unjust means and creating a spiral of counter-appeasements by other political parties.
- **Could lead to bad economics-** due to promises like loan waivers, freebies, income support schemes which have a huge burden on the financial discipline of the state exchequer.
- **Halts the long-term vision for the nation-** as the parties make tall promises to win the immediate elections. This does not allow the election discussion to focus on long term goals for the nation such as defence procurement, national security strategy, electoral reforms, environmental conservation.
- **Creates fractures in the society-** based on class, caste, creed, race, religion, region, language etc which leads to factionalism in the society.

Positive Side of Vote Bank Politics

- **Increases both the individual and collective bargaining power-** when a particular group aligned on the basis of caste, sect, religion, or language is recognised by one or more political party, the chances of their demands and aspirations getting fulfilled are much higher than that of a group or community that is not recognised as a vote bank. E.g. Persons with disabilities, Women.
- **Helps address diverse needs-** especially in a country like India, where uniform policies may ignore critical issues. E.g. Gender Budgeting has ensured that women are given a particular portion of resources, which they might not reap due to social subjugation and economic dependency.
- **Leads to effective representation in legislature-** as people from all segments of society like minorities, transgender, farmers, traders make it to the law making process, which reflects in the holistic nature of the acts made in a country.
- **Helps safeguard constitutional provisions-** such as abolition of untouchability, elimination of manual scavenging. If ruling party and legislature is dominated by upper caste/ class/ elites, which disregard lower strata of society, then the constitutional safeguards may be ignored by the administration. This pressure ensures that there is no dilution in peoples' rights.
- **Help better distribution of resources-** through welfare economics such as subsidies, interest subvention which help poorer segments of society to raise above the poverty line.
- **Makes parties more and more inclusive-** as parties try to field candidates so as to include all available vote banks in a state. The parties try to portray an inclusive image.

Way Forward

- Vote-bank politics becomes ugly only when it is misused to manipulate the demands of one group or groups in order to polarise society, thereby creating unrest. Given its potential for cynical misuse, vote-bank politics should be seen as an instrument to be deployed by citizens, and not by the political class.
- Vote-bank must develop on issues and people should decide what should be the discourse of an election.
- New issues such as environment conservation, electoral reforms, movement against criminalization of politics etc. could be asked by citizens. It can lead to a healthy democracy practice.

5.9. FEMINISATION OF INDIAN POLITICS

Why in news?

Recently, a study by United Nations revealed **strong positive socio- economic and political impacts of feminisation of politics in India.**

Need for women in politics

- **Constitutional and International Mandate:** The Constitution of India promises in **the Preamble** to secure to all its citizens '**JUSTICE**, social, economic and political', as well as '**EQUALITY** of status and of opportunity'.

- Women's active participation in electoral competitions is a **valid indicator of the efficacious growth of democracy** in any country.
- Also, **India has ratified** the International Convention on the Elimination of All Forms of Discrimination against Women **(CEDAW)** adopted in 1979 by the UN General Assembly which **specifies the right for the political participation of women.**

Feminisation of Indian Politics

Feminization of Politics is a wider term that includes various forms and aspects of women's participation (including their representation in political bodies) in the country's politics. Various levels of feminization of politics include women as-

- MPs/MLAs- According to a report 'Women in Politics 2017 Map' published by Inter-Parliamentary Union and UN Women**,** India ranks 148 globally in terms of women's representation in executive government and parliament.
- Political Party candidates/Party Office bearers
- Campaigners/members of political parties- The participatory upsurge among women in Lok Sabha elections is complemented by **increased participation of women in election campaigns.**
- Voters- Women's participation in the electoral process as **voters** has steadily increased from 46.6% in 1962 to around 65.6% in 2014.

- **Controlling Corrupt Practices in Politics:**
  - **Criminal Background:** Male legislators are about three times as likely as female legislators to have criminal charges pending against them when they stand for election. This factor can explain about one fourth of the difference in growth between male and female-led constituencies.
  - **Corruption tendency:** In terms of corruption, the rate at which women accumulate assets while in office is 10 percentage points lower per year than among men.

Factors restricting Women's Participation in Politics

- **Socio- Structural:** It reduces the **pool of available women**. Domestic responsibilities, Prevailing cultural attitudes regarding the roles of women in society and Lack of support from family restricts the number of women available to participate in the political process. Moreover, the limited access to education and Lack of Finance diminishes the confidence of the women to be a part of the political arena.
- **Political:** It focuses on the **openness of political system to women.** Political parties and electoral systems, which enhance or limit the ability of men or other groups to promote their own interests, can be crucial factors in allowing women access in equal numbers. E.g. the proportional representation system has been found to increase women's representation.

- **Economic Aspect:** Raising the share of women is not only likely to lead to better representation of women's and **children's concerns in policymaking,** it is also likely to lead to **higher economic growth**.
  - **Infrastructure Development** based on the MLAs' performance in implementation of the Pradhan Mantri Gram Sadak Yojana, the study concludes that women show higher level of efficacy in terms of ensuring completion of developmental projects in their constituency.
  - 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.

Strategies for Enhancing Participation of Women in Politics:

- **Women's Reservation in Politics:** There have been proposals for introducing reservation of seats (33%) in legislative bodies for women. Such steps have already been taken at local level governance (PRIs).
- **Improve capacity building, gender training and awareness raising** is also crucial. For example, a new scheme called 'Nai Roshni' to empower and grow confidence among minority women, including their neighbours from other communities living in the same village/locality.
- **Further it is important to improve their access to education** and work on gender sensitization of both girls and boys at the educational level.

Conclusion

Women's lack of access to education and to economic and political engagements is often deeply rooted in and hampered by cultural, religious or traditional norms and values. That is to say that mere increasing their participation or representation in the political processes might not be a panacea to all the women related issues as the major chunk of the problems emanate from a bound mindset. Hence, women's empowerment not only requires socio-political reforms and technical capacity development, but also often requires men and women to change their mindset.

6. JUDICIARY

6.1. JUDICIAL ACCOUNTABILITY

Why in news?

Recently, there was an allegation of sexual harassment against the Chief Justice of India (CJI) made by a former Supreme Court employee, which has yet again triggered a debate between **judicial independence and judicial accountability**.

Background

- Indian Democracy runs on the principle of **'rule of law',** which implies that **'no one is above the law'.** The Constitution of India gives the role of its **guardian and protector** to the Judiciary of India.
- The Judiciary is the watchdog, which preserves and enforces the fundamental and legal rights against any arbitrary violations.

In-House Mechanism to check Judicial Accountability

- In 1997, the Supreme Court adopted a charter called the **'Restatement of Values of Judicial Life'**.
- Also, other resolutions have been adopted, which require
  - Declaration of assets by every High Court and Supreme Court Judge/Chief Justice
  - Formulation of an in-house procedure to inquire into any allegation of misbehavior or misconduct against them, which is considered fit for inquiry by the Chief Justice of India and some of his senior colleagues.
- In 2002, **Bangalore Principles of Judicial Conduct** were adopted.

- However, there have been many areas and instances, where the **actions of judiciary itself have been questioned** on being contrary to this and hence the issue of accountability of the judiciary has sprung up.
- All public institutions and functionaries, whatever their role may be or wherever they stand in the hierarchy **have to be accountable** for their actions to the people of India.
- The Constitution follows the **principle of separation of power** where checks and balances exit on every organ's conduct. The two organs of the state of India- The Legislature and the Executive are accountable to the Judiciary and to the people at large. But, the question, which has come up, is, **"to whom is the judiciary accountable?"** and **"who is judging the judges?"**

Judicial Standards and Accountability Bill, 2010

- It establishes the National Judicial Oversight Committee, the Complaints Scrutiny Panel and an investigation committee. Any person can make a complaint against a judge to the Oversight Committee on grounds of 'misbehaviour'.
- A motion for removal of a judge on grounds of misbehaviour can also be moved in Parliament. Such a motion will be referred for further inquiry to the Oversight Committee.
- The Oversight Committee may issue advisories or warnings to judges, and also recommend their removal to the President.

Areas where Judicial Accountability has been found lacking

- **Judicial Appointments** - The collegium system in India presents a unique system wherein the democratically elected executive and Parliament at large has no say in appointing judges.
- **Removal of Judges-** Impeachment under Article 124 (4) and Article 217 (1) of the Constitution is a long-drawn-out and difficult process along with its political overtone.
- **Conduct of Judges-** where judges have been alleged to have indulged in corruption (Justice Ramaswami Case, Justice Soumitra Sen), misappropriation, sexual harassment, taking post retirement jobs among others.
- **Opacity in the operations of Judiciary-** The judiciary claims that any outside body having disciplinary powers over them who compromise their independence so they have set up an **"in-house mechanism"** investigating corruption.
  - Last year four senior most Supreme Court judges held press conference against the role of Chief Justice of India in allocation of cases.
- **Information asymmetry with Judiciary-** Judiciary has virtually kept itself outside the purview of the **Right of Information Act**. The Supreme Court Rules undermined the RTI in four key ways as they 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"

- **Contempt of Court-** Using the powers under the Contempt of Court Act, judiciary has been alleged to silence the rightful critics also.
- **Judicial Overreach-** Judiciary has been praised on its activism towards resolving citizen's grievances, however, in this process some of the decisions have encroached the line of overreach also.

Implications

- **Erosion of public trust in judges and judicial system-** when there are issues of integrity and accountability of Judiciary.
- **Impacts the Independence of Judiciary-** when there is lack of accountability to match it.
- **Against the principles of Natural Justice-** e.g. when the Chief Justice decides the "Master of the Rolls" and himself/herself is a party in any case.

Important Features of Draft Memorandum of Procedure (MoP), 2016

- **Include "merit and integrity"** as "prime criteria" for appointment of judges to the higher judiciary.
- **Performance Appraisal for promotion as chief justice of a high court:** by evaluation of judgments delivered by a high court judge during the last five years and initiatives undertaken for improvement of judicial administration.
- **Setting up a permanent secretariat** in Supreme Court for maintaining records of high court judges, scheduling meetings of the Collegium, receiving recommendations as well as complaints in matters related to appointments.

Steps taken so far

- Contempt of Court (Amendment) Bill, 2003 was introduced.
- Judicial Standards and Accountability Bill, 2010 was introduced.
- Unanimous passing of the **National Judicial Appointments Commission Act** by the Parliament and state legislatures, which was struck down by the Judiciary.
- Draft **Memorandum of Procedure, 2016** is been discussed.
- Supreme Court (SC) approves **live-streaming of court proceedings** agreeing it would serve as an instrument for **greater accountability** and formed **part of the Code of Criminal Procedure, 1973**

Measures which can be taken

- **Bringing a new Judicial standards and accountability bill** to establish a set of legally enforceable standards to uphold the dignity of superior judiciary and establish a new architecture to process the public complaints leveled against the judges.
- A more **formal and comprehensive Code of Conduct for Judges** should be put in place, which is **enforceable by law.**
- **The Contempt of Court Act** could be amended with following provisions-
  - Cases of contempt should not be tried by courts but by an independent commission of concerned district.
  - The Act should be amended to remove words, 'scandalizing the court or lowering the authority of the court' from the definition of criminal contempt.
  - However, there must be stringent punishment against its misuse on false and malicious allegations made against honest judges.
- **A two-level judicial discipline model** with first level as a disciplinary system that can reprimand, fine or suspend judges for misdemeanors along with providing them some limited measures of immunity; and, second level as a system of removal of judges for serious misconduct, including corruption must be established.
- **Increasing the transparency in public hearing in the courtrooms-** Last year, the Supreme Court approved the live-streaming of court proceedings of cases of constitutional importance. This provision could be extended to the other cases and High Courts also.
- **Independent judicial Lokpal** may be set up with power to take up complaints and initiate action against judges should be set up to ensure accountability of the judiciary. It should be independent from both the judiciary and the government.

Live-Streaming of Supreme Court Proceedings

Arguments in Favour

- The SC held that the **right to justice** under **Article 21** of the Constitution would be meaningful only if the public gets access to the proceedings and to witness proceedings live.
- **Concept of open courts**: Indian legal system is built on the **concept of open courts**, which means that the **proceedings are open to all members** of the public.

- **To promote transparency:** Live-streaming has been allowed for both Lok Sabha and Rajya Sabha proceedings since 2004.
- **Lack of physical Infrastructure**: On any given day, only a handful of people can be physically present and are allowed in the courtroom.
- **Digitization**: While the courts are opting for digitisation, with online records of all cases, filing FIRs online etc. there is a need to make live streaming of the proceedings also.
- **Public Interest Issues**: Matters which have a bearing on important public interest issues such as entry of women to the Sabarimala temple, or the scope of the right to the choice of one's food should be available for all to watch which helps to **build the right perception.**
- **The right to information, access to justice** and need to **educate common people** on **how the judiciary functions** are all strong reasons in favour of allowing live-streaming.

Arguments against

- The unwanted public gaze caused by live-streaming will tend to **make judges subject to popular public opinion** and **accountable to the general public.**
- The **role of the judiciary cannot be equated with** the roles of the **legislature** and the **executive**. The broadcasting of parliamentary proceedings may be good for ensuring accountability, this is not the case with the courts.
- The **individuality of judges** is more likely to become a **subject of public debate** through live-streaming, creating problems of its own. The **focus** should be on the **judgment delivered.**
- There is a greater likelihood of **lawyers aspiring to publicise** themselves tend to address not only the judges but also the public watching them which will **hamper their objectivity.**
- Instead of live-streaming**, audio and video recordings of court proceedings** would reform the administration of justice. These can be used at the time of review or appeal of a case.

Way forward

- Only a **specified category of cases** or **cases of constitutional and national importance** being argued for final hearing before the Constitution Bench be live streamed as a pilot project.
- The **discretion** of the Court to **grant or refuse to grant such permission** should be, inter alia, guided by the following considerations:
  - **Unanimous consent** of the parties involved and the **sensitivity of the subject matter**.
  - Any other reason considered necessary or appropriate in the larger interest of administration of justice, including as to whether such broadcast will affect the dignity of the court itself or interfere with/prejudice the rights of the parties to a fair trial.
- Provide for **transcribing facilities and archive the audio-visual record of the proceedings** to litigants and other interested persons who are unable to witness the hearings on account of constraints of time, resources, or the ability to travel long distances.

6.1.1. JUDGES AND POST RETIREMENT POSITIONS

Why in news?

Recently, refusal of a post retirement job by a Supreme Court judge caused controversy.

Related information

- A report by Vidhi Centre for Legal Policy pointed out that as many as 70 out of 100 Supreme Court retired judges have taken up assignments in the many tribunals and commissions.
  - Since 1950, there have been 44 Chief Justices of India who have accepted post-retirement jobs.
  - More than 30 judges were appointed within one year of their retirement. About seven were appointed even before they retired.

Why the judges should accept post retirement jobs?

- **Legal knowledge:** The valuable experience and insights that judges acquire during their period of service cannot be wasted after retirement.
- **No bar:** Constitution doesn't bar them from accepting post retirement posts.
- **Statues lay down conditions:** These posts are generally constitutional or of quasi-judicial bodies, whose laws more often than not mandate that only retired judges can occupy them.

Why judges should not accept?

- **Separation of powers and judicial independence**: Justice should not only be done, but seen to be done. Here, accepting and offering post retirement jobs bridges the constitutional distance which executive and judiciary needs to have, creating the perception of bias. This hampers judicial independence when positions are taken within a short time of retirement or accepted before retirement.
- **Conflict of interest**- Positions at tribunals and constitutional bodies create a conflict as Government itself is a litigant and appointment authority at the same time. The first Law Commission, headed by M C

Setalvad, had recommended that judges of the higher judiciary should not accept any government job after retirement.

- **Politicisation of judiciary:** The acceptance of post-retirement jobs leaves newly retired judges open to political criticism from the opposition, who use it to cast aspersions on the Court, the Judicial system, and the judgments and orders passed by these judges while in office.

What can be done to strike a balance?

- **Cooling off period:** Many have suggested that there should be a minimum cooling-off period of 2 years post retirement.
- **Increase age of retirement:** Unlike in many other countries, a judge of the higher judiciary in India retires at a comparatively young age and is capable of many more years of productive work.

Practices Worldwide

USA: No Supreme Court judge retires lifelong. Done to prevent conflict of interest

UK: Supreme Court judges retire at the age of 70. No law stopping judges from taking post-retirement jobs but no judge has taken such a post.

- **Enact a law:** to set up a commission made up of a majority, if not exclusively, of retired judges to make appointments of competent retired judges to tribunals and judicial bodies. In the meantime, judges themselves can fill the legislative void by giving suitable directions.
- **Amend existing laws:** which mandate the appointment of retired judges in tribunals and other quasi-judicial bodies e.g. NHRC, NGT etc.
- **Envisioning a transparent process:** Former Chief Justice R M Lodha, had suggested that before a judge retires, the government should provide option of either being a pensioner or continue to draw existing salary. If they opt for pension, government jobs are out but if they opted for full salary, that name should be put in a panel. When a vacancy arises, these persons can be considered and the process becomes devoid of allegations of appeasement, favouritism etc.
- **Amending the constitution:** by incorporating a provision similar to Articles 148 (barring CAG from post retirement job) or 319 (similar provision for UPSC members).

6.2. ISSUES IN JUDICIARY

6.2.1. JUDICIAL PENDENCY

Why in news?

Recently the Delhi High Court has released the report on its pilot project titled **"Zero Pendency Courts"** which has highlighted that pendency of cases in the courts is the biggest challenge that Indian Judiciary is facing today.

Status of Judicial Backlog

- As per the National Judicial Data Grid (NJDG), in 2018, **2.93 crore cases are pending in the subordinate courts, 49 lakhs cases in** High Courts and **57,987 cases** in Supreme Court respectively.
- In the Supreme Court, more than 30% of pending cases are more than five years old while in the Allahabad High Court, 15% of the appeals have been pending since 1980s.
- A **Law Commission report in 2009** had quoted that it would require 464 years to clear the arrears with the present strength of judges.

Legal Information Management & Briefing System (LIMBS)

- It is a **web-based portal** developed by Ministry of Law & Justice for monitoring and handling of various court cases of Govt. Departments and Ministries.
- It will help authorities to take **'data driven decision making'** and to evaluate performance of various stake holders and to **conduct legal audit**.

Reasons for Judicial Pendency

- **Shortage of judges -** around 5,580 or 25% of posts are lying empty in the sub-ordinate courts. It leads to **poor Judges to Population Ratio**, as India has only 20 judges per million population. Earlier, Law Commission had recommended 50 judges per million.
- **Frequent adjournments-** The laid down procedure of allowing a maximum of **three adjournments per case** is not followed in over 50 per cent of the matters being heard by courts, leading to rising pendency of cases.

- **Low budgetary allocation leading to poor infrastructure**- India spends only **about 0.09% of its GDP** to maintain the judicial infrastructure. Infrastructure status of lower courts of the country is miserably grim due to which they fail to deliver quality judgements. A 2016 report published by the Supreme Court showed that existing infrastructure could accommodate only 15,540 judicial officers against the all-India sanctioned strength of 20,558.
- **Burden of government cases**- Statistics provided by **LIMBS** shows that the Centre and the States were responsible for over 46% of the pending cases in Indian courts.
- **Special leave petition cases in the Supreme Court,** currently comprises to 40% of the court's pendency. Which eventually leads to **reduced time for the cases related to constitutional issues.**
- **Judges Vacation**- SC works on average for 188 days a year, while apex court rules specify minimum of 225 days of work.
- **Lack of court management systems**- Courts have created dedicated posts for court managers to help improve court operations, optimise case movement and judicial time. **However only few courts have filled up such posts so far.**
- **Inefficient investigation-** Police are quite often handicapped in undertaking effective investigation for want of modern and scientific tools to collect evidences.
- **Increasing Literacy-** With people becoming more aware of their rights and the obligations of the State towards them, they approach the courts more frequently in case of any violation.

Zero Pendency Courts Project

- Delhi High Court started the pilot project from January 2017 in certain subordinate courts in Delhi.
- The objectives of the project were to study the actual, real-time 'Flow of Cases' from the date of institution till final disposal.

Highlights

- It says that the Capital needs 43 more judges above the current strength of 143 to clear all the pending cases in one year.
- It says that absence of witnesses during the evidence stage causes a serious impediment to the progress of the case.
- Also, unnecessary adjournments sought by the advocates or the parties at various stages in a case delay the proceedings, thus prolonging the case life.

Impacts of Judicial Pendency

- **Denial of 'timely justice' amounts to denial of 'justice' itself-** Timely disposal of cases is essential to maintain rule of law and provide access to justice. Speedy trial is a part of right to life and liberty guaranteed under Article 21 of the Constitution.
- **Erodes social infrastructure-** a weak judiciary has a negative effect on social development, which leads to: lower per capita income; higher poverty rates; poorer public infrastructure; and, higher crime rates.
- **Overcrowding of the prisons,** already infrastructure deficient, in some cases beyond 150% of the capacity, results in "violation of human rights".
- **Affects the economy of the country** as it was estimated that **judicial delays cost India around 1.5% of its** Gross Domestic Product annually.
    - **As per the Economic Survey 2017-18** pendency hampers **dispute resolution**, contract enforcement, discourage investments, stall projects, hamper tax collection and escalate legal costs which leads to **increasing cost of doing business**.

Steps to reduce pendency

- **Improving infrastructure for quality justice**- The **Parliamentary Standing Committee** which presented its report on Infrastructure Development and Strengthening of Subordinate Courts, suggested:
    - States should provide suitable land for construction of court buildings etc. It should undertake vertical construction in light of shortage of land.
    - Timeline set out for computerisation of all the courts, as a necessary step towards setting up of **e-courts.**
- **Addressing the Issue of Vacancies-** Ensure the appointments of the judges be done in an efficient way by arriving at an optimal judge strength to handle the cases pending in the system. **The 120th Law Commission of India report** for the first time, suggested a **judge strength fixation** formula.
    - Supreme Court and High Courts should appoint efficient and experienced judges as Ad-hoc judges in accordance with the Constitution.
    - **All India Judicial Service,** which would benefit the subordinate judiciary by increasing quality of judges and help reduce the pendency.

- **Increase in number of working days:** Average annual working days for subordinate courts is 244, 190 for Supreme Court, 232 for High Court. Increase in number of working days could improve productivity significantly.
- **Having a definite time frame to dispose the cases** by setting annual targets and action plans for the subordinate judiciary and the High Courts. The judicial officers could be issued a **strict code of conduct,** to ensure that the duties are adequately performed by the officials**.**
- **Strict regulation of adjournments** and imposition of exemplary costs for seeking it on flimsy grounds especially at the trial stage and not permitting dilution of time frames specified in Civil Procedure Code.
- **Better Court Management System & Reliable Data Collection:** For this categorization of cases on the basis of urgency and priority along with bunching of cases should be done.
    - The Economic Survey 2018-19 has suggested formation of **Indian Courts and Tribunal Services to** provide administrative support functions needed by the judiciary and identify process inefficiencies and advise the judiciary on legal reforms.
- **Use of Information technology (IT) solutions**- The use of technology for tracking and monitoring cases and in providing relevant information to make justice litigant friendly.
    - **Electronic filing of cases:** e-Courts are a welcome step in this direction, as they give case status and case history of all the pending cases across High courts and Subordinate courts bringing ease of access to information.
    - **Revamping of National Judicial Data Grid** by introducing a new type of search known as **elastic search,** which is closer to the artificial intelligence.
- **Alternate dispute resolution (ADR)-**
    - As stated in the Conference on **National Initiative to Reduce Pendency and Delay in Judicial System-** Legal Services Authorities should undertake **pre-litigation mediation** so that the inflow of cases into courts can be regulated.
    - The **Lok Adalat** should be organized regularly for settling civil and family matters.
    - **Gram Nyayalayas,** as an effective way to manage small claim disputes from rural areas which will help in decreasing the workload of the judicial institution.
    - **Village Legal Care & Support Centre** can also be established by the High Courts to work at grass root level to make the State litigation friendly.

Conclusion

The fundamental requirement of a good judicial administration is **accessibility, affordability and speedy justice**, which will not be realized until and unless the justice delivery system is made within the reach of the individual in a time bound manner and within a reasonable cost**. Therefore, continuous formative assessment is the key to strengthen and reinforce the justice delivery system in India.**

6.2.2. VACANCIES IN SUB-ORDINATE COURTS

Why in News?

Supreme Court expresses concern over the high level of vacancy in subordinate courts.

Background

- Subordinate courts perform the most critical judicial functions that affect the life of the common man: **conducting trials, settling civil disputes**, and implementing the bare bones of the law.
- But there are various issues faced by the lower judiciary. Many of these emerge from the problem of high level of vacancy for the posts of judges. For example, there are **5,133 judges posts vacant** in the subordinate judiciary against a sanctioned strength of 22,677 across the country.

Recruitment Process

District Courts

- The appointment, posting and promotion of district judges in a state are made by the governor of the state in consultation with the high court. A person to be appointed as district judge should have the following qualifications:
    - He should not already be in the service of the Central or the state government.
    - He should have been an advocate or a pleader for seven years.
    - He should be recommended by the high court for appointment.
- Appointment of other Judges (other than district judges) to the judicial service of a state are made by the governor of the state after consultation with the State Public Service Commission and the high court.

Other Issues faced by Subordinate Courts

- **Issues in recruitment**: There is tardiness in the process of calling for applications, holding recruitment examinations and declaring the results.
  - Apart from that, according to a recent study, the **recruitment cycle** in most States far exceeded the time limit prescribed by the Supreme Court.
  - As per economic survey, as of December, 2018, subordinate courts are **working at 79% their sanctioned strength.**
- **Pendency of cases:** Economic survey highlights that of the 3.5 crore pending cases in Judiciary District and Subordinate courts (D&S courts) account for **87.54 percent of pending cases.** Due to laxity in recruitment process there has been an increasing pendency in lower courts with 22. 57 lakh cases pending for more than 10 years, some as old as two or three decades.
- **Lack of uniformity in frequency of hearings** among the subordinate courts in the country. Higher frequency shows that more cases are being heard in shorter time span. This may affect the overall quality of justice delivered.
- **Delays in evidence collection and examination of witnesses** which impacts the overall process of the court.
- **Lack of Infrastructure:** Any failure to allocate the required human and financial resources may lead to the crippling of judicial work in the subordinate courts. It majorly has two components-
  - Firstly, there is a lack of legal and para-legal staff and a dearth of well-trained investigating staff.
  - Secondly, lack of funds to support various processes like recruitment and support the needs of the recruited staff, is another issue.
- **Efficiency:** Economic survey highlights that the backlog in lower courts can be cleared in five years at full sanctioned strength with an **efficiency gain of 24.5 per cent.**

Way Forward

- A smooth and time-bound process of making appointments would, require **close coordination** between the High Courts and the State Public Service Commissions.
- The situation demands a **massive infusion of both manpower and resources**.
  - Strengthening of court infrastructure requires "immediate attention" in the form of planning, enhanced budgeting and structured implementation.
  - **Proportionate recruitment of legal and paralegal staff** too has to be addressed along with the need for **well-trained staff** responsible for preliminary investigation such as evidence collection and examination of witnesses.
  - Economic survey notes, in order **to clear all the backlog in the next five years, further 8,152** judges are needed, in subordinate courts.
  - It also highlights the need for more **judges specialised in criminal cases** as these form major portion of pending cases and also have **lower case clearance rate.**
- **Life cycle analysis of cases**: Economic survey suggests that the process for both civil and criminal cases can be significantly sped up by targeting the delay in the specific stages where the time taken is maximum like the 'Evidence' stage and 'Framing of Charges stages that consume on average 235 and 231 days, respectively.
- Create an **All-India Judicial Service (AIJS)** along the lines of the All India Services (AIS). It will create a cadre of judges who can be appointed at the district courts level across the country and ensure a transparent and efficient method of recruitment to attract the best talent in India's legal profession.
- Utilizing **Information Communication Technology** to improve the judicial and administrative process in courts and also scaling up E-courts projects to provide efficient & time-bound citizen centric services delivery has a potential to go a long way.

6.3. TRIBUNALS

Why in news?

Recently Chief Justice of India while heading a Constitution Bench suggested having as few tribunals as possible.

More in news

- The Bench is hearing a batch of petitions, which challenges the amendments in the **Finance Act, 2017**.
- The amendments to the Finance Act, 2017:
  - provides that the **central government may make rules** to provide for the qualifications, appointments, term of office, salaries and allowances, resignation, removal, and other conditions of service for the Chairpersons and other members of the Tribunals that will continue to operate.
  - state that the **central government will have the power to amend the list of Tribunals,** through a notification.
  - replaces certain existing Tribunals and transfer their functions to other Tribunals. For example, the Airports Economic Regulatory Authority Appellate Tribunal has been replaced by the Telecom Disputes Settlement and Appellate Tribunal (TDSAT).

Need of Tribunals

- **Flexibility:** Administrative adjudication has brought about flexibility and adaptability in the judicial as they are not restrained by rigid rules of procedure and can remain in tune with the varying phases of social and economic life.
- **Less Expensive:** They are set up to be less formal, less expensive, and a faster way to resolve disputes than by using the traditional court system.
- **Relief to Courts:** The system also gives the much-needed relief to ordinary courts of law, which are already overburdened with numerous suits.
- **Expert knowledge on a specialized subject** through specialism, which reduces the time needed and thus costs.

Tribunals in India

- 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.
- **Technical Expertise:** They play an important role and part 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.

Issues with the amendments

- **Reducing parliamentary scrutiny:** by allowing the government to determine the appointment, reappointment and removal of members through rules**.** Earlier these were done through amendments to the respective acts of the tribunals in which Parliament was involved.
- **Dilution of judicial independence:** as the amendments give more powers to the executive. The Supreme Court in 2014 held that appellate tribunals have similar powers and functions as that of High Courts, and hence matters related to their members' appointment and reappointment must be free from executive involvement.
- **Unclear rationale:** behind replacing certain tribunals. For example, it is questionable whether the National Company Law Appellate Tribunal, which will replace the Competition Appellate Tribunal, will have the expertise to deal with matters relating to anti-competitive practices.

Problems with Tribunals

- **Violation of Doctrine of Separation of Powers:** Tribunal is not a court of law and is controlled and manned partly by the Executive which is against the principle of separation of powers and allows the Executive to perform adjudication functions.
  - Executive is also the largest litigant in the country, which creates a conflict of interest situation.
- **Inadequate constitutional protection:** The tribunals do not enjoy the same constitutional protection as high courts as the **appointment process and service conditions** of high court judges are not under the control of the executive.
- **Undermining the Authority of Judiciary:** Tribunals have largely replaced high courts for disputes under the various Acts. An aggrieved, by an order of an appellate tribunal, can directly appeal to the SC, side-stepping the HC.

  - However, after the judgment in L. Chandrakumar's case in 1997, appeals would have to be filed first in the High Court concerned and then before the Supreme Court.
- **Increasing Pendency:** Average pendency across tribunals is 3.8 years with 25% increase in the size of unresolved cases while pendency in high courts is 4.3 years.
- Due to **scant geographic availability** across the country, tribunals are also not as accessible as high courts. This makes justice expensive and difficult to access.
- **Overlapping Jurisdiction:** Various tribunals are functioning under various ministries and departments creating a sort of confusion with respect to the management of the tribunals. Also there are multiple tribunals performing functions of similar nature.
- **Huge vacancies** in dozens of tribunals have defeated the very purpose for which these specialized quasi-judicial forums were created.

Way forward

Law Commission of India (LCI) in its report has laid out a detailed procedure for improving the working of the tribunal system in the country:

- **Qualification of judges** - In case of transfer of jurisdiction of HC (or District Court) to a Tribunal, the members of the newly constituted Tribunal should possess the qualifications akin to the judges of the HC (or District Court).
- **Appointment of Chairman & members of Tribunals**
  - A common nodal agency, should be set up possibly under law ministry to monitor the working of tribunals as well as ensure uniformity in the appointment, tenure and service conditions of all members appointed in the tribunals.
  - **Vacancy arising in the Tribunal** should be filled up quickly by initiating the procedure well in time, preferably within six months prior to the occurrence of vacancy.
- **Selection of the members of Tribunals**
  - **Selection should be impartial** with minimal involvement of government agencies as the government is a party in litigation.
  - **Separate Selection Committee**, for both judicial and administrative members, must be formed.
- **Tenure:** The Chairman should hold office for 3 years or till he attains the age of 70years, whichever is earlier. Whereas Vice-Chairman and Members should hold the office for 3 years or till they attain the age of 67 years whichever is earlier.
- Any order from a tribunal may be **challenged before the Division Bench of the HC** having territorial jurisdiction over the Tribunal or its Appellate Forum since judicial review is the basic feature of Indian constitution.
- The Tribunals must have **benches in different parts of the country** so that people may have easy Access to Justice, ideally where the High Courts are situated.

6.4. FAST TRACK COURTS

Why in news?

As per the recent study conducted by the **National Law University** (Delhi), fast-track courts (FTC) in India are increasingly getting sluggish.

About Fast Track Courts (FTCs)

- They were established in the year 2000, to expeditiously dispose of **long pending cases in the Sessions Courts and long pending cases of under trial prisoners** in a time bound manner.
- The **11th Finance Commission recommended** the creation of 1734 FTCs in the country. They were to be established by the state governments in consultation with the respective High Courts.
- FTCs have also been set up on the **orders of various High Courts** to accelerate disposal of cases on matters ranging from sexual offences, anti-corruption, riots, and cheque bouncing.
- The judges for these were appointed on an ad hoc basis, selected by the High Courts of the respective states.
- There is **no central funding to FTCs after 2011**. However, the state governments could establish FTCs from their own funds.

- The **14th Finance Commission** endorsed the proposal for setting up 1800 FTCs at a cost of Rs.4144.00 crore. It also urged the State Governments to utilize the enhanced devolution of central taxes from 32% to 42% to fund this effort. As on December 2018, 699 FTCs are functional across the country
- **Some notable fast track cases-** Best Bakery Case, Jessica Lal Murder Case, 26/11 Mumbai case
- **However, questions have been raised over the slow and inefficient working of FTCs.** Since inception, close to around 39 lakh cases were transferred to the FTCs out of which, 6.5 lakh cases are still pending with FTCs.

Issues plaguing the functioning of the Fast Track Courts

- **Insufficient number** of fast track courts for the number of cases that are required to be disposed. For example: In Delhi, fast-track courts have only one or two judges. FTCs at the level of additional district or session judge is being run on **ad hoc or temporary basis** though the Supreme Court in 2012 had directed that either they be discontinued or made permanent.
- **Heavy workload**- Over the years, the **number of cases allotted to them have increased**, which has led to the burdening of these courts which in turn slow down the decision process, and compromised quality of judgements.
- **Lack of infrastructure-** These courts were not set up with different facilities, but were often housed in an existing court, limiting their effectiveness. Some FTCs do not have the equipment needed to conduct **video and audio recordings of victims**.
- **They do not follow any special, speedier procedure for disposal of cases** which leads to usual delay like the regular courts.
- **Financial bottlenecks-** In its judgment in the Brij Mohan Lal case, the Supreme Court held that the **continuation of FTCs is within the domain of the States with their own funds.** This has left FTCs on the mercy of State as some states have continued support for FTCs while others did not.

Way ahead

- **Rationalisation of judicial structures**- Fast-track courts and special courts are administered under different judicial bodies, with little **coordination or uniformity** among them. Therefore, a lead agency to be established by Central and State Governments to review the functioning of courts in a **systematic and streamlined manner**.
- **Capacity building and improving infrastructure as** originally envisaged, therefore hiring of additional judges and new infrastructure, including courtrooms, technological facilities and libraries is the need of the hour. Also, as suggested by the Supreme Court, the ad-hoc judges and support staffs should be granted **permanent appointments**.
- **Sensitising State Governments-** As per the **Conference of Chief Ministers and Chief Justices**, the State Governments, in consultation with the Chief Justices of the respective High Courts should take necessary steps to establish suitable number of FTCs and provide adequate funds for the purpose of creating and continuing them.
- A holistic approach of fast **tracking the investigation to** complement the FTC's and providing a **special procedure** different from the procedure followed in the regular courts is required.

7. TRANSPARENCY AND ACCOUNTABILITY

7.1. ISSUES RELATED TO RTI

7.1.1. POLITICAL PARTIES UNDER RTI

Background

Political parties are out of the purview of the RTI Act despite the Central Information Commission's directive of declaring political parties as public authorities.

What is a Public Authority under RTI act?

- Section 2(h) of the RTI Act states that "public authority" means any authority or body or institution of self- government established or constituted
  - By or under the Constitution;
  - By any other law made by Parliament;
  - By any other law made by state legislature;
  - By notification issued or order made by the appropriate Government, and includes any-
  - Body owned, controlled or substantially financed (The RTI Act does not define substantial financing. Consequently, courts are often required to decide whether a particular form and quantum of financial aid constitutes substantial finance.)
  - Non-Government organization substantially financed, directly or indirectly by funds provided by the appropriate Government.
- The RTI Act empowers citizens with the right to access information under the control of 'public authorities' and imposing penalties on officials of public authorities for failing to disclose 'information' defined in Section 2(f).

Why defining public authorities under RTI remains a contentious issues?

The major issue was regarding whether entities registered under various laws become public authorities merely by reason of their incorporation or registration. However, Delhi High Court clearly stated that the mere establishment of a body under a statute (such as companies under Companies Act or societies/trusts under respective laws) will not automatically render it a public authority under RTI Act.

There have also been controversies over whether the second part merely qualifies the first part of the definition, or they are independent. However, Delhi High Court clarified that the aim of the second part is to bring bodies that may not have been established by or under a notification.

Other major issue pertains specifically to the interpretation of the part of the definition i.e. what constitutes ownership, control, substantial financing, etc. There are opposing views within the judiciary regarding this. For e.g.:

- **Control**: Various High Courts have considered entities to be controlled on the basis of definition of State in Article 12 or supervision and regulation by the government agencies under laws. However, some courts have argued that regulation and supervision cannot be equated with control.
- **Substantial financing**: Although RTI does not define it, courts have also refrained from giving a uniform benchmark. In some cases, form of financing such as subsidies, land, salary of staff etc. were seen as substantial financing while in other cases quantum of financing was considered.

Political Parties as Public Authorities

- Six national parties — the BJP, the Congress, the BSP, the NCP, the CPI and the CPI(M) were **brought under the ambit of the RTI Act** by a full bench of the Central Information Commission in 2013. (Trinamool Congress was also recognised as the seventh national party in 2016).
- However, the political parties have refused to entertain the RTI applications directed at them.
- Several activists have approached the Supreme Court on the grounds of non-compliance of the CIC order and the matter is pending.

Arguments in favour of bringing Political parties under RTI

- **Need to ensure Transparency in Funding**
  - According to **Association for Democratic Reforms,** between FY 2004-05 and 2014-15 only 31.55% of the total income of political parties was through voluntary contributions/donations and for the rest 68.45% they have evaded declaring any details by exploiting section 29C of the Representation of the People Act, 1951 which exempts them from declaring any donations below Rs 20,000.

- **Crony capitalism -** From FY 2004-05 to FY 2014-15, six national parties have declared receiving 88% of their total donations in excess of Rs 20,000 crore from corporate or business houses which may not be without any quid pro quo for the corporates.
- **Black money -**According to ADR, 34% of the donations have been received with no address or any other detail of the donor, and 40% donations have been received with no PAN details.
- **Illicit foreign contributions:** National parties have been accepting foreign contributions despite The Foreign Contribution (Regulation) Act (FCRA), 1976, prohibited political parties from accepting contributions from foreign companies or companies in India controlled by foreign companies.

- **Political parties are vital organs of the State**- According to CIC, critical role played by these political parties point towards their **public character**. They perform functions like government bodies and they have monopoly over selection of candidates, who will ultimately form the government. Therefore, they cannot escape the scrutiny by the common people of their functioning.
- **Political parties are public authorities-**The CIC held that political parties **enjoy various benefits** directly or indirectly like land for offices of political parties on concessional rates, allotment of free time on Doordarshan/All India Radio and supplying electoral roll copies free of cost during elections hence they are 'public authority' under **section 2(h**) and answerable under the RTI Act.
- **Larger Public Interest:** The disclosure of the information is in larger public interest. Even **170th report of Law Commission of India on reform of the electoral laws** recommended to introduce internal democracy, financial transparency and accountability in the working of the political parties.

Arguments against bringing Political parties under RTI

- **Obstruct party functioning**- Political parties cannot disclose their internal functioning and financial information under the Act as it will hamper their smooth functioning.
- **RTI can be a tool of misuse:** RTI can become a weak spot and rivals with malicious intentions may take advantage of RTI.
- **Not 'public authorities'-** Political parties are not established or constituted by or under the Constitution or by any other law made by Parliament. Even the registration of a political party under the 1951 Act was not the same as establishment of a government body.
- **Transparency provisions for parties already exist** in the Income Tax Act, 1961, and Representation of the People Act, 1951, which demand "necessary transparency regarding financial aspects of political parties.
- **Information in public domain-** Government holds the view that required information about a political body is already in the public domain on the website of the Election Commission.
- **Not envisaged in the RTI Act** -According to the Department of Personnel and Training (DoPT) when the RTI Act was enacted, it was never visualised that political parties would be brought within the ambit of the transparency law.

Conclusion

Considering the role played by the political parties in our democracy, it is important that their working be transparent in such a manner that induces trust in the whole election process. Given the fact that existing laws have not performed upto the mark in regulating the working of political parties, bringing them under the RTI with certain safeguards seems to be a logical step.

7.1.2. SECTION 4 OF THE RTI ACT

Why in News?

Recently, Central Information Commission (CIC) has undertaken a transparency audit to ascertain the quality of suo-motu disclosures under **Section 4 of the RTI Act** made by various public authorities.

Related news

- India recently ranked **6th** in the **global RTI ranking**.
- The Right to Information Rating is a programme founded by **Access Info Europe** (AIE) and the **Centre for Law and Democracy** (CLD) and is conducted by **Transparency International**.

Finding of Audit

- It found that, out of the 838 public authorities audited, over 85% did not disclose information related to: Budget and programming, Publicity and public interface and e-governance.
- It observed that most public authorities had taken transparency-related measures, however, vital information is not fully displayed on official websites.

Major Reason behind Non-Compliance to Section 4 of RTI.

- **Lack of Awareness among PIO's:** According to an annual report of **State Information Commission (SIC)**, 80% of Public Information Officers (PIO) and Appellate Authorities (AAs) do not know the basics of the RTI Act.
- **Demand Based Supply**: There is focus on furnishing information on demand rather than effectively ensuring voluntary disclosures by public authorities.
- **Poor quality of information provided**: Information proactively disclosed is not updated regularly leading to obsolescence of information provided, lack of important items of information on websites and relevant facts, which reflect **lack of transparency** in processes and **inadequate training** provided to the concerned PIO.
- **Obsolete record management Guidelines:** The current record management guidelines at Centre and in most states are inadequate to meet the requirements specified under the RTI Act as there is **lack of any electronic document management system** in many of the Departments.
- **Neglect of record keeping**: Leading to a tendency to provide bulk unprocessed information rather than a relevant and intelligible summarization.
- **Lack of Accountability:** Currently there is **no provision to fix responsibility** on any officer at the level of public authority in case of non-compliance.
- **Non-availability of basic Infrastructure**: Lack of basic infrastructure such as photocopier machines at each Public Authority and basic level of automation such as necessary applications and connectivity hampers its implementation.

Section 4 of the RTI Act

- It states that, every government department has to **voluntarily disclose information** through annual reports and websites.
- It mandates that public authorities shall maintain all its records duly catalogued and indexed in a manner and form which facilitate the RTI Act.

Advantages of Suo-moto Disclosure:

- **Limiting Corruption**: Publishing information about the actions of the government keeps public officials under the constant watch of the public, makes governments to be more accountable and less corrupt.
- **Increasing Participation**: It empowers citizen with information which increase their voice in decision making process and policies, which are more likely to benefit them and less likely to be hijacked by special interest groups.
- **Equality in Access**: Proactive disclosure makes the information available to the public rather than particular or few individual(s).
- **Security**: Publishing information also protects the security of individuals within society. Requesting information for some individuals can sometimes be dangerous, particularly if it threatens powerful interest groups.
- **Improving Information Management**: Proactive disclosure is also a more efficient means of disclosing information than processing individual information requests both in terms of the number of people it reaches and the public administration burden.

Way Forward

- **Awareness drive**: Government should make awareness programs targeting the public as well as governmental bodies, for educating them and promoting about Suo-moto disclosure under RTI Act.
- **Training of public authorities**: Public officials should be trained on how to comply with proactive disclosure rules and how to make most effective use of both ICTs and traditional dissemination channels.
- **Establishing Public Records Office (PRO) for website monitoring and auditing**: PRO would have responsibility to oversee proper record keeping in all public offices including preparation and up-dating of manuals, modernization and digitization, monitoring, inspections and other relevant functions. The Public Records Office should function under the overall guidance and supervision of CIC or SIC.
- **Improving Infrastructure:** The ARC report had mentioned that GoI may allocate one per cent (1%) of the funds of the 'Flagship Programs' for a period of five years for improving the infrastructure requirements.
- **Strict Punishment**: Government officials hide truth/facts of information for camouflaging their acts of corruption/carelessness. This act should come under criminal offence.
- **Improving Record Management**: Record keeping procedures need to be developed, reviewed and revised; cataloguing, indexing and orderly storage should be mandatory; all documents need to be converted into rational, intelligible, retrievable information modules.

7.2. OFFICIAL SECRETS ACT

Why in news?

The Government of India threatened to **invoke the Official Secrets Act** and initiate "criminal action" against the two publications that had run reports on the Rafale deal.

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 act was retained after independence. 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.
  - The act has invited criticisms for being used as a shield by the governments for refusing to divulge information and misusing it against whistleblowers.
- **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.

8. GOVERNANCE

8.1. LATERAL ENTRY

Why in news?

The Union Public Service Commission (UPSC) has selected **nine professionals** to work in the capacity of **joint secretaries** in the Government of India.

Background

- Earlier, the **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.
- Now, after the UPSC has recommended the candidates, their appointment has to be cleared by the **Election Commission of India** (EC) and the next government.
- **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.
    - The debate of **generalists vs. specialists** has been an old one in the discussions of governance reforms.
    - Various professionals, commissions and political commentators have prescribed **Lateral Entry.**
    - Earlier in India, experts have been brought by the Government of India, at **specific posts** such as the **Reserve Bank of India, Chief Economic Advisor, NITI Aayog** among others. But till now it has not become an **institutionalised mechanism of recruitment**.

Need of Lateral Entry

- **Bring new dimensions and fresh talent in Policy Making**- It is essential to have people with specialized skills and domain expertise in important positions as policy making is becoming complex in nature.
    - The IAS officers see the government only from within, lateral entry would enable government to understand the impact of its policies on stakeholders — the private sector, the non-government sector and the larger public.
    - First ARC had pointed out the need for specialization as far back as in 1965. The Surinder Nath Committee and the Hota Committee followed suit in 2003 and 2004, respectively, as did the second ARC.
- **Increase in efficiency and governance**-
    - Career progression in the IAS is almost automatic which could put officers in comfort zone. Lateral entrants could also induce competition within the system.
    - NITI Aayog, in its Three-Year Action Agenda for 2017-2020 had said that sector specialists be inducted into the system through lateral entry as that would "bring competition to the established career bureaucracy".
- **Increasing complexity in governance-** requires specialists and domain expertise, due to emergence of new issues like globalisation, digitalisation of governance, financial frauds, cybercrime, organized crime, terrorism, climate-change among others.
- **Fill the vacancy gap of officers**: According to a report by Ministry of Personnel, Public Grievances and Pensions there is a shortage of nearly 1,500 IAS officers in the country. The Baswan Committee (2016) had also supported lateral entry considering the shortage of officers.
- **Will help widen the talent pool for appointment-** Recruitment of IAS officers at very young age makes it difficult to test potential administrative and judgment capabilities. Some who are potentially good administrators fail to make it, and some who do make it, fall short of the requirements.

Challenges faced after Lateral Entry

- **Scope of utility-** i.e. how far the government can leverage the expertise of entrants. Much will depend on how far the political executive is willing to facilitate the functioning of these external experts and whether an enabling environment is created for utilizing their full potential.
- **Difficult to ensure responsibility and accountability**- for the decisions taken by the private people during their service, especially given the **short tenures** of 3 to 5 years.

- **Lack of long-term stakes**: The advantage with the current civil service is that policy makers have long-term interests in government.
- **Lack of field experience**- Officers who will join might score on domain knowledge, but they may fall short on the experience of working in the "field".
- **May face resistance from the Bureaucracy-**
  - **Lack of cooperation-** as existing officials might resist functioning with **outsiders** and inevitable tensions between **generalists and specialists** may surface.
  - **Difficulty in adjusting to the bureaucratic work culture-** including manners of addressing each other, speed of working, knowledge of rules, punctuality among others.
  - **May demotivate them the existing officials-** as they won't have reasonable assurance of reaching top-level managerial positions from now on. By suggesting a contract-based system for positions of joint secretary and above, the signal would be sent out that only mid-career positions would be within reach in about 15-18 years of service and there would be considerable uncertainty about career progression thereafter.
- **Issue of Reservation**- It is unclear whether there would be reservation for recruitment through Lateral Entry or not.

Way Forward

- **Need to learn from earlier experiences**: The past experience of inducting private-sector managers to run public-sector enterprises has not been particularly satisfactory. For e.g. Air India, Indian Airlines etc.
- **Move towards longer tenures of lateral entrants-** to allow them sufficient time to settle, learn and implement their approach, blueprint for work.
- Various reforms apart from institutionalised lateral entry are the need of the moment such as:
  - **Set up public administration universities for aspiring and serving civil servants**: It can create a large pool of aspiring civil servants as well as enable serving bureaucrats to attain deep knowledge of the country's political economy, increased domain expertise and improved managerial skills.
  - **Deputation to Private Sector**- A Parliamentary panel has recommended deputation of IAS and IPS officers in private sector to bring in domain expertise and competition.
  - **Institutionalize goal setting and tracking for each department**- Each Ministry and government agency should set outcome-based goals with a clear timeline.

8.2. WITNESS PROTECTION SCHEME

Why in News?

Recently Supreme Court asked the states to adopt Witness Protection Scheme.

Related Information

Art. 141 - law declared by the Supreme Court shall be binding on all courts within the territory of India.

Art. 142- Under this, SC can grant appropriate relief for doing **complete justice** (where there is some manifest illegality, want of jurisdiction or where some pulpable injustice is shown to have resulted). Curative petition owes its origin to this article.

More on News

- **Supreme Court under Article 141/142 of the Constitution of India has provided legal sanctity** to the scheme until Parliament/state legislature enacts a law on the matter.
- **Although National Investigation Agency (NIA) act** provides for witness protection, the scheme has extended it to the witnesses in all other cases as per the threat perception.
- Judgments/Committees in the matter
  - **Zahira sheikh vs. State of Gujarat SC** observed that witness protection is necessary for free and fair trial.
  - **14th report of Law commission and subsequently in and reports** indicated about the need to protect witnesses.
  - Concerns in the matter were also raised by the **4th Report of the National Police Commission (1980).**

Need of Witness Protection Scheme

Rule of Law: it is imperative to ensure that investigation, prosecution and trial of criminal offences is not prejudiced because of threats or intimidation to witnesses**. It will help in strengthening the Criminal Justice System** in the Country and improve national security scenario.

- **Rights of Witness:** While offenders have range of constitutional and legal rights, witnesses have limited rights and protection in current setup. This imbalance of rights many times compels the witnesses to turn hostile.
- **Threats to Witness: In many high-profile cases/scams** like NRHM scam in UP, Fodder scam in Bihar **key witnesses were killed** adversely affecting the investigation in these cases.
- **International Practice:** Countries like US, UK, Canada, and New Zealand have separate programme/acts for the protection of witnesses. In many countries, local police may implement **informal protectio**n as the need arises in specific cases.

Witness Protection Scheme

- **Procedure:**
  - Secretary, District Legal Services Authority (DLSA) can pass witness protection order for the witness protection under this Scheme for protection of identity/change of identity/relocation of a witness, categorization of threat etc.
  - The Threat Analysis Report shall be prepared by the ACP / DSP after investigation on direction from DLSA. The police officer will **categorize the threat perception** and suggest corrective measure.
  - The **responsibility of implementation lies on witness protection cell** constituted under the scheme.
- **Physical safety:**
  - Ensuring that witness and accused do not come face to face during investigation or trial.
  - Concealment of identity of the witness by referring to him/her with the changed name or alphabet.
  - Escort to and from the court and provision of Government vehicle date of hearing.
  - Close protection, regular patrolling around the witness's house.
- **Use of Technology:**
  - Holding of in-camera trials, videoconferencing, teleconferencing etc.
- **Judicial Support:**
  - Ensuring expeditious deposition of cases during trial on day to day basis without adjournments.
- **Financial provisions:**
  - **Witness Protection Fund** for the purpose of re-location, sustenance or starting new vocation/profession.
- The scheme aimed to enable a witness to depose fearlessly and truthfully. Under it, witness protection may be as simple as providing a police escort to the witness up to the courtroom or, in more complex cases involving an organised criminal group, taking extraordinary measures such as offering temporary residence in a safe house, giving a new identity, and relocation at an undisclosed place.

Challenges

- **Lack of resources:** Indian police force has acute shortage of **manpower (136 personnel per lakh population) and funds** even to handle day to day policing. The witness protection duties will further increase the pressure.
- **Right of accused:** Law Commission mentioned that concealing the identity of witness for his/her protection can compromise the rights of the accused to demand a fair trial in case he/she wants to establish authenticity of witness.
- **Privacy of Witness:** Providing physical security to witnesses may not be appreciated by witness as it curtails the privacy and movement.
- **Time frame of protection:** It may be difficult to assess the time frame for protection. E.g. protection of witnesses may be required not only before, but also during and after trail and that too for years considering the delays in Criminal Justice System.
- **Issue in implementation:** Indian Penal Code, Juvenile Justice Act and Whistleblowers Protection Act etc. already have provisions for witness protection but lack of availability of appropriate structure limits the implementation.

Witness Protection Bill 2015

The proposed Bill seeks to ensure the protection of witness by-

- Formulation of witness protection programme and **constituting National Witness Protection Council** and **State Witness Protection Councils** to ensure its implementation
- Constitution of a "witness protection cell" to prepare a report for the trial court to examine and grant protection to the witness referred as "protectee" after being admitted in the programme;
- Providing safeguards to ensure protection of Identity of witness;
- **Providing transfer of cases out of original Jurisdiction** to ensure that the witness can depose freely;
- Providing stringent punishment to the persons contravening the provisions and against false testimonies;

Way forward

- **Effective witness protection legislation should be enacted** clearly defining the role of police, government and judiciary. This will

create confidence among witnesses. In this regard, Witness Protection Bill 2015 can be enacted with suitable amendments.

- **Witness protection cell** established under scheme should arrange for the provisions of false identities, relocation, employment and follow up.
- In some cases medical facilities, social services, state compensation, counseling, treatment and other support should be provided to the witness.
- **The witness should be treated with fairness, respect and dignity** and protection from intimidation, harassment or abuse must be prevented throughout the criminal justice process.
- **Overhauling the Criminal Justice System** with faster and scientific investigation, trails and convictions will reduce the need of witness protection.

8.3. 'BEYOND FAKE NEWS' PROJECT

Why in News?

UK-based broadcasting channel BBC launched the **Beyond Fake News project** on how and why misinformation is shared in India.

Background

- Fake news can be **propagated through any media- print, electronic and social.**
- There have been instances of mob unrest, death and injury due to fake news as most of the citizens view any news published by mainstream media as true **without ascertaining its authenticity**.
- It is used to **influence public opinions, to gain popularity or to malign the image, character of certain individuals** or opponents or to defame them.
- **Self-regulation** by mainstream media to contain fake news has largely been **ineffective**. Any **direct effort by the government** to control fake news is prone to be seen as an **assault on the freedom of media** which functions as the fourth pillar of democracy.

Right to free speech and fake news

Fake news refers to news, stories, information, data and reports which is or are wholly or partly false. Fake news exploits the freedom allowed to media in a democracy to spread misinformation which in turn affects the right to free speech in the following ways:

- Free publication or broadcast of news in India flows from the fundamental right to freedom of expression as enshrined under **Article 19** of the Constitution. However, there is **no specific law in India to deal with fake news.**
- Freedom of speech can only be curtailed as per the **limited circumstances** set out in **Article 19(2)** of the Constitution of India – and **falsehood isn't one of those 'reasonable restrictions'.**
- But while tackling the problem, the priority of any responsible Government must be to first **ensure that freedom of speech is not unduly restrained**.

Related Information

- To curb the **menace of fake news** IIT-Kharagpur has come up with a solution that **uses artificial intelligence** to extract critical information from viral social media content that is manually not possible.
- Similar innovative ways can be further developed and utilized for applying on the mass level.

Legal recourses available for people affected by fake news

- **Broadcasting Content Complaint Council (BCCC):** A complaint relating to objectionable TV content or fake news can be filed to the BCCC if a broadcaster incites communal hatred, encourages violence against women or child abuse, airs contents having gory scenes of violence, promotes superstition or consumption of drugs and other contraband substances.
- **Indian Broadcast Foundation (IBF):** It look into the complaints against contents aired by 24x7 channels.
- **News Broadcasters Association (NBA):** It represents the private television news and current affairs broadcasters. It is self-regulatory in nature and probes complaints against news broadcasters in a fair manner.
- **Press Council of India**: According to the **Press Council Act, 1978,** it can warn, admonish or censure the newspaper, the news agency, the editor or the journalist found guilty of spreading misinformation.
- **IPC Sections 153A and 295:** It can be invoked against someone creating or spreading fake news if it can be termed as **hate speech.**
- **Defamation suit:** It is another legal tool available in the case of fake news. If a person finds a fake news defamatory, s/he can file a civil or criminal case for defamation.
- **The Information Technology (IT) Act**: It imposes an obligation on intermediaries such as search engine giant Google to remove any objectionable content pursuant to takedown notices by law enforcement agencies.

- **Contempt of Court laws:** False stories about judicial proceedings would be covered by contempt of court laws and false stories about Parliament and other legislative bodies would violate privilege.

8.4. DRAFT IT RULES

Why in news?

The Ministry of Electronics and Information Technology (MEITy) has sought public comments on the proposed amendments to the rules under Information Technology (IT) Act 2000 that seek to make it mandatory for platforms such as WhatsApp, Facebook and Twitter to **trace "originator" of "unlawful" information**.

Key Suggestions of Draft IT [Intermediaries Guidelines (Amendment) Rules] 2018

- **Definition of intermediaries:** Any social media platform with **more than 50 lakh users** or in the list notified by the government is defined as an **"intermediary".** Social media platforms such as WhatsApp and search engines like Google fall under the definition of intermediary.
- **Privacy Policy:** The intermediary **must publish their privacy policy** informing the user of various details such as not sharing any information that is harmful.
- **Informing non-compliance:** A new rule requires intermediary to **inform its users at least once every month, in case of non-compliance** with rules and regulations.
- **Nodal person of contact:** The intermediaries are expected to appoint a **'nodal person of contact'** for 24X7 coordination with law enforcement agencies and officers to ensure compliance.
- **Removal of unlawful content:** The intermediary after being notified by the appropriate authority should **remove or disable access to unlawful content within 24 hours.**
- **Traceability of originator:** The modified rules introduce a **"traceability requirement"** to enable tracing the originator of information on the platform.
- **Tools to identify unlawful content:** It requires online platforms to **report cyber security incidents** with the Indian Computer Emergency Response Team.

Information Technology Act 2000

- It is the primary law in India dealing with cybercrimes and electronic commerce, based on **United Nations Model Law on Electronic Commerce 1996.**
- It formed the basis on e-governance in India as it gave recognition to electronic records and digital signatures.
- It **defines several cyber-crimes** like tampering with computer source documents, hacking, cheating using computer resource, publishing obscene information in electronic form, cyber-terrorism etc. and prescribes penalties for them.
- **Section 79 of the IT Act** elaborates on the exemption from liabilities of intermediaries in cases where they are merely acting as 'conduits' for information transmitted & published by end-users. **Section 79(2)(c)** mentions that **intermediaries must observe due diligence** while discharging their duties, and also observe guidelines as prescribed by the Central Government.

Need for such regulations

- Social media has brought new challenges for the law enforcement agencies, as it is being used for **recruitment of terrorists, circulation of obscene content, fake news etc.**
- An active cooperation & coordination between government and technology companies is needed for effective enforcement of the law.
- A number of lynching incidents were reported in 2018 mostly alleged to be because of **fake news/rumors being circulated** through WhatsApp and other Social Media sites. The government needed to strengthen the legal framework and make the social media platforms accountable under law.
- Supreme Court also recognized the need for online platforms following due diligence and enforcing **'reasonable restrictions to free speech'** under Article 19(2) of the Constitution so that their platforms are not used to commit and provoke terrorism, extremism, violence and crime. It allowed government to frame **Standard Operating Procedure (SOP)** to deal with publication of such content.

Challenges posed

- **Definition of "unlawful content":** The scope of such as definition is wide and allows the government to curb any information that goes against it. The activists fear that this might lead to the "**Chinese model of censorship**".

- This also goes against the spirit of SC judgement in **Shreya Singhal case** whereby it struck down Sec 66A of IT Act 2000.
  - ✓ It was asserted in the judgement that vague and subjective used in the law such as "annoyance", "inconvenience", "danger" etc. doesn't come under the purview of a criminal proceeding.
  - ✓ **A penal law can be declared void on the ground of vagueness, if it fails to define the criminal offense with definiteness.**

- **Government Interference:** The draft amendments **allow breaking of encryption** on messaging platforms such as WhatsApp, but lack any judicial safeguards against governmental abuse or interference. This infringes on the constitutional right to informational privacy and goes against the spirit of **Puttaswamy judgement (2017)**.
- **Pro-active censorship:** Allowing intermediaries to block any "unlawful" content on the Internet or using automated tools for the same, without any oversight, makes them arbiters without any right & violates the right to free speech. The Rules **don't provide** the **procedure** or the **object** for such an exercise.
- **Longer data retention:** The phrase, "government agencies" is not defined and the specific conditions for data retention, for a longer period, are also not defined. Such retention will be without the information of the user and even despite the user deleting the data on the servers of the intermediary.
- **Induce self-censorship:** Draft Rule 3(4), which inserts a monthly requirement to inform users about the legal requirements, may induce self-censorship. Such a measure by law will require product side changes for smaller startups and entrepreneurs, thereby increasing costs.

There is a need to keep the privacy-security balance intact and limit the scope for executive overreach. But, such changes in digital information architecture must be brought after a consultative process with all stakeholders on board.

8.5. TRADE UNIONS IN INDIA

Why in News?

Recently the government approved the **amendment to Trade Unions Act, 1926** to make provisions regarding recognition of trade unions at the Central and state level.

Background

- The Present Act provides for **only registration** of trade unions. Currently there is no provision for recognition of unions in the Act.
- Presently, a tripartite national body determines the membership criteria for designating trade union organisations as central trade union organisations (CTUOs).
- As per this process, the office of **Chief Labour Commissioner** has recognized **13 CTUOs** after a verification process.

Trade Union Act, 1926

- It defines trade union as a combination formed primarily for the purpose of regulating relations between workmen and employers or between workmen and workmen or between employers and employers.
  - It can be temporary or permanent.
  - It can impose restrictive conditions on the conduct of any trade or business.
  - It also includes any federation of two or more Trade Unions.
- It provides for **the constitution and registration** of trade unions in India.
- It permits any association of seven workers to be registered as a union.
- The Act extends to the whole of India **except the State of Jammu and Kashmir.**
- **Government Servants cannot form** trade unions under the Trade Unions Act, 1926.

Trade Unionism in India

- **The first organized labour movement** in India was in **1884** by **N. M. Lokhande.** It sought to make representations to the Factory Commission appointed by the British Government to study the conditions of the working class in factories.
- In 1920, the leaders of Indian National Congress, due to the necessity brought by the growth of Trade Unionism, founded the **All India Trade Union Congress (AITUC).**
- **N.M. Joshi** is considered as the **father of modern trade unionism in India,** and he introduced the Trade Union Bill in the Assembly in 1921.

Importance of Trade Unions for a nation

- **Collective bargaining and Worker's Welfare:** Trade Unions are workers' tool for collective bargaining. Industries with trade unions always have higher wage structures. Trade Unions negotiate with employers for better terms and conditions of employment and for healthy workplace standards.

- **Harmonious Employee-Employer relations:** Trade Unions by being the voice of the workers in front of management prevent industrial unrest, violence, strikes etc. which is good for the overall productivity and economy of the country.
- **Social responsibility:** Trade Unions often provide educational support and training for skill up-gradation.
- **Improved Legislation:** Trade Unions strengthen workers' demand for better labour and industrial legislation. The ability of unions to represent workers and their families stand as an asset, for which political parties try to woo them by offering better deals in terms of pro labour legislation.

Key Amendments proposed

- Insertion of Section 10(A) in the principle Act, which would **empower center and state governments to recognize trade unions** and federation of trade union at central government level. The statutory recognition is necessary because recognized trade union of an industry or establishment get **bargaining or negotiating rights** with the employer.
- The central or state government **may make rules** further for the authority to decide disputes arising out of such recognition, and the manner of deciding such disputes.

Criticism of the Bill

- There are concerns among unions that it gives **discretionary powers to the government** to recognize trade Unions departing from the existing practice based on tripartite consensus.
  - It goes against India's commitment of social dialogue under Tripartite Consultation (International Labour Standards) Convention, 1976.
- The issue of mandatory recognition of trade unions at the enterprise/establishment level still remains which is one of the major issues undermining the collective bargaining power of workers.
- **Contractual workers** can't be part of the Trade Unions as per the current Trade Unions Act, 1926. In the present era of rising Gig Economy in which most jobs are contractual, there is a need to address **issue of rights** of contract workers through amendment.

Problems faced by Trade Unions in India

- **Uneven Growth:** Trade union activities are concentrated in large scale industries.
- **Low Membership:** Even though, the number of trade unions has increased considerably in India, this has been followed by the declining membership per union.
- **Multiplicity of Unions:** There may exist many trade unions in the same establishment as The Trade Unions Act, 1926 permits any association of seven workers to be registered as a union.
- **Inter Union Rivalry:** Unions try to play down each other in a bid to gain greater influence among workers, thus, harming the cause of unionism as a whole.
- **Lack of Public Support** as the trade unions frequently resort to strike and protest in order to make their demands meet which causes inconvenience to public.

8.6. COOPERATIVES IN INDIA

Why in News?

Union Agriculture Minister launched **National Cooperative Development Corporation (NCDC)'s new scheme 'Yuva Sahakar-Cooperative Enterprise Support and Innovation Scheme'**.

Background

- To obviate the plethora of different laws governing the same types of societies, **the Multi-State Cooperative Societies Act, 1984** was enacted by Parliament.
- As a result, there have been many success stories of Cooperatives in India, the two most important being- **Green Revolution and White Revolution.**
- Government of India announced a **National Policy on Cooperatives in 2002.**

What is a Cooperative?

- A cooperative is an **autonomous association** of persons united voluntarily to meet their common economic, social and cultural needs and aspirations through a jointly owned and democratically controlled enterprise.
- Cooperatives as business enterprise possess some basic interests such as ownership and control but these interests are directly vested in the hands of the user.
- Therefore, the need for profitability is balanced by the needs of the members and the wider interest of the community.

Constitutional Provisions

- **Directive Principle:** Part IV, Article 43, enjoins the State Government to promote cottage industry on an individual or cooperative basis in rural areas.
- It is a **State Subject** under entry No.32 (7th schedule) of the State List of the Constitution of India.
- Right to form cooperatives can also be construed as a **Fundamental Right,** Article 14 – (Right to Equality) and Article 19(1)(c) as 'Right to form cooperatives.'

The ultimate objective of the National Policy is to-

- Provide support for promotion and development of cooperatives
- Reduction of regional imbalances
- Strengthening of cooperative education, training and human resource development

- Various commitees such as V. S. Vyas Committee (2001 and 2004) have strongly advocated the need to replace the existing government dominated cooperative laws by a new people centric legislation.

Importance of Cooperative sector for India

Cooperation in a vast country like India is of great significance because it is an organization for the poor, illiterate and unskilled people.

- **Penetration into crucial areas:** It supplies agricultural credit and funds and has the potential to deliver goods and services in vital areas where state and private sectors have not been able to do very much.
- **Crucial Inputs:** The village cooperative societies provide strategic inputs for the agricultural-sector, consumer societies meet their consumption requirements at concessional rates. It overcomes the constraints of agricultural development.
- **Benefits for the farmers:** Marketing societies help the farmers to get remunerative prices and co-operative processing units help in value additions to the raw products.
- **Building Infrastructure:** In addition, co-operative societies are helping in building up of storage go-downs including cold storages, rural roads and in providing facilities like irrigation, electricity, transport and health.
- **Beyond bureaucratic morass:** It reduces the bureaucratic evils and follies of political factions. It creates conducive environment for flourishing agriculture and allied activities.
- **Unity among members:** Co-operative movements help in all round development of the rural areas, which is possible through unity, trustworthiness and consistency of membership. It is an institution of mutual help and sharing.
- **Beyond class conflict:** in a country divided on social basis, it softens the class conflicts and reduces the social cleavages.
- **Encourages democratic values:** Encourage the 'values of self-help, democracy, equality, and solidarity. Cooperative members believe in the ethical values of honesty, openness, and social responsibility and caring for others.

About NCDC

- It is the sole **statutory** organisation (under **Ministry of Agriculture & Farmers Welfare**) functioning as an apex financial and developmental institution exclusively **devoted to cooperative sector**.
- It strengthens and promotes programmes across sectors relating to agriculture and allied fields like dairy, poultry, livestock, fisheries, cotton ginning and spinning, sugar and notified services like hospitality, transport, rural housing, hospitals/health core etc.

About Yuva Sahakar

- It has been launched by NCDC to attract youth in cooperative business ventures. It would encourage cooperatives to venture into new and innovative areas.
- The scheme will be linked to a 'Cooperative Start-up and Innovation Fund (CSIF)' created by the NCDC.
- The funding for the project will be up to 80% of the project cost for the special categories as against 70% for others.

Challenges faced by Cooperatives in India

- **Inability to ensure active membership**, speedy exit of non-user members, lack of member communication and awareness building measures.
- **Serious inadequacies in governance** including that related to boards' roles and responsibilities.
- **Lack of efforts for capital formation** particularly that concerning to enhancing member equity and thus member stake.
- **Lack of cost competitiveness** arising out of issues such as overstaffing, and overall competitiveness due to entry of MNCs in Indian market.
- **Politicization and excessive role of the government** chiefly arising out of the loopholes and restrictive provisions in the Cooperative Acts.
- The **vital link in cooperative finance system** i.e. cooperative banks itself remains very poor. They are too small to operate properly and some of them are existing only on the paper.
- The NPAs of the cooperative banks are higher than those of commercial banks i.e. in NPAs to asset ratios.
- Along with **lesser than expected shareholders participation** in working, these banks are facing infrastructural weaknesses, thereby hindering the overall working of the Cooperatives.

- **Regional variations in cooperative movement** - cooperatives have done well in areas where land reform had met with a greater degree of success. However, limited success of cooperatives in some of the most fertile and populous regions points towards the link with demographic and cultural factors as well.

Way Forward

- Cooperatives have immense potential to deliver goods and services in areas where both the state and the private sector have failed. Agriculture and its allied activities are areas which have benefitted due to greater role of cooperative movements.
- However, members should realise that their eternal vigilance alone could guarantee autonomy, independence and progress of their cooperative. It is necessary to spread the movement as people's movement. To ensure this, following steps may be taken
  - Incorporating provisions in the law quantifying the minimum level of participation required by a member of cooperative annually.
  - Legally specifying the contours of democratic participation by members.
  - developing effective leadership who can even influence policy formulation by government favourable to cooperatives.
  - Infusing professionalism as it is key requirement for conversion of ideas/policies into tangible outcomes.
  - Strengthening arrangements for ensuring sound human resources management practices in cooperatives such as recruitment, training, social security etc.

9. LOCAL GOVERNANCE

9.1. GRAM PANCHAYAT DEVELOPMENT PLANS

Why in news?

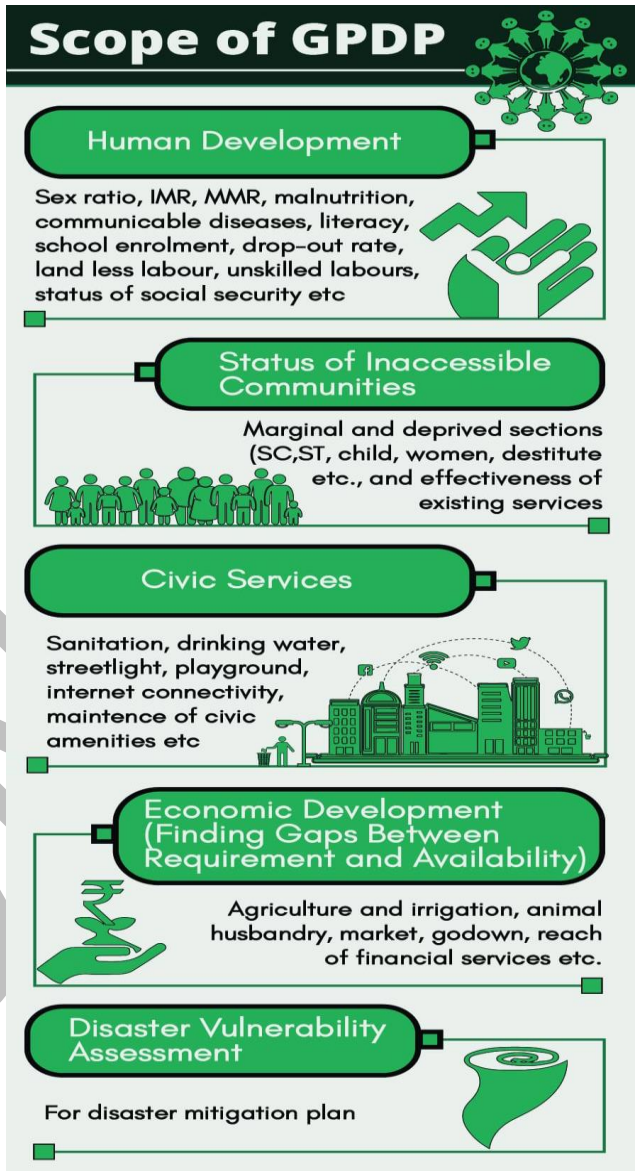
The central government launched a campaign, Sabki Yojana Sabka Vikas to involve people at the grassroots while preparing structured **gram panchayat development plans.**

About Gram Panchayat Development Plan (GPDP):

- It is an annual plan of each panchayat where the villagers would decide where the money should be spent.
- It aims to strengthen the role of 31 lakh elected Panchayat leaders and 2.5 crore SHG Women under DAY-NRLM in effective gram sabha.

Significance of GPDP

- **Stakeholder involvement:** Judicious planning with involvement of all stakeholders is critical for success of any activity. Community involvement leads to quality works and acceptance by local inhabitants
- **Consolidation of all financial resources at Gram Panchayat (GP) level:** Pooling of resources helps in optimum outcomes.
- **Development works:** They are undertaken in prioritized manner through collective provisioning. It also helps to reach marginalized sections and achieve specific development goals within a specified time-frame.
- **Responsive government:** It activates PRI level bureaucracy and also strengthens bond between government, GP & local inhabitants leading to responsive government.



Some concerns about existing GPDP process

- Lack of awareness and Inadequate people's participation in the gram sabhas.
- Over-emphasis on investment in infrastructure.
- Inadequate public service delivery and e-enablement of panchayats.
- Review of GPDP at Block/ District/ State levels non-existent.
- Lack of integration in Plans at block and district levels.
- GPDP being prepared as a wishlist owing to lack of technical support to GPs for GPDP preparation.

About Sabki Yojana Sabka Vikas campaign

- The campaign will involve people at the grassroots while preparing structured **gram panchayat development plans.**
- It will also involve **thorough audit** of the works done in the last few years.
- Under the campaign, which will conclude in December this year, gram panchayats will have to **publicly display all sources of funds** collected and their annual spending, along with future development initiatives.
- This would help in making the exercise of formulating Gram panchayat development plans more structured which has been largely unorganized till now.

9.2. EDUCATION AS A CRITERIA FOR LOCAL ELECTIONS

Why in News?

Rajasthan Government has **scrapped education criteria** for Panchayati Raj elections.

Background

- Under Rajasthan **Panchayati Raj (Second Amendment) Act, 2015** it was made mandatory for people contesting **zila parishad, panchayat samiti and municipal elections** to have passed **Class 10**.
- Those contesting **sarpanch elections** to have passed **Class 8** and those standing for **sarpanch elections in panchayats in scheduled areas** to have cleared **Class 5**.
- Constitutional Validity of the law enacted by Haryana government was challenged in Supreme Court in **Rajbala vs State of Haryana case**, in which court upheld the validity of law barring the illiterate from contesting panchayat polls in the state.
- SC held that **the Right to Contest** is neither fundamental rights, nor merely statutory rights, but are Constitutional Rights. Further, **the Right to Contest can be regulated and curtailed** through laws passed by the appropriate legislature.
- The Supreme Court's interpretation is based on the fact that uneducated or illiterate people getting elected to the local bodies can easily be misled by officials if they don't know how to write and read.

Arguments against educational criteria

- **Against grassroots democracy:** When there is no minimum education criteria to become MLA or MP, it is unfair to make such a criteria for panchayat elections.
- **Misplaced Focus:** Experts have said that primary role of an elected public representative is to put forward the point of her/his electorate rather than being well-versed in technicalities of administration.
- **Discriminatory towards Women & Weaker Sections:** Since the rate of literacy is low among the Dalits, Tribals and Women in particular due to societal and historical reasons, this law had disenfranchised a large number of Dalits and Women.
- **Exclusionary Move:** As per 2011 Census, over 70% of the overall rural population over the age of 20 years got barred from contesting the sarpanch elections in Rajasthan. It defeats the very purpose of the Panchayati Raj institutions, to include citizens in multi-tier local governance from all sections of society.
- **Abdication of Responsibility:** The education criteria penalised the people for failure to meet certain social indicators, when in fact it is the state's responsibility to provide the infrastructure and incentives for school and adult education.

Panchayati Raj Elections

- 73rd and 74th Amendment Act in 1992 provided for mandatory constitution of Panchayati Raj Institution as third tier of government at local level.
- Under **Article 243 (K) (4)** of Indian Constitution State Government by law can lay down the qualification for elections to local bodies.
- **Article 243 (O)** bans the interference of courts in electoral matters. If there is any dispute in the Panchayat Elections, courts have no jurisdiction over them.
- Panchayat Election can be questioned in the form of an election petition presented to an authority which the state legislature can by law prescribe.
- Haryana Government had passed the **Haryana Panchayati Raj (Amendment) Act, 2015** requiring minimum qualification for those contesting in panchayat election.
- States like Assam and Uttarakhand have also brought in legislations to make minimum education criteria for contesting local polls.

Arguments in favor of educational criteria

- **Progressive Legislation:** It will encourage people to focus on education. People who were till now illiterate will now be encouraged to take up minimum education even if at a later age.
- **Need of the Hour:** This move may further the debate about having educational criteria for MPs and MLAs too. As in the present era, governance has become a complex issue and we must have educated people as our representatives.
- **Improvement in Social Indicators:** Experts argue that having Educational Criteria will lead to betterment of other social indicators like lowering of child marriages, female feticide, and overall improvement of health and wellbeing. Having two child norm as a criterion has already lowered the fertility rates in states.

- **Role-Model Effect:** States rationale is that it will lead to the role-model effect, and citizens in the constituencies will emulate their panchayat leaders, which will lead to social progress.

Conclusion

- In his memorandum to the Simon Commission in 1928, B.R. Ambedkar said, "Those who insist on literacy as a test and insist upon making it a condition precedent to enfranchisement, in my opinion, commit two mistakes. Their first mistake consists in their belief that an illiterate person is necessarily an unintelligent person…Their second mistake lies in supposing that literacy necessarily imports a higher level of intelligence or knowledge than what the illiterate possesses…".
- This decision should force a recasting of the debate on finding ways and means by which elected bodies are made more representative. This is because to mandate paternalistically what makes a person a 'good' candidate goes against the spirit of the attempt to deepen democracy by taking self-government to the grassroots.