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Classroom Study Material

**POLITY**

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# 1. CENTRE STATE RELATIONS

## 1.1. MECHANISMS OF COOPERATION

### 1.1.1. ROLE OF GOVERNOR

The governor has a great role in promoting cooperative federalism as he acts as a vital link between the centre and the state government. Various role of governor as a binding agent are as follows

- Reservation of bill passed by the state legislature may be reserved for the consideration of the President by governor under Article 200.
- Under Article 356, the governor gives report of the working of constitutional machinery of the state. It ensures that states actions are in confirmation with the central law and directions.
- Governor is charged with the duty to preserve, protect and defend the Constitution and the laws. Thus he has a duty and obligation to promote political stability and upheld ideals of Indian democracy
- Under Article 163, he exercises his functions with the aid & advice of chief minister and his council of minister except where he is required to function in his discretion. Thus working in coordination with the state government.
- He can seek information from chief minister regarding any legislative or administrative matter in the states. Thus, he can inform central government regarding the existing situation in the state.

At the same time, role of governor is one of the major points of tussle between centre and state. The major sticking points are discretionary powers with respect to the following issues:

#### PRESIDENT'S RULE

**Article 356** has been abused by central governments for more than 120 times till date. In such times, the state comes under the direct control of the central government. The President dissolves the state assembly and orders the centrally appointed Governor to execute the operations of the state. The problem arises because the breakdown of constitutional machinery is not defined in constitution and this is misused by political parties to its advantage as was

#### Supreme Case judgments related to Art. 356

- **S R Bomai vs Union of India**
  - ✓ Art. 356 should be used "very sparingly", & not for political gains.
  - ✓ Government's strength should be tested on the floor of the house and not as per whims of the Governor.
  - ✓ Court cannot question the advice tendered by Council of ministers but it can scrutinize the ground for that advice of imposition of President's rule and may take corrective steps if malafide intention is found.
  - ✓ Use of Art 356 is justified only when there is breakdown of constitutional machinery & not administrative.
- **Buta Singh case**
  - ✓ The governor's report could not be taken at face value and must be verified by the council of ministers before being used as the basis for imposing President's rule.
  - ✓ It was alleged that in 2005, Governor of Bihar, Buta Singh had recommended dissolution of the Assembly on the basis of his **subjective satisfaction that some parties were trying to obtain majority through unethical means.**
  - ✓ The **Supreme Court** ruled that if a political party with the support of other parties or MLAs staked claim to form a government and satisfied the Governor about its majority, he cannot override claim because of his subjective assessment that majority was formed through tainted means.

seen in the case of Arunachal Pradesh and Uttarakhand last year.

### Observations of relevant Committees/Commissions with respect to Article 356

- **Sarkaria Commission (1987)**
  - ✓ Article 356 should be used very sparingly, in extreme cases and only as a matter of last resort.
  - ✓ Any imposition of Article 356 should be accompanied with a report by Governor to the President with relevant facts and details.
  - ✓ No dissolution of Assembly till proclamation is ratified by the parliament
- **National Commission for Reviewing the Working of Constitution (2002)**
  - ✓ A warning should be issued to the errant State, in specific terms that it is not carrying on the government of the State in accordance with the Constitution. Before taking action under Article 356, any explanation received from the State should be taken into account.
  - ✓ The Governor's report, on the basis of which a proclamation under Article 356(1) is issued, should be given wide publicity in all the media and in full.
  - ✓ Safeguards corresponding to that of Article 352 should be incorporated in Article 356 to enable Parliament to review continuance in force of a proclamation.
- **Punchhi Commission (2008)**
  - ✓ The commission recommended imposition of localized emergency i.e. in only a district or a part of it. Such an imposition should not be of a duration exceeding three months.
  - ✓ It also recommended suitable amendments in Article 356 to incorporate the guidelines of Supreme Court in S.R Bommai case (1994) with regards to invoking of the article.

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### APPOINTMENT OF CM IN HUNG ASSEMBLY

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- In the context of government being formed by a non-majority party in Goa and Manipur, it has once again questioned the discretion of governor in calling a person to form a government.
- **Article 164(1)** provides for the appointment of chief minister by governor. Supreme court clarified that there is not qualification mentioned in article 164(1) and reading it with collective responsibility in 164(2), the only condition chief ministerial candidate need to satisfy is that he/she should be commanding majority in the house.
- As for the **appointment of Chief Minister**, the Sarkaria Commission has recommended:
  - ✓ The party or combination of parties with widest support in the Legislative Assembly should be called upon to form the Government.
  - ✓ If there is a pre-poll alliance or coalition, it should be treated as one political party and if such coalition obtains a majority, the leader of such coalition shall be called by the Governor to form the Government.
  - ✓ In case no party or pre-poll coalition has a clear majority, the Governor should select the CM in the order of preference indicated below:
    - a) The group of parties which had pre-poll alliance commanding the largest number.
    - b) The largest single party staking a claim to form the government with the support of others.
    - c) A post-electoral coalition with all partners joining the government.
    - d) A post-electoral alliance with some parties joining the government and the remaining supporting from outside.

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### APPOINTMENT & TRANSFERS OF GOVERNOR BY CENTRE

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The qualifications of governor are not mentioned in constitution. Thus, ex-bureaucrats, retired

CJI, active politicians etc. have been appointed as governors. This leads to governor being committed to centre.

Thus, **Recommendations of the Puncchi Commission** on Role of Governor should be considered:

- It has given a set of criteria for the qualification of Governor to be included in **Article 157**:
  - ✓ The Governor should, in the opinion of the President, be an **eminent person**;
  - ✓ The Governor must be a person from **outside the concerned State**;
  - ✓ The Governor should be a **detached person** and not too intimately connected with the local politics of the State. Accordingly, the Governor must not have participated in active politics at the Centre or State or local level for at least a couple of years before his appointment.
- The tenure of office of the Governor must be fixed, say for a **period of 5 years**;
- The phrase "during the pleasure of the President" may be deleted from Article 156 of the Constitution.
- In B.P. Singhal vs Union of India case, SC observed that power to remove Governor cannot be exercised in an arbitrary, capricious or unreasonable manner. This power should only be exercised in rare and exceptional circumstances for valid and compelling reasons.
- A provision may be made for the **impeachment of the Governor** by the State Legislature on the same lines as the impeachment of the President by the Parliament.
- Governors should not be eligible for any further appointment or office of profit under the Union or State Governments except a second term as Governor, or election as Vice-President or President of India.
- Also, after quitting or laying down his office, the Governor shall not return to active partisan politics.

In general, Governor needs to make sure that it has a constitutional obligation to preserve, protect and defend the constitution. They must not only be fair but also be seen to be fair

### 1.1.2. INTERSTATE COUNCIL

#### Significance for cooperation between centre and states

- The forum is the most significant platform to strengthen Centre-state and inter-state relations and discuss policies.
- This works as an instrument for cooperation, coordination and evolution of common policies.
- It can act to bridge trust deficit between centre and states as the chief ministers are able to raise issues and their concerns on this platform

#### Issues in the functioning of ISC

- It is seen as a mere talk shop. Thus, it needs to show that it can follow up
- Its recommendations are not binding on the government
- It does not meet regularly as recently Inter-State Council met after a gap of 12 years

#### Interstate Council (ISC)

- **Article 263 of the Constitution** provides for establishment of Inter-State Council for coordination between states and union government.
- It is **not a permanent constitutional body** but it can be established 'at any time' if it appears to the President that the public interests would be served by the establishment of such a council.
- First time it was set up on recommendation of Sarkaria Commission
- It was established by Presidential order dated 28 May, 1990.
- The council shall consist of the **PM as the Chairman, CMs of all states and UTs and six union cabinet minister nominated by PM.**



### Need for further strengthening of ISC

- Together, the FC and the ISC should operationalize again Part XI and XII of the Constitution that ensure appropriate financial devolution and political decentralization.
- It should be given the power to investigate the issues of inter-state conflicts which is mentioned in the Constitution but dropped by the Presidential order creating ISC in 1990 (Based on Sarkaria Commission's recommendations)
- It should be strengthened as a forum for not just administrative but also political and legislative give and take between centre and states
- Some of the following recommendations of Punchhi commission should also be considered
  - The Inter-State Council must meet at least thrice in a year on an agenda evolved after proper consultation with States.
  - The Council should have experts in its organizational set up drawn from the disciplines of Law, Management and Political Science besides the All India Services.
  - The Council should have functional independence with a professional Secretariat constituted with experts on relevant fields of knowledge supported by Central and State officials on deputation for limited periods.
  - After ISC is made a vibrant, negotiating forum for policy development and conflict resolution, the Government may consider the functions for the National Development also being transferred to the ISC.

### Conclusion

Though, there are other bodies such as the NITI Aayog's Governing Council-it has a similar composition, including the prime minister, chosen cabinet ministers and chief ministers-that could address centre-state issues. But the ISC has constitutional backing, as against the NITI Aayog which only has an executive mandate. This puts the states on more solid footing-an essential ingredient in building the atmosphere of cooperation needed for calibrating centre-state relations.

### 1.1.3. NITI AAYOG

NITI Aayog, The National Institution for Transforming India, was formed via a resolution of the Union Cabinet on January 1, 2015. NITI Aayog has emerged as the premier policy 'Think Tank' of the Government of India fostering the spirit of cooperative federalism.

#### NITI Aayog as the Forum for Cooperative Federalism

One of the key mandates of NITI Aayog is to foster co-operative federalism through structured support initiatives. The key functions which refer to 'Cooperative Federalism' are:

- To evolve a shared vision of national development priorities, sectors and strategies with the active involvement of States in the light of national objectives
- To foster cooperative federalism through structured support initiatives and mechanisms with the States on a continuous basis, recognising that strong States make a strong nation.

#### Difference with Planning Commission:

- It has a structure similar to the Planning Commission, but its functions will be limited to **only acting as a policy think-tank relieving it of the two more functions** viz. formation of five year plans and the allocation of funds to the States.
- The major difference in approach to planning, between NITI Aayog and Planning Commission, is that the former will invite greater involvement of the states, while the latter took a top-down approach with a *one-size-fits-all* plan.



**Following steps have been taken in this direction:**

- **Constitution of three sub-groups of Chief Ministers** to advise the central government on Rationalization of Centrally Sponsored Schemes, Skill Development and Swachh Bharat Abhiyaan. All three sub-groups of Chief Ministers have submitted their reports. While some recommendations have been implemented, others are under consideration.
- **Reform in social sector through Indices Measuring States' Performance in Health, Education and Water Management:** NITI has come out with indices to measure incremental annual outcomes in critical social sectors like health, education and water with a view to nudge the states into competing with each other for better outcomes, while at the same time sharing best practices & innovations to help each other - an example of competitive and cooperative federalism.
- **Facilitating the resolution of issues involving states and central ministries** by bringing the two sides together on a single platform. For eg NITI Aayog recently took the initiative to seek resolution of several pending issues of the State of Telangana with different central ministries.

Similarly there are symmetrical problems that central government projects face in the states and there is scope for taking up those as well. NITI Aayog must be ready to serve as the forum for similar future consultations to resolve two-way issues between other states and the central ministries.

**Challenges**

The Aayog is expected to serve as a source of new ideas and achieve convergence between the Centre and States for evolving a long-term vision for India. At the same time it is expected to coordinate among the various departments. In discharging these two assigned tasks, the Aayog will **overlap with the Inter-State Council**, which is a constitutional body, and the **office of the cabinet secretary** that at present strives to achieve inter-departmental coordination. This could be tricky.

**Way ahead**

Moving beyond cooperative federalism it is now 'competitive cooperative federalism' that defines the relation between Centre and states as NITI Aayog puts onus on states to drive transformation in India. India is facing many challenges in its path to SDGs 2030. The central government has initiated many mission mode programs viz Smart City, Skill India, Swach Bharat, Housing and Electricity for All etc. Success of all these depends on active cooperation and healthy competition among states and centre. NITI Ayog is poised to play the role of catalyst in achieving this cooperation.

**1.1.4. EK BHARAT SHRESHTHA BHARAT INITIATIVE****Why in news?**

"Ek Bharat Shreshtha Bharat" was launched by Hon'ble Prime Minister recently.

**About the Initiative**

- It is an **innovative measure that will lead to an enhanced understanding and bonding between the States** through the knowledge of the culture, traditions and practices of different States & UTs, for strengthening the unity and integrity of India.
- All States and UTs will be covered under the programme.
- According to the scheme, **two states** will undertake a **unique partnership for one year** which would be marked by cultural and student exchanges. **6 MoUs** between two States each were also signed on the occasion of launch, under this initiative.

- Students of a particular state would travel to another state to learn each other's culture.
- **District level pairings will also be done** and it would be independent of the State level pairings.
- The activity will be very useful to link various States and Districts in annual programmes that will connect people through exchanges in areas of culture, tourism, language, education trade etc.
- Citizens will also be able to experience the cultural diversity of a much larger number of States/UTs while realising that India is one.

#### Significance

- The idea of Ek Bharat Shreshtha Bharat will help in building a better nation through by enabling people to imbibe the innate chord of binding and brotherhood.
- It will help to induce a sense of responsibility and ownership for the nation as a whole through these close cross-cultural interactions.

#### Objectives of Ek Bharat Shreshtha Bharat

- To **celebrate** the Unity in Diversity of our Nation and to maintain and strengthen the fabric of traditionally existing emotional bonds between the people of our Country.
- To **promote** the spirit of national integration through a deep and structured engagement between all Indian States and Union Territories through a year-long planned engagement between States.
- To **showcase** the rich heritage and culture, customs and traditions of either State for enabling people to understand and appreciate the diversity of India, thus fostering a sense of common identity.
- To **establish** long-term engagements and to create an environment which promotes learning between States by sharing best practices and experiences

## 1.2. INTER-STATE WATER DISPUTES

### Background of the issue

Most rivers of India are plagued with interstate disputes. Nine out of the 12 major rivers in India are interstate rivers. 85% percent of the Indian land mass lies within its major and medium interstate rivers.

The regulation and development of all rivers which flow across international and inter-state boundaries are a source of potential conflict, more so because of demand for water has been increasing at an accelerated rate due to rapid growth of population, urbanization, industrialization, etc.

### Impact of River Water Disputes

- The frequent recurrence and long deliberations produce various kinds of insecurities and impact people's livelihoods.
- These disputes caused concerns about their potential impact over State-State relations in India, with greater implications to the federal integrity of the nation-state. These concerns are not without reason; the recent Cauvery dispute between Tamil Nadu and Karnataka which led to civic strife, ethnic clashes and violence in 2016 is a glaring example.
- Another case in point is the recent Telangana separatist movement. Regional imbalances in sharing of water resources were one of the core issues at the heart of the movement.
- Political mobilization over uneven water resource distribution is proving to be a major challenge for policy makers in India. Such political movements do have implications for the state in India and its federal structural relations.

### LINGERING DISPUTES

Tribunal	States	Status
Ravi & Beas Water Tribunal	Punjab, Haryana and Rajasthan	Sub-judice
Krishna Water Disputes Tribunal-II	Karnataka, Maharashtra and Andhra Pradesh	Sub-judice
Vansadhara Water Disputes Tribunal awaited	Andhra Pradesh & Odisha	Decision awaited
Mahadayi Water Disputes Tribunal	Goa, Karnataka and Maharashtra	Decision awaited

Source: PIB, as on July 14, 2014

## Constitutional Provisions

**Article 262(1)** of the Constitution lays down that “Parliament may by law provide for the adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river, or river valley”. Parliament has enacted the Inter-State River Water Disputes Act, 1956. (box)

## Criticisms against existing arrangements

The main points of criticism against the existing arrangements are:

- Under 1956 Act, a **separate Tribunal** has to be established for each Inter State River Water Dispute.
- They involve inordinate delay in securing settlement of such disputes. Tribunals like Cauvery and Ravi Beas have been in existence for over 26 and 30 years respectively without any award. There is no time limit for adjudication.
- There is no provision for an adequate machinery to enforce the award of the Tribunal.
- **Issue of finality.** In the event the Tribunal holding against any Party, that Party is quick to seek redressal in the Supreme Court. Only **three out of eight Tribunals** have given awards accepted by the States.
- **Control over water is considered a right** which has to be jealously guarded. Compromise is considered a weakness which can prove politically fatal.

Considering these criticisms of existing arrangement in general and 1956 act in particular, Union Minister of Water Resources, River Development and Ganga Rejuvenation introduced **Inter-State River Water Disputes (Amendment) Bill, 2017** in Lok Sabha. It proposes to streamline the adjudication of inter-state river water disputes and make the present legal and institutional architecture robust.

## Key Provisions of amendment bill

- **Dispute Resolution Committee(DRC)**, to be established by the Central Government before referring dispute to the tribunal, to resolve the dispute amicably by negotiations within a period of one year extended by 6 months,.
- **Single Tribunal** - Bill proposes a Single Standing Tribunal (with multiple benches), one Chairperson, one Vice-Chairperson and not more than six other Members, instead of existing multiple tribunals.
- **Age and tenure of members-** The term of office of the Chairperson is five year or till he attains the age of 70 years, whichever is earlier, the term of office of Vice Chairperson and other member of tribunal shall be co-terminus with the adjudication of the water dispute.
- **Timeline:** The tribunal should settle a dispute in four-and-a-half years.
- **Finality** - The decision of the Tribunal shall be final and binding.
- **Data Collection** and maintenance of a data-bank at national level for each river basin by an agency to be appointed and authorized by central government
- **Technical Support:** Provides for the appointment of Assessors to provide technical support to the tribunal. They shall be appointed from amongst experts serving in the Central Water engineering Service.

### Interstate water dispute Act, 1956:

#### Salient Features

- Constitution of the tribunal
- The Tribunal shall have the same powers as are vested in a civil court,
- Power to make schemes for implementing decisions of tribunal,
- Dissolution of Tribunal and power to make rules.
- Adjudication of water disputes,
- Maintenance of data bank and information,
- Bar of jurisdiction of Supreme Court and other Courts.

## Issues

- Benches of Permanent Tribunals are proposed to be created as and when need arise. Thus it is not clear how these temporary benches will be different from present system.
- The Supreme Court recently has said that it can hear appeals against water tribunals set up under ISWDA, thus delaying the judicial proceedings
- Institutional mechanism to implement tribunal's award is still mired in ambiguities

## Suggestions and way forward

- **Inter-State Council (ISC)** is a constitutional body with the mandate of enquiring into and advising upon disputes arising between the various states of India, to investigate and make recommendations upon such subjects for better coordination of policy and action. It can play a useful role in facilitating dialogue and discussion towards resolving conflicts.
- **For implementation purposes**, River Boards Act 1956 under entry 56 of union list, the most potent law available for the purpose should be suitably amended. River Basin Organization (RBOs) can be set up under this act to regulate and develop inter-state rivers and their basins.
- **Moving towards mediation:** Mediation is a flexible and informal process and draws upon the multidisciplinary perspectives of the mediators. In the South Asian context, the World Bank played the role of mediator between India and Pakistan, which resulted in a successful resolution of the conflicts surrounding the rivers of the Indus basin
- **Supply Side Management:** Many scholars have argued that augmenting the water supply might be one way of dealing with such issues. Thus, water resources should be utilised and harnessed properly through undertaking long-term measures towards saving water and rationalising its use.
- **Declaration of Rivers as National Property:** which may reduce the tendency of states which consider controlling of river waters as their right
- **Bringing water into concurrent list:** as recommended by Mihir shah report where central water authority can be constituted to manage rivers. It was also supported by a Parliamentary Standing Committee on Water Resources
- Apart from institutional mechanism, a sense of responsibility in states towards humanitarian dimension of water disputes needs to be infused.
- Water disputes should be depoliticized and political parties must refrain from taking benefits out of it.

## 1.3. STATES WITH SPECIAL STATUS

Indian constitution has granted special status to certain states under Article 370 and 371. Article 370 provides special autonomous status to state of J&K while Article 371 provides special provisions for 12 states. Under article 371, 371A and 371C are with respect to the states of Nagaland and Manipur respectively.

### 1.3.1. NAGALAND WOMEN DEMAND ULB RESERVATION

#### Why in News?

- Nagaland women are demanding 33% constitutional reservation for Urban Local Bodies (ULBs) in Nagaland.

#### Provisions of 74<sup>th</sup> amendment related to women reservation

- **Article 243T (3)** - Not less than 33% of the total seats by rotation are reserved for women in direct municipal elections.
- **Article 243T (4)** - Reservation of women for offices of Chairperson of municipalities would be decided by law by the State Legislative Assembly.

## Background

- **74th constitutional amendment (CA)** was passed in 1993, providing reservation for women in ULBs. Nagaland adopted this provision by **Nagaland Municipal (First Amendment) Act of 2006**.
- Nagaland has not witnessed any ULB election since 2011 due to the conflict between 74<sup>th</sup> CA and Article 371A principles.
- In April 2016, the Supreme Court (SC) ordered the state government to hold municipal elections.

## Issues involved

- There appears to be a **conflict between Article 243T** (reservation of seats for women) and **Article 371A of the Constitution**.
- Nagaland's urban areas are facing a **lack of governance in provision of basic services** because of its refusal to hold elections to ULBs since 2011.
- **There is a conflict between women demanding political representation** and the customary law which allows only the men to run the institutions of governance.

### What is Article 371A (1)?

No Act of Parliament in respect of

- Religious or social practices of the Nagas,
- Naga customary law and procedure,
- Administration of civil and criminal justice involving decisions according to Naga customary law.
- Ownership and transfer of land and its resources.
- Shall apply to the Nagaland unless it's Legislative Assembly by a resolution so decides.

## Arguments given in support of women reservation

- **Joint Action Committee on Women reservation** contends that denying reservation to women in ULBs is a Constitutional violation.
- Tribals have no objection to **25% women reservation** in village development boards as per **Nagaland Village and Area Council Act, 1978**. Hence, the opposition to women's election to ULBs is illogical.
- Male dominance in the governing institutions may create a vacuum in gender specific policies.
- Nagaland has a high female literacy rate of 76.11%. Yet, there has only ever been one Naga woman elected to the Parliament.
- It impedes women's socio-economic empowerment though political representation.

## Arguments given against women reservation

- Naga Hoho, a body of 16 tribal groups, say that women representation in ULBs is against their customary law.
- They argue that they are not against women's representation in these bodies but they are against women standing for elections. They prefer to nominate women rather than have them stand for elections.

## Steps taken by the government

- Nagaland government has agreed to hold ULB elections with 33% reservation for women.
- Centre is working to mandate 50% reservation for women in all the ULBs to promote **development of 'engendered cities'**.



### Way forward

- Proposal of 50% reservation to women should be finalized soon and implemented thoroughly.
- Reform customary law to make it gender neutral.
- Political parties or various local councils should themselves set 'voluntary quotas' for fielding women candidates in elections.

### 1.3.2. GORKHALAND ISSUE

#### Why in News?

There has been total shutdown in Darjeeling and instances of violence over demand for creation of Gorkhaland.

#### Why the agitation?

- Immediate cause: Bengali language being made mandatory upto class 9<sup>th</sup> by the state government. The Gorkhas, whose native language is Nepali, has taken it as a threat to their identity.
- Long-term cause: problems in functioning of GTA (Gorkhaland Territorial Administration). The leaders have accused state govt. of interference and not devolving enough financial resources to GTA.

#### Who are Gorkha?

Indian Gorkhas are indigenous people living all along the Himalayan belt and the North-East states of India. The Gorkhas inhabit areas in J&K, Himachal, Uttarakhand, Sikkim, Darjeeling, Assam, and other states in the North-East.

#### History of Demand for Gorkhaland

Gorkhaland consists of Nepali-speaking people of Darjeeling, Kalimpong, Kurseong and other hilly districts. The people belonging to these areas hardly have any connection with the Bengali community and are different in ethnicity, culture and language.

- In 1780, the Gorkhas captured Sikkim and other areas includes Darjeeling, Siliguri, Simla, Nainital, Garhwal hills, and Kumaon, that is, the entire region from Teesta to Sutlej. After 35 years of rule, the Gorkhas surrendered the territory to British in the Treaty of Segoulee in 1816, after they lost the Anglo-Nepal war.
- In 1907, the first demand for Gorkhaland was submitted to Morley-Minto Reforms panel. Later, on several occasions demands were made to the British government and then government of Independent India. There have been two mass-movements - first in the 1980s and then in 2007.



#### Why demand for Gorkhaland?

- Differences in language and culture.
- Aspiration of Indian Gorkha identity: Since creation of Darjeeling Gorkha Hill Council in 1988 and GTA in 2012 did not fulfill this aspiration, they failed.
- Relative Economic deprivation
- Alleged maltreatment by Bengalis and lack of voice in Kolkata.

#### Responses to Gorkhaland

- **Darjeeling Gorkha Hill Council (DGHC):** Following the agitation of 1986, a tripartite agreement was reached between Government of India, Government of West Bengal, and



Gorkha National Liberation Front in July 1988. Under this, an autonomous Hill Council (DGHC) under a State Act was set up for “the social, economic, educational, and cultural advancement of the people residing in the Hill areas of Darjeeling District”. The Council covered the three hill sub-divisions of Darjeeling district and a few Mouzas within the Siliguri sub-division.

**Problems:**

- ✓ The Council was given limited executive powers but in the absence of legislative powers the aspirations of the people of the region could not be addressed.
- ✓ The non-inclusion of the Dooars region in the Council became a major reason of discontent.
- **Gorkhaland Territorial Administration (GTA):** GTA created in 2012 through a tripartite agreement signed by Gol, Govt. of West Bengal and Gorkha Janmukti Morcha (GJM), replaced the Darjeeling Gorkha Hill Council. It is a semi-autonomous administrative body. It has administrative, executive and financial powers but no legislative powers. GTA presently has three hill subdivisions Darjeeling, Kurseong and Mirik and some areas of Siliguri subdivision of Darjeeling district and the whole of Kalimpong district under its authority.

**Problems:**

- ✓ Lack of legislative powers means that the people of the region have no control over laws to govern themselves by
- ✓ Dooars again has been left out and instead a verification team has been set to identify “Gorkha majority” areas in the Dooars.

**Way forward**

The agitation for a separate Gorkhaland state must be brought to a swift end through a solution which meets the aspirations of the Nepali-speaking people without hurting the sentiments of the Bengali-speaking majority, which is largely against the division of the state. The possible steps include:

- Good power sharing agreement: Gorkhaland on its own is not financially viable. Except tourism it doesn't have much of its own resources. Tea industry is also facing crisis. The functioning of GTA needs to be improved and made accountable.
- Government of centre as well as state needs to be more sensitive towards needs and aspirations of Gorkhas. Eg instead of imposing Bengali, it could have made optional.
- Economic development of the region. Hospitals, schools, public services must be set up and existing one needs to be improved.
- Creation of an Autonomous State of Gorkhaland within an undivided West Bengal can be considered. Article 244 A provides for an autonomous state for certain tribal areas in Assam with its own legislature and council of ministers. By a constitutional amendment, the applicability of this article can be extended to West Bengal. Alternatively, through a constitutional amendment, an Article similar to Article 244 A, can be inserted as a new chapter in Part VI of the Constitution. This will enable the establishment of an Autonomous State of Gorkhaland, with a legislature and council of ministers within the existing state of West Bengal without bifurcating it.

**1.3.3. 6TH SCHEDULE**

**Why in news?**

The Assam government is considering inclusion of various tribal dominated areas under the 6<sup>th</sup> schedule of constitution, after a sub-committee had approved inclusion of Rabha areas.

The Sixth Schedule of the Constitution contains special provisions regarding the administration of the tribal areas in the four northeastern states of Assam, Meghalaya, Tripura and Mizoram to preserve their cultural identity and customs.

### Advantages of inclusion in 6<sup>th</sup> schedule

The entry into 6<sup>th</sup> schedule gives sizeable amount of autonomy to the people in these areas for self-government through following features

- **Autonomous districts**, with several **autonomous region** depending upon the different tribes inhabiting the region, within the executive authority of the state
- Each autonomous district has a **district council** and each autonomous region has a separate **regional council**, both of which administer the areas under their jurisdiction.
- **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
- **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.
- **Limitation to power of Parliamentary or state legislature over autonomous regions** - The acts of Parliament or the state legislature do not apply to autonomous districts and autonomous regions or apply with specified modifications and exceptions.

### 6<sup>th</sup> schedule vis-a-vis 5<sup>th</sup> schedule

Although both 5<sup>th</sup> and 6<sup>th</sup> schedule of the constitution have been formulated to empower tribal communities but still 6<sup>th</sup> schedule is considered better from 5<sup>th</sup> schedule because

- It provides **better autonomy**
- The council in 5<sup>th</sup> schedule is creation of state legislature while in 6<sup>th</sup> schedule it is the **product of constitution**.
- It has financial power to **prepare budget** for themselves unlike council in 5<sup>th</sup> 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.

### More steps that need to be taken with respect to 6<sup>th</sup> schedule

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

However, inclusion in 6<sup>th</sup> schedule is not a panacea, as it also suffers from some problems such as:

- **No Decentralization of powers and administration** – It has not taken place in many 6<sup>th</sup> schedule areas. For example in Bodo Territorial Area districts, there is only district council

which elects few people who enjoy unbridled power. Thus, units should be created that will represent people at all strata.

- **Lack of development** – Although 6<sup>th</sup> schedule was enacted to give more benefit to the people and bring fast paced development, yet due to no panchayats or parishad at people level, they have no power and money which non-6<sup>th</sup> schedule areas have for implementation of various schemes like MGNREGA etc.
- **Corruption and illicit activities** – Some members of autonomous council is helping siphoning of money to the extremist group factions. For example – The north Cachar autonomous council is under scrutiny of NIA and CBI.
- **Legislative power of state over councils** - The laws made by the councils require the assent of governor. This process has no time limits, thus legislations get delayed for years. Also, Para 12 (A) of the Sixth Schedule clearly states that, whenever there is a conflict of interest between the District Councils and the state legislature, the latter would prevail.
- **Overlapping functions without coordination** - Lack of comprehensive activity mapping leading to overlap in functions and jurisdictions of council and state. For example – there is no arrangement between state water resource department and the council for conserving and reclaiming water resources rendered toxic.
- **Non-involvement of state finance commission** - They are less provided in terms of grants to their counterparts PRIs as they are not covered by State finance commission. Thus, PRIs in non-6<sup>th</sup> schedule areas are liberally funded. So, direct funding of the councils should be done under Article 280 of Constitution instead of grant-in-aid under Article 275 (major source of income currently).
- **Conflict in discretionary powers of governor** - There are differing views over the discretionary power of governors with respect to the administration of these areas. Thus, conflict is there on requirement of consultation of governor with council of ministers.

## 1.4. ISSUES RELATED TO UT

### 1.4.1. PUDUCHERRY LG ISSUE

#### Why in news?

- There is an ongoing tussle between Puducherry LG and CM over powers designated to the two authorities.
  - ✓ CM has insisted that Lt. Governor should work according to the advice of council of ministers and she should inform prior to visiting any constituency
  - ✓ Lt. Governor said that she was the “real administrator” and all files had to be sent for her approval as she had the powers over administrative matters.

#### Ambiguities in Government of Union Territories Act, 1963

- This act provides for a Legislative Assembly in Puducherry, with a Council of Ministers to govern the “Union Territory of Pondicherry”.

Puducherry is one of the smallest and administratively challenging Union Territories of India as it has administrative fragments across three States of southern India

- Puducherry and karaikal districts in Tamil Nadu
- Mahe district in Kerela
- Yanam district in AP

#### UTs and its Administration

- Every UT is administered by the President through an “Administrator” appointed by him.
- The “Administrator” of the UT has powers similar to that of the Governor but he is just a representative of the President and not the constitutional head of the state.
- The administrator may be designated as Lieutenant Governor, Chief Commissioner or Administrator.
- The powers and functions of Administrator are defined under Article 239 and 239AA of the Constitution.

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On the “Extent of legislative power” of the Assembly, the act provides that MLAs “may make laws for the whole or any part of the Union Territory with respect to any of the matters enumerated in the State List or the Concurrent List”.

- However, the same Act says that the UT will be administered by the President of India through an Administrator (LG). And Section 44 of the

Act, says the Council of Ministers headed by a Chief Minister will “aid and advise the Administrator in the exercise of his functions in relation to matters with respect to which the Legislative Assembly of the Union Territory has power to make laws”. The same clause also allows the LG to “act in his discretion” in the matter of lawmaking if there is any difference in opinion.

#### Arguments in favour of CM's stand

- **Undermining of rights of elected government** - The UTs of Delhi and Puducherry have been provided with a legislative assembly and Council of Ministers. Therefore, their Administrators are meant to act upon the aid and advice of the CM and his Council of Ministers.
- **Accountability to people** – Being people’s representative in the legislative assembly, they are accountable to people for their welfare. LG may not approve certain policy decisions taken by the government for the same.
- **Parallel power centres** – LG should not conduct inspections, meet people directly and give directions bypassing the elected government. She has to coordinate with the government.
- **Upset balance of power between LG and CM** - Constitution would not have envisaged a legislature and a council of ministers feeding on public funds, if these are to be overruled by LG frequently.

#### Difference between powers in state and UT

- The Union Government can exercise **executive and legislative power on all State subjects** with reference to a Union Territory, which is not possible in a full-fledged State Government.
- According to **Article 240**, the President has powers to make regulations for a UT unless there is a legislature for that State. Even if there is a legislature, the Administrator can reserve it for the assent of President, who might reject it, except a money bill.
- The Governor appoints the CM in States but the President appoints the CM and Ministers for UTs, who will hold office during the President’s pleasure.
- Prior sanction of the Administrator is required for certain legislative proposals involving “Judicial Commissioner”
- ‘Recommendation’ of the LG is obligatory for UT government before moving a Bill or an amendment to provide for
  - the imposition, abolition, remission, alteration or regulation of any tax
  - the amendment of the law with respect to any financial obligations undertaken or to be undertaken
  - anything that has to do with the Consolidated Fund of the UT.

#### Difference between LG power in Puducherry and Delhi

- The LG of Delhi enjoys greater powers than the LG of Puducherry. The LG of Delhi has “Executive Functions” that allow him to exercise his powers in matters connected to public order, police and land “in consultation with the Chief Minister, if it is so provided under any order issued by the President under Article 239 of the Constitution”.
- While the LG of Delhi is also guided by the Government of National Capital Territory of Delhi Act, 1991, and the Transaction of Business of the Government of National Capital Territory of Delhi Rules, 1993, the LG of Puducherry is guided mostly by the Government of Union Territories Act, 1963.
- Articles 239 and 239AA of the Constitution, as well as the Government of National Capital Territory of Delhi Act, 1991, clearly underline that Delhi is a UT, where the Centre has a much more prominent role than in Puducherry.



- **Article 240 (1)** states that the President's administrative control ceased to exist after the legislative body was created, thus, an appointee (LG) of the President had no powers over and above the council of minister and elected representatives.

### Arguments in favour of LG's stand

- **Rule 21(5) of Business of the Government of Puducherry** – According to it, LG can call for files relating to any case and request the CM for update on any doubt or query which may arise.
- **Article 239AA**– It states that in case of a difference of opinion and referring a matter to the central government/ president in an urgent situation, the LG can take action as he deems necessary and can give such directions as he considers necessary.
- **Delhi high court judgement** - In a similar feud witnessed between Delhi Chief Minister and former LG, Delhi High Court had in August 2016 upheld the supremacy of the LG.
- **Rule 47** – According to it, the Administrator exercises powers regulating the conditions of service of persons serving in UT government in consultation with the Chief Minister.

### Way forward

LG has more powers in UT than a governor in the state. However, LG should use its capabilities to guide, direct and advice the government and allow primacy in administration to the elected government.

Now, Legislative Assembly of Puducherry has passed a resolution urging the Union Government to make necessary amendments in the Union Territories Act 1963, to bestow full administrative powers on the elected government and curtail the role of the Lt. Governor.

"You are as strong as your foundation"

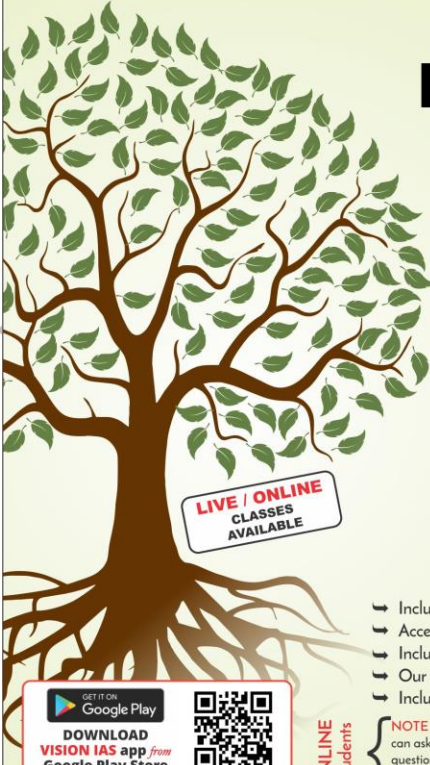
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## 2. ISSUES RELATED TO CONSTITUTION

### 2.1. FREEDOM OF SPEECH AND EXPRESSION

#### 2.1.1. DEFAMATION

##### Why in news?

- The Supreme Court recently upheld the validity of the criminal defamation law. The court pronounced its verdict on a batch of petitions challenging the constitutional validity of sections 499 and 500 of the Indian Penal Code providing for criminal defamation.
- The court said though free speech is a “highly valued and cherished right”, imprisonment is a proportionate punishment for defamatory remarks.

Sections 499 and 500 of IPC prescribes two years' imprisonment for a person found guilty of defamation.

##### Why it should be retained?

##### According to Supreme Court

- Reputation** of an individual, constituent in **Article 21** is an equally important right as free speech.
- Criminalization of defamation to protect individual dignity and reputation is a “**reasonable restriction**”
- Editors have to take the responsibility of everything they publish as it has far-reaching consequences in an individual and country's life
- The acts of expression should be looked at both from the perspective of the speaker and the place at which he speaks, the audience etc.

##### Other arguments

- It has been part of statutory law for over 70 years. It has neither diluted our vibrant democracy nor abridged free speech
- Protection for “legitimate criticism” on a question of public interest is available in the
  - ✓ Civil law of defamation &
  - ✓ Under exceptions of Section 499 IPC
- Mere misuse or abuse of law can never be a reason to render a provision unconstitutional rather lower judiciary must be sensitized to prevent misuse
- Monetary compensation in civil defamation is not proportional to the excessive harm done to the reputation

##### Significance of this judgement

- The judgement raises reputation to the level of “**shared value of the collective**” and elevates it to the status of a fundamental right **under Article 21 of the Constitution**.
- According to the judgement, the theory of balancing of rights dictates that along with the right to freedom of speech and expression, there is a correlative duty on citizens not to interfere with the liberty of others, as everyone is entitled to the dignity of person and of reputation.

##### Why it should be deleted?

- Freedom of speech and expression of media is important for a vibrant democracy and the threat of prosecution alone is enough to suppress the truth. Many times the influential people misuse this provision to suppress any voices against them.
- Considering anecdotal evidence, every dissent may be taken as unpalatable criticism.



- The right to reputation cannot be extended to collectives such as the government, which has the resources to set right damage to their reputations.
- The process in the criminal cases itself becomes a punishment for the accused as it requires him to be personally present along with a lawyer on each date of hearing.
- Given that a civil remedy to defamation already exists, no purpose is served by retaining the criminal remedy except to coerce, harass and threaten.
- It goes against the global trend of decriminalizing defamation
  - ✓ Many countries, including neighboring Sri Lanka, have decriminalized defamation.
  - ✓ In 2011, the Human Rights Committee of the International Covenant on Civil and Political Rights called upon states to abolish criminal defamation, noting that it intimidates citizens and makes them shy away from exposing wrongdoing.

### 2.1.2. SECTION 295A

#### Why in News?

- Recently SC quashed criminal case against MS Dhoni and magazine editor, filed under section 295A of IPC, for his depiction as Lord Vishnu on a magazine cover in 2013.

#### Key features of judgement

- Section 295A requires action to be **deliberate** with **intention to outrage religious feelings** without just cause or excuse.
- The section is applicable to only **aggravated forms of insult** to religion that is meant for disrupting public order. This was already clarified in a 1957 judgement.
- It also **warned lower courts** to stop taking reflexive cognizance of cases of little importance related to offending of religious/caste/cultural sentiments of any group.

#### Section 295A

Whoever, with deliberate and malicious intention of outraging the religious feelings of any class of citizens of India (by words, either spoken or written, or by signs or by visible representations or otherwise), insults or attempts to insult the religion or the religious beliefs of that class, shall be punished with imprisonment of three years, or with fine, or with both.

#### Impact of judgement

- It would reduce the **misuse**, owing to the subjectivity of section 295A, as the judgement excludes its applicability on casual observations not driven by any bad intention.
- It **clarifies the ambit** of this section, which would help protecting individuals and public figures from political activists and overzealous administrative authorities.
- It re-establishes **balance** between **Article 19 and Article 25** of the Constitution.

### 2.1.3. FREEDOM OF PRESS AND MEDIA

- The press faces various problems and restrictions through government notifications in conflict zones and otherwise. Media persons between the state armed with the law to enforce varying degrees of censorship and various groups pressurizing to have their versions published.
- India ranks at **136** among 180 nations on **the World Press Freedom Index 2017**, published by Reporters without Borders.
- Recent issues when freedom of press has come into question
  - Restricting news agencies to publish any news related to National Socialist Council of Nagaland-Khaplang (NSCN-K) as it will be seen as violation under Unlawful Activities [Prevention] Act, 1967

- Order of Inter-ministerial committee instituted by the Information and Broadcasting ministry that the Hindi channel NDTV India be shut down for a day for **revealing “strategically sensitive” details** during its coverage of the **Pathankot attacks**.
- Pre-censorship of films by CBFC

### Issues

- The government’s decisions violate freedom of media and therefore the citizens of India.
- Imposing ban without judicial intervention or oversight goes against the spirit of the Constitution and is violative of the principles of natural justice.
- Problem in regulation as it is fragmented because of multiple bodies and moreover self-regulation is ineffective. In social media, regulatory body is absent.

### Way forward

- There should be detailed guidelines laid down, in relation, to broadcasting/publishing during a terrorist attack or insurgency.
- The government should work with the media, the armed forces and all the stakeholders to create a system so as to prevent leakages.
- Media and press has to be more responsible when it comes to broadcasting or publishing such sensitive issues
- It’s time to **establish an independent television media watchdog on the lines of the Press Council of India** to ensure the freedom of the televised press. The **UK has an independent media watchdog Office of Communications (Ofcom)** that is recognised by statute and has enforcement powers.
- One more way is pre-broadcast or pre-publication censorship of the media but it has been recently rejected by apex court on the basis of Article 19(1)(a) and 19(2)
- Following suggestions by the Supreme Court and Parliamentary Committees can be **feasible options**:
  - ✓ The Supreme Court in (**Secretary, Ministry of Information and Broadcasting v. Cricket Association of Bengal**) case suggested for **creation of an independent broadcasting media authority along the lines of TRAI**.
  - ✓ In May 2013, the Parliamentary Standing Committee on Information Technology (2012-2013) recommended that **either there be a statutory body to look into content from both print and electronic media or that the PCI be revamped with real powers to penalize** for violation of its code.
- Regular updation of guidelines with annual report on regulation by different regulation agencies. For example CBFC should:
  - ✓ Submit an annual report to the central government, containing an analytical study of the trends in the film industry, to be tabled in Parliament each year,
  - ✓ review the work of regional officers and the Regional and Central Advisory Panels,
  - ✓ periodically review guidelines laid down for certification of films, etc.

#### Current scenario of Regulatory Mechanism

- The electronic media in India is mostly self-regulated.
- A lot of private channels by themselves have set up **the News Broadcasting Standards Authority (NBSA)** of India which issues standards in the nature of guidelines.
- The NBSA is empowered to warn, admonish, censure, express disapproval and fine the broadcaster a sum upto Rs. 1 lakh for violation of the Code.
- If something goes wrong, the Government also may step in and punish the channels e.g. by taking them off the air for a day or so.
- Film censorship provisions are governed by the Cinematograph Act, 1952 and the Cinematograph (Certification) Rules, 1983.

The media plays a vital role in democracy. So, there is a need to balance its independence and provide an effective mechanism to regulate media at the same time. Certain amount of

regulation is necessary as they affect mind of society. But regulation should be done in a manner which does not restrict the artistic expression, freedom of speech etc.

## 2.2. RIGHT TO CHOOSE

### Why in news?

- Recently, Patna High Court in *the Confederation of Indian Alcoholic Beverage Companies v State of Bihar (2016)* holds the imposition of “prohibition” in Bihar as unconstitutional.

### Background

- The Bihar government issued a notification under the Bihar Excise Act, 1915 banning the manufacture, sale, and distribution, as well as the possession and consumption of alcohol.
- It also reversed the burden of proof, requiring the accused to prove her innocence to avoid imprisonment.
- Supreme Court, however, has stayed the operation of the Patna High Court judgment, allowing the continuation of a draconian prohibition law in Bihar.

Right to Choose guarantees individuals the right to personal autonomy, which means that a person's decisions regarding his or her personal life are respected so long as he/she is not a nuisance to the society.

### Significance of Patna High Court judgement

- For the first time, a constitutional court has addressed the question of imposition of prohibition in terms of its impact on the right to life and liberty of a citizen.
- This implies that the debate was not just about the right to business and trade of manufacturers and dealers, but individual liberty as well.

### Other judgements related to Right to Choose

- Bombay High Court, in *Shaikh Zahid Mukhtiar v State of Maharashtra (2016)*, struck down the sections of Maharashtra Animal Preservation Act, 1976, on the grounds that it is a breach of Article 21, specifically the right to consume food of one's choice in private.
- Bombay High Court in *High Court on Its Own Motion v State of Maharashtra (2016)*, read in “choice” as a ground on which a woman may lawfully seek an abortion, even though the Medical Termination of Pregnancy Act, 1971 only permits abortions on the ground that the pregnancy might affect the mental health of the woman.

### Concerns related to approach of SC vis-à-vis Right to Choose

- The Supreme Court's jurisprudence on the scope of Right to life under Article 21 has largely been about incorporating socioeconomic rights contained in Part IV. But it has not focused on the individual's right to determine what the “good life” itself is.
- There have been stray mentions of the right to choose by Supreme Court without fully articulating what they mean by it.
  - ✓ For instance, The Supreme Court overturned *Naz Foundation in Suresh Kumar Koushal v Naz Foundation (2014)*, refusing to even engage with the argument that LGBTQ persons may have rights.
  - ✓ This after Delhi High Court's judgement decriminalised voluntary homosexual acts on the premise (among other things) that it was a violation of the right to privacy of the individual, which is part of the right to life of a person. The right to privacy here is framed specifically in terms of choice of sexual partners.

### Way forward

- In its role as the ultimate arbiter of the rule of law and fundamental rights, it is time the Supreme Court re-examines its whole approach to Article 21.
- For instance, it can adopt a more straightforward approach to this issue, by reading a right to choose as something that is essential to leading a meaningful life.

## 2.3. RESTRICTIONS ON TRADE IN CATTLE

The Union government has recently notified Prevention of cruelty to animals (Regulation of Livestock Markets) Rules, 2017 under Prevention of Cruelty to Animals Act, 1960 for restricting trade in cattle.

### Rationale behind this decision

- Prevention of Cruelty to Animals Act, 1960
- Supreme Court directions regarding improving the condition of animals in markets where they are sold
- Supreme Court order that directed the government to frame guidelines to prevent cattle smuggling to Nepal for the Gadhimai Festival

### Key provisions in new formulated rules

- **Ban on sale of cattle for slaughter** at animal markets across the country. The cattle can now be purchased only for “agricultural purposes”.
- **Specifying the term “Cattle”** - “Cattle” in the notification includes bulls, bullocks, cows, buffaloes, steers, heifers and calves, as well as camels.
- **Introducing lot of paperwork** – for both seller and buyer
- **Regulating the animal market** – Approval of District Animal Market Monitoring Committee (DAMMC) is required to run the market. Other provisions such as no sale of young and unfit animals, certification of veterinary inspector and separate facilities for sick animals in these markets are also included.
- **Regulating Inter-state and Inter-national movements** - No animal market can now be organised within 50 km of an international border and 25 km of a state border. Taking animals outside the state will require special approval of the state government nominee.
- **Prohibiting cruel practices** – like slaughter, painting of horns and cutting the ears of buffaloes. Also DAMMC is duty-bound to ensure that no animal is kept in a pen or cage unsuitable for its size.

#### Prevention of Cruelty to Animals Act, 1960

- It was enacted to prevent the infliction of unnecessary pain or suffering on animals
- It extends to whole of India except J&K
- Animal welfare board of India in MoEF, was established under this act.
- It regulates animal markets, dog breeders, aquarium and pet fish shop owners
- Treating animals cruelly under this act, includes:
  - ✓ inflicting pain through beating etc.
  - ✓ willfully and unreasonably administering drugs
  - ✓ caging, conveying and carrying animals inappropriately as to cause pain & suffering to them
  - ✓ mutilating any animals etc.

### Effects of these rules

Although prohibitions on the cruelty inflicted in the transport and treatment of animals are welcome, but these new rules are going to affect various stakeholders associated with cattle trade.

- **Cattle owner/farmer** – Almost 30% of a farmer income comes from animal wealth, now he will be burdened to maintain old ones. Also, they act as natural insurance for farmers. For instance, the carcass of an animal dying of “natural causes” also can’t be sold in the market as rules prescribe that the carcass will be incinerated and not be sold or flayed for leather.
- **Slaughter houses** – These rules are likely to make sourcing of meat difficult for slaughter houses.
- **Leather & meat industry** – These industries will be crippled as 90% of slaughtered buffaloes are bought and sold in animal markets which has been banned now. Their supply chain is choked. It may also lead to unemployment.
- **Consumer** – It takes away a cheap source of nutritious food for the poor.
- **Exports** – India could lose on 30000 crores worth of exports.
- **Environment** – In India 80 million cattles are unproductive. Government and private cow shelters will be able to take care of only 5-10% of it. Thus, rest of them is going to cause environmental and sanitation concerns as owners would not be able to afford their upkeep.

### Other issues with the rules

- **Against its parent act** – The act does not categorise slaughter of animals for food as cruelty. Thus, rules seem to be invalid as they go against what the parent act permits by prohibiting the sale of cattle for slaughter or sacrifices at animal markets. The court also had specifically noted how Section 28 of the Act mandates that it is not an offence to kill any animal in a manner required by the religion of any community.
- **Against federalism** – Invoking 1960 law for these rules is a blatant attempt to interfere with the powers of state. Historically, different cow slaughter laws have been passed by different States as “agriculture” and “the preservation of stock” fall within the exclusive legislative competence of the States.
- **Against fundamental rights** - slaughtering of animals for food, culinary made out of such animal flesh etc. is a part of cultural identity of some communities, Thus it goes against Article 29 which is not been subjected to any restriction in Constitution. It also violates **right to food, privacy, personal liberty** of a citizen
- The reasonability of restriction on trade needs to be tested against the fundamental **right to occupation**, trade or business under **Article 19 (1) (g)**
- **No rational basis** – to limit the rules to select few animals. The pain is inflicted on other animals as well while they are traded and consumed.

1958 - MH Quareshi v State of Bihar – SC held that a total ban on the slaughter of she-buffaloes, bulls and bullocks (cattle or buffalo) after they cease to be capable of yielding milk or of breeding or working as draught animals cannot be supported as reasonable in the interest of the general public.

1996 - Hasmattullah v. State of Madhya Pradesh SC held that a total ban on slaughter of bulls and bullocks would impose an unreasonable restriction on the fundamental rights of butchers. Thus, the total ban on the slaughter of cows, calves of cow and calves of she-buffaloes was upheld as earlier.

2005 - State of Gujarat v Mirzapur Moti Kureshi Kassab Jamat SC held that a species of cattle which is milch or draught for a number of years is to be included within the expression “cows or calves” which partially overruled the decision in MH Quareshi case.

### Constitutional position

This dispute has a history starting with founding of the Republic where the subject of cow slaughter was one of the most fraught and contentious topics of debate. On the call of prohibition of cow slaughter to be made part of the fundamental rights, the Constitution’s Drafting Committee agreed upon a compromise.



It was included as a **DPSP under Article 48** which says the state shall “organise agriculture and animal husbandry on modern and scientific lines and shall, in particular, take steps for preserving and improving the breeds, and prohibiting the slaughter, of cows and calves and other milch and draught cattle.”

Even Supreme Court also has given various contradictory judgements (see box) over the years on the attempts of government to impose a total ban.

## 2.4. RIGHT TO INTERNET ACCESS: SUPREME COURT

### Why in news?

- The **Supreme Court** in a judgement has said that the **right to access Internet comes under fundamental right of expression and cannot be curtailed at any cost.**

#### Right to Internet Access

- In 2015, **UN** declared Internet Access as a Human Right.
- In March 2017, Kerala became the first state to declare Internet as a basic right for every citizen.

### Judgement

- It was passed during hearing of a **PIL filed by Sabu Mathew George against search engines (Yahoo, Google and Microsoft)** for strict adherence to section 22 of the Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) (PCPNDT) Act of 1994.
- The court said that the Right of Internet Access is permissible, until and unless it doesn't **'encroaches into the boundary of illegality'**.
- The court said that if someone searches for medical tourism in India, he/she can do so unless it violates the restrictions under section 22 of the PCPNDT Act.

### Current Status

- The three Internet search engines have given assurances to the Supreme Court that they would **neither advertise nor sponsor advertisements violative of the PNPCDT Act.**
- The search giants are also required to have **'in-house' experts** to spot illegal content and pull them down.
- Nodal Officers** have been appointed at the State level to keep tabs on the Net for offensive material contravening Section 22 of the Act.

## 2.5. RESPECTING NATIONAL SYMBOLS

### Why in news?

In **Shyam Narayan Chouksey case** (National Anthem Order), the Supreme Court directed all cinema halls to play national anthem at the start of movies.

Later in same case, Shyam Narayan Chouksey wanted Parliament to define 'respect' for the national anthem and flag under Article 51A (a) of the Constitution or Supreme Court to issue a mandamus to the government to frame guidelines.

In response to it, Centre asserted that respect for the national anthem and flag is “a matter of national pride and non-negotiable”.

### Legislations and Rules regarding National Symbols

- Article 51A** of the Constitution makes it a **fundamental duty** for

#### DOS AND DON'TS

##### Rules laid down by the Supreme Court

- Cinemas must play the national anthem before a film is screened
- All those in hall must stand and show respect
- When the anthem is played, the national flag will be shown on screen
- Doors will be closed before anthem is played, and opened after it's over
- No commercial exploitation of anthem
- Anthem cannot be dramatised or included in variety show
- Abridged version cannot be played
- Cannot be printed on any object and displayed in manner 'tantamount to disrespect'



every citizen of India to abide by the Constitution and **respect** its ideals and institutions, the national flag and the national anthem.

- **The Prevention of Insult to National Honour Act, 1971** deals with cases of insults to the Constitution, the national flag and the national anthem and provides for penal provision for insulting these symbols.
- **Flag Code of India, 2002** is **not a law** but a consolidation of **executive instructions** issued by the Government of India from time to time and contains detailed instruction for observing such behaviour which will not disrespect the National Flag.

### 2.5.1. PROMOTION OF NATIONAL SONG

#### Why in News?

- Supreme Court **rejected a plea to direct the Central government to frame a national policy under Article 51A** of the Constitution to promote the National Anthem, the National Flag and a 'National Song'.
  - ✓ It also rejected making the National Anthem compulsory in offices, courts, legislative houses and Parliament.
  - ✓ However the court **"kept alive"** the plea that schools should play or sing National Anthem on working days.

#### Provisions of the Prevention of Insult to National Honour Act, 1971

- **Section 2** of the Act provides for a maximum imprisonment of three years with or without fine for insulting the Indian national flag and the constitution of India.
  - **Insult includes** burning, mutilating, defacing, defiling, disfiguring, destroying or otherwise showing disrespect or contempt towards the national flag or the constitution.
  - **Section 3** of the Act criminalizes insult to national anthem.
- No section** of this Act or Indian Penal Code, 1860 **makes it mandatory for a citizen to stand up** when the national anthem is being played.

#### Arguments given

- **Fundamental Duties cannot be made compulsory.** They only direct individuals to become a better citizen. They are also not enforceable in courts.
- Court pointed out that the **National Song has not been mentioned in the Fundamental Duties.**
- Forcing abidance to national symbols is not an ethical way to promote feeling of nationalism.

#### Significance

- By rejecting the idea of a policy on National anthem, flag and song, Supreme Court has **avoided national symbols becoming a tool of promoting moral policing.**
- Supreme Court has also **held personal choice over dictating patriotism** in this decision.

#### Way Forward

- Gradual steps should be taken rather than radical changes. Educating the people on the national flag, anthem and songs will increase acceptance of them in a citizen's life. They will also understand their fundamental duty to promote them. A policy on them seems to be a futuristic idea and is not relevant in present times.

## 2.6. ISSUES RELATED TO LANGUAGE

### 2.6.1. EIGHTH SCHEDULE OF THE CONSTITUTION

#### Why in news?

A group of Hindi Professors has written to the Prime Minister to not add dialects of Hindi like Bhojpuri and Rajasthani to the Eighth Schedule of the Constitution.

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### About Eighth Schedule

- Eighth Schedule of the Constitution contains 22 languages. 14 languages were initially in the Constitution.
- Sindhi language was added in 1967. Konkani, Nepali and Manipuri were added in 1992.
- Bodo, Dogri, Maithili and Santhali were added in 2004.
- At present, there is demand for at least 38 more languages in the Eighth Schedule.
- There is “**no established set of criteria**” for inclusion of languages in the Eighth schedule.
- **Sitakant Mohapatra Committee** was set up to evolve a set of objective criteria for inclusion of more languages in the Eighth Schedule which submitted its report in 2004.
- The above report is under consideration of the Central Government.

### 2.6.2. PROMOTION OF HINDI LANGUAGE

A panel, set up under the Official Languages Act 1963, had submitted its recommendations to the President in 2011. The President has given in principle approval to some of these recommendations recently -

- The HRD Ministry needs to make credible efforts for making Hindi a compulsory subject and Hindi should be compulsorily taught in all CBSE schools and KVs until Class X.
- Those holding top government posts should give their speeches/statements in Hindi, especially those who can read and speak in Hindi.
- Equal honorarium for guest speakers at Hindi workshops organised by ministries at par with speakers at other workshops
- Hindi translators and co-announcers of Akashvani be given salary at par with translators of foreign languages
- Filling vacancies of the Hindi officers in various departments,
- Introducing the option of writing answers and giving interviews in Hindi in higher education institutions of non-Hindi speaking states
- Railways and Air India Tickets to also have information in Hindi.

#### Basis for promoting Hindi language

**Article 351:** It shall be the duty of the Union to promote the spread of the Hindi language, to develop it so that it may serve as a medium of expression for all the elements of the composite culture of India and to secure its enrichment by assimilating without interfering with its genius, the forms, style and expressions used in Hindustani and in the other languages of India specified in the Eighth Schedule.

**Article 120 and 210** regarding language to be used in parliament and state legislature respectively gives the option of transacting business in Hindi as well

**Article 343** gives power to parliament to decide by law, the languages to be used for official work.

**Article 344** provides for constitution of a parliamentary committee every 10 years to recommend to the President regarding progressive use of the Hindi language for the official purposes of the Union and restrictions on the use of English.

#### Why opposition to this order?

- It may instigate another anti-Hindi agitation.
- Critics argue that the people in the north don't even make an effort to learn any south Indian language, then why should south be forced to study a particular language.
- A nation need not have a single language, For ex- even small nations such as Belgium and Switzerland have three and four respectively.

## 2.7. PREVENTIVE DETENTION

### Why in news?

- Recently Supreme Court held that Preventive detention of a person by a State after branding him a 'goonda' merely because the normal legal process is ineffective and time-consuming in 'curbing the evil he spreads' is illegal.
- The authorities in Telangana had taken a seed manufacturer into preventive detention (under Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986) on allegation of selling spurious seeds to poor farmers.

### Arguments for this judgement

- **Liberty of citizen** - Detention affects liberty of the citizen under Article 14, 19, 21, 22 of the constitution
- **Abuse of discretionary powers by executive** - The power is statutory in nature, thus, must be exercised for the purpose it is conferred, i.e., within the limits of the statute.

### About preventive detention

Preventive detention, the most controversial of all fundamental rights, is detaining without trial to prevent possible commitment of crime on suspicion that some wrong actions may be done by the person concerned. The four grounds for Preventive detention are—

- security of state
- foreign affairs or security of India
- maintenance of public order
- maintenance of supplies and essential services and defence

A detainee under preventive detention can have no right of personal liberty guaranteed by Article 19 or Article 21. The Article 22 (3) also provides that the protection against arrest and detention under Article 22 (1) and 22 (2) shall not be available, if a person is arrested or detained under a law providing for preventive detention,.

## 2.8. PARLIAMENTARY V/S PRESIDENTIAL SYSTEM

The constitution of India has adopted parliamentary form of government. But it is a matter of debate, at least academically, whether India should switch over to presidential system or not. India adopted parliamentary system due to following reasons:

- It ensures harmony between legislature and executive organs of government as executive is a part of legislature. Thus no conflict and paralysis due to tensions between executive and legislature being from different parties
- It prefers accountability over stability as ministers are responsible to government
- It does not give power to a single individual rather power is in council of ministers collectively. Thus, prevents despotism. The group of people as executive also ensures wide representation
- We were more familiar with this form of government.

However, presidential system offers other incentives such as

- **Stable government** – The government is elected for specified tenure unlike parliamentary where no-confidence motion can be passed anytime as government is on the mercy of legislators

- The above factor also affects the continuity in policies and decisiveness in actions
- Government by experts because President has wide choice to choose his advisers unlike parliament elected ministers may not be experts in their fields
- Focus is more on policies and performance rather than politics as the government position is secure
- Clarity to people on who they are electing as their leader which is not the norm in parliamentary system. However, elections in recent time in India have seen a leader being face of the electoral process similar to the presidential system.

Due to these reasons there is view that India should switch over to Presidential system. However,

- It is difficult under the present constitutional scheme as it would violate the 'basic structure' doctrine
- Centralisation of power and authority in one individual may become dangerous for democracy in a country where diversity is high
- Parliamentary system has been tried and tested for nearly 70 years so rather than replacing it, the focus should be on reforming its processes and cleansing the electoral process.

**फाउंडेशन कोर्स**  
**सामान्य अध्ययन**

**28 Sep | 10 AM**

**इनोवेटिव क्लासरूम प्रोग्राम के घटक**

**हिन्दी माध्यम में**

**ऑनलाइन कक्षाएं भी उपलब्ध**

**Venue: Mukherjee Nagar Classroom Center**

- ▶ प्रारंभिक परीक्षा, मुख्य परीक्षा और निबंध के लिए महत्वपूर्ण सभी टॉपिक का विस्तृत कवरेज
- ▶ मौलिक अवधारणाओं की समझ के विकास एवं विश्लेषणात्मक क्षमता निर्माण पर विशेष ध्यान
- ▶ एनीमेशन, पॉवर प्वाइंट, वीडियो जैसी तकनीकी सुविधाओं का प्रयोग
- ▶ अंतर - विषयक समझ विकसित करने का प्रयास
- ▶ योजनाबद्ध तैयारी हेतु करंट ओरिएंटेड अप्रोच
- ▶ नियमित क्लास टेस्ट एवं व्यक्तिगत मूल्यांकन
- ▶ कॉम्प्रीहेंसिव स्टडी मटेरियल
- ▶ **PT 365** - लगभग 20 कक्षाएं
- ▶ **MAINS 365** - लगभग 20 कक्षाएं
- ▶ **PT** टेस्ट सीरीज - 35 मॉक टेस्ट पेपर
- ▶ मुख्य परीक्षा टेस्ट सीरीज - 25 मॉक टेस्ट
- ▶ निबंध टेस्ट सीरीज - 5 मॉक टेस्ट पेपर
- ▶ सीसैट - 15 मॉक टेस्ट पेपर
- ▶ निबंध लेखन - शैली की कक्षाएं
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## 3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATURE AND EXECUTIVE

### 3.1. ISSUES IN PARLIAMENTARY FUNCTIONING

#### 3.1.1. ANTI DEFECTION LAW

##### Why in News?

Recent trends have been observed in past few years where MLA's defected to ruling party without being disqualified from their legislative membership. This questions the viability of Anti-Defection-Law in India.

##### What is Anti Defection Law?

- The anti-defection law was passed by parliament in 1985 to provide stability to governments and promoting party discipline.
- The 52nd amendment to the Constitution added the Tenth Schedule which laid down the process by which legislators may be disqualified on grounds of defection.
- An MP or MLA is deemed to have defected if he either voluntarily resigned from his party or disobeyed the directives of the party leadership on a vote (against party's whip).
- Independent members would be disqualified if they joined a political party.
- Nominated members who were not members of a party could choose to join a party within six months; after that period, they were treated as a party member or independent member.
- The law also made a few exceptions.
  - ✓ Any person elected as speaker or chairman could resign from his party, and rejoin the party if he demitted that post.
  - ✓ A party could be merged into another if at least two-thirds of its party legislators voted for the merger.
- The law initially permitted splitting of parties, but that has now been outlawed.

##### Issues

- There is **no mention of time frame** for Presiding officer to take decision regarding disqualification which is one of the main loophole in the law.
- The law states that the decision of Presiding officer is final and not subject to judicial review. The Supreme Court later on held that there may not be any judicial intervention until the presiding officer gives his order. However, the final decision is subject to appeal in the High Courts and Supreme Court.
- Though there is provision of judicial review (**Kihoto Hollohan case, 1993**) still judiciary is by and large helpless at the pre-decisional stage as no clear role is mentioned in the anti-defection law.

##### Way Forward

- Need to define the entire procedure clearly and set a definite and reasonable time limits for each step of the process, ensuring transparency.
- Power to decide upon the question of disqualification can be taken away from Speaker and entrusted to some **independent constitutional authority** like **Election commission of India**.



- Supreme court order in **Kihoto Hollohan** case of 1992 should be followed that parties should issue directions only on votes which are crucial to the stability of the government.
- There is a need of amendment in the law to sync it with representative democracy and not become a system of blindly following the instruction of party leadership Thus allowing legislators right to dissent and promote independent thinking as allowed in other democracies of the world such as US, UK, Australia etc.

### 3.1.2. PARLIAMENTARY COMMITTEES

#### Why in news?

- Since the inception of the 16<sup>th</sup> Lok Sabha, only 29% bills have been scrutinised by parliamentary committees as compared to 60% and 70% of bills being examined in 14<sup>th</sup> and 15<sup>th</sup> Lok Sabhas respectively.
- This raises concern over the diminishing importance of parliamentary committees and whether proper deliberations are taking place before the passage of various bills.

#### Importance of Parliamentary Committees

- Parliamentary committees are of two types: **Standing and Ad-hoc committees**. While the former perform specialized jobs, the latter are constituted to perform specific tasks and cease to exist on its completion.
- Parliamentary committees investigate issues and bills proposed so that the Parliament can be well informed before making a decision of national importance.
- It increases the ability of Parliament to scrutinize government policies and make it accountable
- The committees can make recommendations and amendments to the bill. These are not binding on the Parliament.
- In the past, we have seen that scrutiny by committees has helped resolve significant issues in Bills. For instance, the Prevention of Corruption Amendment Bill which has been pending in the Rajya Sabha since 2013. The Bill has been examined by two parliamentary committees and has gone through a number of iterations. This has resulted in significant issues in the Bill getting addressed.

#### Way Forward

- **Detailed and proper deliberations** need to be undertaken before passage of each bill. Due to the magnitude of work and the limited time available in the parliament, MPs are being unable to comprehensively scrutinise legislation on the floor of the House. In case of shortage of time, bill needs to be scrutinised by a parliamentary committee.
- Alternatively, India can also adopt the British model where **every bill is scrutinised by a committee**. It was also recommended by **NCRWC**.

#### 3.1.2.1. PUBLIC ACCOUNTS COMMITTEE

#### Why in news?

- RBI governor Urjit Patel appeared before the committee to brief it on the impact of demonetization.
- A controversy also arose over whether the PAC can summon the Prime Minister.

#### Primary Functions of the Committee

- To examine the appropriation accounts and the finance accounts of the Union government and any other account laid before the Lok Sabha.



- In scrutinizing the Appropriation Accounts and the Reports of the Comptroller and Auditor-General thereon, it is the duty of the Committee to satisfy itself:
  - ✓ that the money shown in the accounts as having been disbursed were legally available for and, applicable to the service or purpose to which they have been applied or charged;
  - ✓ that the expenditure conforms to the authority which governs it; and
  - ✓ that every re-appropriation has been made in accordance with the provisions made in this behalf under rules framed by competent authority
- To examine audit reports of various autonomous and semi-autonomous bodies, the audit of which is conducted by the CAG.
- It considers the justification for spending more or less than the amount originally sanctioned.
- The functions of the Committee extend however, “beyond, the formality of expenditure to its wisdom, faithfulness and economy” and thus the committee examines cases involving losses, nugatory expenditure and financial irregularities
- The Committee examines cases involving under-assessments, tax-evasion, non-levy of duties, misclassifications etc., identifies the loopholes in the taxation laws and procedures and makes recommendations in order to check leakage of revenue

### Issues

- **Secrecy:** The meetings of the committee are closed door meetings unlike USA where statements made before committees are telecast live and UK where its meetings are open to public.
- The members of the committee lack **technical expertise required** to go into intricacies of accounting and administrative principles.
- The work of the committee is more in the nature of a **post-mortem exercise** and is not effective in preventing losses.
- It does not have suo motu powers of investigations.
- **Politicization of the proceedings:**
  - ✓ With greater public interest shown in some issues like 2G scam, members have started taking strict party lines in committee meetings.
  - ✓ Even during the UPA government, the then PAC Chairperson Murli Manohar Joshi's decision to summon Prime Minister Manmohan Singh in connection with the 2G scam had triggered a massive controversy.

### Way Forward

- A stipulated time limit within which CAG audit reports should be presented to the Parliament.
- A time limit should be fixed for government departments to submit Action Taken Report.
- The PAC should have suo motu powers of investigations.
- Sufficient technical assistance should be provided to them through Lok Sabha or Rajya Sabha Secretariats.
- Testimony of witnesses should be made public either by telecasting it or allowing the Press or by making the transcript of testimony public.
- Minutes of meeting of the PAC should be made public.
- The general public should be allowed to view evidence proceedings of committees.

### 3.1.3. REFORMS IN PARLIAMENT: INCREASING EFFICIENCY

#### Issues concerning Indian Parliament:

- **Reduction in the number of sittings:** The number of sitting days has come down from about 140 days a year in the 1950s to an average of sixty-five days over the past five years.
- **Discipline and decorum:** instances of interruptions and disruptions leading sometimes even to adjournment of the proceedings of the House have increased. This, not only, results in the wastage of time of the House but also affects adversely the very purpose of Parliament.
- **Declining quality of parliamentary debates:** Parliamentary debates, which once focussed on national and critical issues, are now more about local problems, viewed from a parochial angle.
- **Low representation of women:** The Lok Sabha and the Rajya Sabha have not seen women MPs cross the 12% mark.
- **Bills being passed with no/minimum discussion** and by voice vote amidst pandemonium in the House. In 2008, for instance, 16 Bills were passed with less than 20 minutes of debate. The non-passage of private member Bills doesn't help either. To date, only 14 private member bills have been passed.

#### Factors that have affected the role of Parliament:

- Passing of Anti-defection law in 1985 has made it less necessary for MPs to prepare for their work in Parliament, because they will need to heed the party whip or risk losing their seat in Parliament.
- MPs have no research staff, nor does the Parliament library provide sufficient research support.
- Growth of coalition politics has made managing inter-party mechanisms more difficult.
- The opening up of Parliament to live telecasts has increased the incentives for groups of MPs to grandstand on issues, knowing well that it will be widely covered in the media, beyond the live telecast.
- On positive side, the introduction of Standing Committees in 1993 has enhanced the ability of Parliament to scrutinize legislation, and to oversee the work of the executive.

#### Implications of poor functioning of Parliament

- **Lack of accountability of the government:** If the parliament doesn't function properly, it can not hold the government accountable for its actions.
- **Low productivity:** Productivity of Lok Sabha in the 2016 winter session was 14%, while that of the Rajya Sabha was 20%.
- High cost to public exchequer in the form of wasting of taxpayer money. But the real cost to society is huge. Eg. GST could have been passed four years ago. If we assume that the passage of GST will have added 1% to India's GDP then in the last four years we have lost 4% of GDP.
- Delay in policy making leading to rise of unconstitutional bodies to fill the legislative gap
- **Declining faith in democratic process:** Parliament as an institution becomes less relevant for national policy making.

#### Suggestions

- **Minimum working days:** National Commission to Review the working of the Constitution recommended the minimum number of days for sittings of Rajya Sabha and Lok Sabha

should be fixed at 100 and 120 days respectively. Odisha has already shown the way, mandating minimum 60 days for the State Assembly.

- If time is lost due to disruptions it should be compensated for, the same day, by sitting beyond normal hours.
- Passage of the Women's Reservation Bill (108th amendment) reserving 33% of all seats in Parliament and State legislatures for women.
- **Systematic approach to legislative process:** Parliamentary committees can assume institutional importance in this process. They offer a place to raise issues in the general public interest and conduct advocacy amidst legislative engineering.
- Constitution committee to conduct prior scrutiny before the actual drafting of the proposal for constitutional reform.
- The Anti-Defection Act needs to be recast, and used only in exceptional circumstances, allowing MPs free rein on their self-expression.
- Investing in Parliament's intellectual capital is necessary and additional budgetary support should be provided to LARRDIS (Parliament's Library and Reference, Research, Documentation and Information Service) while assisting MPs in employing research staff.
- **Improving the budget scrutiny process:** India needs a parliamentary budget office, akin to the US Congressional Budget Office. This can be an independent institution devoted to conducting a technical and objective analysis of any Bill with spending or revenue raising requirements.

### Conclusion

Parliament should be a space for policy and not for politics. The Indian Parliament has not gone through the changes that recognize the new circumstances. Hence there is need to make our parliament representative and efficient.

### 3.1.4. PRIVILEGE OF LEGISLATORS

#### Why in news?

Recently the Karnataka assembly Speaker ordered the imprisonment of two journalists for a year based on recommendations of its privilege committees. Earlier in 2003, the Tamil Nadu assembly Speaker directed the arrest of five journalists for publishing articles that were critical of the AIADMK government.

#### What are Privileges?

They are special rights, immunities and exemptions enjoyed by the two houses of the Parliament/ state legislatures, their committees and their members.

Two broad categories:

- Collective privileges are enjoyed by each house collectively. E.g. right to publish reports etc., exclude strangers from house proceedings, punish members/ outsiders for breach of privileges etc.

**Committee on Privileges:** This is a standing committee constituted in each house of the Parliament/state legislature. This Committee 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, respectively.

Its function is to examine every question involving breach of privilege of the House or of the members of any Committee thereof referred to it by the House or by the Speaker. It determines with reference to the facts of each case whether a breach of privilege is involved and makes suitable recommendations in its report.

- b) Individual privileges are enjoyed by the members individually. E.g. freedom of speech in the house, exemption from jury service when house is in session, exemption from arrest during the session and 40 days before and after the session.

**Source of the privileges:** Originally these are derived from the British House of Commons. There is no law to codify all the privileges. They are based on five sources namely: Constitutional provisions, various laws of parliament, Rules of both the houses, Parliamentary conventions and Judicial interpretations.

**Breach of privilege:** There are no clearly laid out rules on what constitutes breach of privilege and what punishment it entails. As per Karnataka privileges panels, breach of privilege include to make speeches or to print or publish any libel reflecting on the character or proceedings of the house, its committees or any member of the house relating to his character or conduct as a member of Parliament.

**Constitutional position:** Special privileges are enshrined under Art 105 (in case of Parliament) and Art 194 (in case of state legislature) of the Constitution.

### Importance

- They protect the freedom of speech of parliamentarians and legislators and insulates them against litigation over matters that occur in these houses.
- Without these privileges the house can neither maintain their authority, dignity and honour nor can protect their members from any obstruction in discharge of their duties.

### Criticism

- It is sometimes used to counter media criticism of legislators and as a substitute for legal proceedings.
- Breach of privilege laws allow politicians to become judges in their own cause, raising concerns of conflict of interest and violating basic fair trial guarantees.

### Way forward

There is need for a law codifying the legislative privileges, define the limits of penal action for breach of privilege and procedures to be followed. The legislature must use the power to punish for contempt or breach of privilege sparingly, invoking it mainly to protect the independence of the House and not to take away the liberty of critics.

## 3.2. ISSUES RELATED TO RAJYA SABHA

### 3.2.1. RELEVANCE OF RAJYA SABHA

#### Why in news?

The elections to the Rajya Sabha last year became notorious for alleged poaching by political parties among the ranks of their counterparts with charges of corruption blaring out loud against one another.

#### Issues with functioning and composition

- After the amendment to RPA in 2003 the domicile requirement has been done away with. Consequently it is now increasingly used by the political parties to park unelectable or defeated candidates. Thus, it is not the true representation of states.
- Control over few big states is more than enough to scuttle the voice of numerous smaller states with significantly less representation.

- Another significant criticism of current state of affairs is allotment of seats in Rajya Sabha to states on the basis of population. Such allotment of seats on the basis of population does great disservice to the federal role, which the Rajya Sabha has been envisaged to play.
- Various political parties are using Rajya Sabha seats for generating funds. Large numbers of states have industrialists (not even remotely connected to the state) as their representative in Rajya Sabha. Corrupt and criminal politicians rejected by voters find their way in Rajya Sabha by use of connections and money power.

### Importance of Rajya Sabha

- The core rationale for having two chambers in a national legislature broadly flows from the need for checks and balances in a republican government; to serve as an auxiliary precaution against abuse by majority factions
- At the same time, nations with large territories and heterogeneous constituents prefer bicameralism for ensuring the adequate representation of diverse interests at the federal level; the importance of RS has renewed on account of rise of regional parties
- A forum for calm and informed deliberation
- Less political compulsion- as the seat is not dependent upon direct elections
- Permanent character as a measure of stability.
- Enables senior politician and statesman to take part in the polity and also facilitate participation of intellectuals through nomination.

### Way Forward

- As seats in Lok Sabha have already been distributed on the basis of population of states, so there is little merit in Rajya Sabha having distribution on similar basis.
- To bring small states in our political mainstream it is important for them to have equal representation in Rajya Sabha. Such scheme of equal representation for all states is already being followed in USA. Such a step has also been recommended by Punchhi Commission.
- To deal with abuse of money power, enhanced monitoring by election authorities and a need to reintroduce the residency condition is necessary.

### 3.2.2. UNITED GROUP IN RAJYA SABHA

#### Why in news?

- Recently Vice-President of India formally recognised a **group of 22 MPs** belonging to parties with less than four MPs and certain independents as a consolidated block — **the United Group** in Rajya sabha.

#### Background

- This is only the third time in the history of Indian Parliament that this is happening.
- In **1983**, the first such consolidated group was called **United Associations of Members** was recognised by the then Rajya Sabha Chairman.
- In **1990**, the then chairman of Rajya Sabha recognised **organised group of Parliamentarians** and was renamed as the United Group.

#### Implications of the decision

- The united group will be the **third largest group** of MPs in the Rajya Sabha, after the Congress and the BJP.
- The group will find a place in the **Business Advisory Committee (BAC)** that decides time allotment.



Time allotted to parties to speak on debates depends entirely on their strength in the House. Earlier due to their lean status numerically members of this bloc had **just three minutes of speech time**. Thus, the formation of the United Group would allow for enhanced deliberation and debates in the Rajya sabha.

### 3.3 ISSUES RELATED TO EXECUTIVE

#### 3.3.1. ORDINANCE ROUTE

##### Why in news?

- A seven-judge Constitution Bench of the Supreme Court in **Krishna Kumar Singh vs. State of Bihar** has held that the failure to place an ordinance before the legislature constitutes abuse of power and a fraud on the Constitution.

The Bihar Government had re-promulgated a 1989 ordinance for seven successive times by which it took over 429 Sanskrit schools in Bihar without even once tabling it in the State Assembly.

##### What does the Constitution Say?

- **Article 123 and Article 213** confers power to promulgate ordinance on the President and the Governor respectively.
- Under the Constitution, an Ordinance can be **promulgated only when**
  - ✓ Legislature or either house of legislature is not in session.
  - ✓ Circumstances exists which **require immediate action**.
- The Supreme Court had already declared in **1986, in D.C. Wadhwa** case, that repeated re-promulgation of ordinances was unconstitutional.

##### Why frequent resorting to Ordinance Route?

- Reluctance to face the legislature on particular issues.
- Lack of majority in the Upper House.
- Repeated and willful disruption by opposition parties.

##### Arguments against ordinance route

- It is against separation of power as law making power is domain of legislature.
- It gives arbitrary power in the hands of executive.
- Law is announced without any debate and discussion.

##### Implication of the Judgment

- The court can go into whether the President or Governor **had any material to arrive at the satisfaction** that an ordinance was necessary
- The Court can examine **whether there was any oblique motive**, thus extending power of judicial review
- It makes **mandatory for an ordinance to be tabled** in the legislature for its approval

##### Way Forward

The Constitution has provided for Separation of Power where enacting laws is the function of the legislature. The executive must show self-restraint and should use ordinance making power only as per the spirit of the Constitution and not to evade legislative scrutiny and debates.

#### 3.3.2. OFFICE OF PROFIT

##### Why in news?

Punjab and Haryana high court recently quashed the appointments of four Haryana chief parliamentary secretaries (CPSes).

### Who is a Parliamentary Secretary?

- Parliamentary Secretary is a member of the parliament in the westminster system who assists a more senior minister with his or her duties. Originally, the post was used as a training ground for future ministers.
- The post has been created in several states now and then like Punjab, Haryana, Delhi and Rajasthan etc.
- However, various petitions in the High Court have challenged the appointment of Parliament Secretary.
- In June 2015, Calcutta HC quashed appointment of 24 Parliamentary Secretaries in West Bengal dubbing it unconstitutional.
- Similar actions were taken by the Bombay High Court, Himachal Pradesh High Court, Delhi High Court etc.

#### Definition of Office of Profit

'Office of profit' is not defined in the Constitution. However, based on past judgments, the Election Commission has noted five below tests for what constitutes an office of profit:

- Whether the government makes the appointment
- Whether government has the right to remove or dismiss the holder.
- Whether the government pays remuneration.
- What the functions of the holder are.
- Does the government exercise any control over the performance of these functions.

### What is the Issue with the Post?

- Parliamentary secretary **essentially goes against the principle of separation of powers between the Executive and Legislature.**
- While in theory, the legislature holds the government to account, in reality it is often noticed that the government controls the legislature as long it has a majority in the House. Thus posts like Chairmanships of Corporations, Parliamentary Secretaryships of various ministries, and other offices of profit are used as to appease and leverage legislators as way of buying peace for the government.
- Appointment of parliamentary Secretaries **goes against two important provisions the constitution** concerning the separation of powers issue:
  - ✓ **Office of profit clause:** Under **Article 102(1)(a) and Article 191(1)(a)** of the Constitution, a person shall be disqualified as a member of Parliament or of a Legislative Assembly/Council if he holds an "Office of Profit" under the central or any state government (other than an office declared not to disqualify its holder by a law passed by the Parliament or state legislature).
  - ✓ The underlying idea was to obviate a conflict of interest between the duties of office and their legislative function.
  - ✓ **Limitation of strength of minister's clause:** Parliamentary Secretary's post is also in contradiction to **Article 164 (1A)** of the Constitution which provides for limiting the number of Ministers in the State Cabinets to 15 per cent of the total number of members of the State Legislative Assembly because a Parliament Secretary holds the rank of Minister of State.

### Arguments in Support of the Posts

- Constitution allows a legislature to pass a law to grant exemption to any office of profit holder. In past, states and Parliament have done this as well. The SC in UC Raman case has upheld this.
- Ministers are appointed by the President/Governor. He administers the oath of office and secrecy to them. Without meeting these constitutional requirements one cannot be treated as a minister. Parliamentary secretaries are not ministers within the meaning of Article 239 AA(4) because they are not appointed by the President and are not administered the oath of office and secrecy by him.

**2nd ARC recommendations in this regard:** The Law should be amended to define office of profit based on the following principles:

- All offices in **purely advisory bodies** where the experience, insights and expertise of a legislator would be inputs in governmental policy **shall not be** treated as offices of profit.
- All offices involving **executive decision** making and control of public funds, directly deciding policy or authorizing or approving expenditure **shall be** treated as offices of profit.
- If a serving Minister is a member or head of certain organizations, where **close coordination between the Council of Ministers and the organization is vital** for the functioning of government, it **shall not** be treated as office of profit.

#### Future Actions

- Now, the Election Commission of India has to decide whether the terms and conditions of appointment of Parliamentary Secretaries constitute an "Office of Profit."
- The President's decision cannot be challenged in any court as it is his executive power under the Constitution of India. The Supreme Court cannot interfere.
- However, any decision taken by the ECI can be challenged before Delhi High court by the aggrieved party. This means that the AAP can approach the court if the EC decides to disqualify the MLAs.

### 3.3.3. SPOILS SYSTEM

#### Why in News?

- Appointments made by the State Governor to the Tamil Nadu Public Service Commission were set aside by the Madras High Court and the Supreme Court (SC) recently.

#### Spoils System

- It is also called patronage system.
- Under this, a **winning political party rewards its campaign workers and supporters by appointing them to government posts** or by other favours.

#### Background

- In **Upendra Narayan Singh case (2009)**, SC observed that the Public Service Commissions are becoming victims of spoils system.
- Even **appointments and exits of Governors** with changes in political dynamics is an indication of a shift towards spoils system in constitutional posts.

#### Issues involved

- In **Ramashankar Raghuvanshi case (1983)**, SC observed that employment based on the basis of past political loyalties **violates Article 14 and 16 of the constitution**.
- Spoils system creates a **conflict of interest in the appointee**. It may create a **lack of transparency and accountability** in the public administration.
- Since it is **against meritocracy**, it may **hurt administrative inefficiency**. Also because morale of personnel is affected due to politicisation of administration.

#### Steps taken to remove this system

- **Article 320** resulted in the establishment of **Public Service Commissions** to frame service rules and conditions for selection of meritorious candidates to civil services.
- Kerala government has recently decided to have a **dedicated law to prevent nepotism in government appointments**.

**What needs to be done?**

- 2nd ARC recommends **laying down certain principles** for administrative recruitments to avoid spoils system. These principles are:
  - ✓ **Well-defined merit-based procedure** for recruitment to all government jobs.
  - ✓ **Wide publicity and open competition** for recruitment to all posts.
  - ✓ **Minimization of discretion** in the recruitment process.
  - ✓ Selection primarily on the basis of **written examination** or on performance in existing board or university examination with minimum weight given to interview.
- These principles can be included in a **Civil Services Bill**.
- An independent civil services board at state level with the appointment made by a committee constituted by Chief Minister, Judges, Lokayukta etc. can help in making the recruitment transparent.

**Way forward**

- Government needs to prevent this spoils system by making the institutions independent of political interference. This will help improve administrative efficiency and maximize governance by giving emphasis on merit system.

**3.3.4. EXCESSIVE GOVERNMENT LITIGATION****Why in news?**

Recently, Prime Minister brought up the problem of excessive government litigation.

**Background**

- Government litigation reportedly constitutes **nearly half of all litigation** in the Indian judiciary.
- Besides being a **constraint on the public exchequer**, government litigation has contributed to **judicial backlog**, thus affecting justice delivery in India.
- **Supreme Court**, since the 1970 has **criticized successive governments** for being callous and mechanical in pursuing litigation
- The **Law Commission** of India also studied this problem in its **126th Report in 1988**, and expressed the need of having a Litigation Policy.
- **“National Litigation Policy” (NLP) 2010 failed as it was generic and without any scope for implementation.**
- In 2015 another attempt was made in this direction by the government. The process is still in progress. Currently the government has given the task to Law Commission headed by a retired SC Justice.

**Features of National Litigation Policy 2010**

- Based on the recognition that Government and its various agencies are the pre-dominant litigants in courts and Tribunals in the country (appx 46% of all litigations) it aims to transform government into an efficient and responsible litigant. The policy has defined the meaning of **‘efficient litigant’ & ‘responsible litigant’**.
- It has rejected the complete dependency of government institutions on the courts.
- Its aim is to reduce government litigations and achieve the Goal in the National Legal Mission to reduce average pendency time from 15 years to 3 years.
- Accountability was seen as the touch stone of the policy and as part of accountability, there must be critical appreciation on the conduct of cases

- Empowered committees were to be set up to monitor the implementation of the policy and accountability.
- It recognizes the need for arbitration as an alternate dispute mechanism but in a responsible way. It lays down certain guidelines for arbitration.

### Problems in NLP 2010


- It **fails to provide a yardstick** for determining responsibility and efficiency. The text does **not define “suitable action”** against officials violating this policy.
- It creates **“Empowered Committees”** to regulate the implementation of the policy. But there is **ambiguity about their role** and powers.
- It also **lacks any form of impact assessment** to evaluate actual impact on reducing government litigation.

### Way forward

- The government seems to be making a new litigation policy. It must **ensure certain critical features**:
  - ✓ It must have **clear objectives** that can be assessed;
  - ✓ The **role of different functionaries** must be enumerated;
  - ✓ The **minimum standards for pursuing litigation** must be listed out;
  - ✓ Fair **accountability mechanisms** must be established;
  - ✓ The **consequences for violation** of the policy must be provided;
  - ✓ A **periodic impact assessment programme** must be factored in.

A litigation policy can have a profound effect on how the government thinks about itself as a litigant, and can help curb the problem, provided it is constructed with a thorough understanding of the problem and offers solutions based on evidence rather than conjecture.

**“You are as strong as your foundation”**

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## 4. CONSTITUTIONAL, REGULATORY AND OTHER BODIES

### 4.1. CBI

#### Why in News?

- Government of India (GOI) **turned down** the recommendation of Parliamentary Standing Committee on Personnel, Public Grievances, Law and Justice (**PSC**) on a new law for the CBI.

#### Background

- Supreme Court in **Vineet Narain case** gave reforms for making CBI independent.
- SC ruled that the Director of the CBI should be appointed on the recommendations of a committee headed by the **Central Vigilance Commissioner, Home Secretary and Secretary in Department of Personnel** as members.
- Earlier Supreme Court (SC) has termed CBI as a **caged parrot with many masters** on account of political interference in CBI's functioning.
- PSC 85<sup>th</sup> report wanted to **replace Delhi Special Police Establishment (DSPE) Act of 1946** by a new CBI law.

#### Need of an independent law

- **Effective Cadre management-** Currently, vacancies in CBI have to be plugged through State or other Central forces on deputation. Thus, it is susceptible to the government's ability to manipulate the senior officers, as their future postings are dependent on it. It also enables government to transfer officers at critical stages of enquiry.
- **Administrative autonomy-** CBI Director should be given the powers of ex-officio Secretary to allow direct reporting to the Minister of Personnel reducing the hassles in going through DoPT for even basic administrative issues.
- **Financial Powers-** Currently the CBI is not financially independent as administrative and financial control wrests with Ministry of Personnel. It makes it prone to interference by the government.
- **Dependence on states** – Since CBI is police agency (as it acts as per procedures of CrPC) and police is a state subject, CBI needs to go through cumbersome procedure to get the consent of State government in question before it can make its presence in that State.
- **Set timeline** – As of now CBI faces enormous delays in concluding investigation which can be reduced by setting a time period and improving infrastructure and manpower with CBI

#### Central bureau of Investigation

- It is the **main investigation agency of the central government** for cases relating to corruption and major criminal probes.
- It has its origin in **Special Police Establishment** set up in 1941 to probe bribery and corruption during World War II.
- CBI was set up by a **resolution of Ministry of Home Affairs** in 1963 after **Santhanam committee** recommendation.
- Superintendence of CBI rests with CVC in corruption cases and with Department of personnel and training in other matters.
- Presently it acts as an **attached office under DOPT**.
- Although DSPE Act gives legal power to CBI, **CBI is not a statutory body as:**
  - ✓ Word 'CBI' is not mentioned in DSPE act.
  - ✓ Executive order of MHA did not mention CBI to be constituted under DSPE Act.
- **Functions of CBI include** solving:
  - ✓ Corruption Cases
  - ✓ Economic Crimes like financial frauds, narcotics, antiques, smuggling etc.
  - ✓ Special Crimes like Terrorism, ransom for kidnapping etc.

### Issues involved

- New CBI law will have to be passed by a **constitutional amendment in State List relating to law and order** which may violate the spirit of cooperative federalism.
- CBI powers are misused for vested gains leading to **poor transparency and accountability** of the agency to the people at large.

### Steps taken by government to strengthen CBI

- **Operationalizing CBI courts** for effective prosecution.
- CBI has been **exempted from consultation with UPSC for recruitment** to the post of DSP for a period of 3 years in 2017.
- **Advanced Certified Course for CBI officers** to enhance their investigation skills, forensic data collection, collection of evidence, skills etc. by training from National Law School of India University and IIM Bangalore.
- Various schemes for Modernization of training centers in CBI, CBI e-governance, comprehensive modernization of CBI branches/offices etc are being implemented.

### Way Forward

The role, jurisdiction and legal powers of the CBI need to be clearly laid down. It will give it goal clarity, role clarity, autonomy in all spheres and an image makeover as an independent autonomous statutory body. Therefore CBI law will be a step in the right direction. Apart from this Lokpal Bill and CVC should be strengthened to make CBI truly robust.

## 4.2. ISSUES RELATED TO NHRC

### Why in news?

The Global Alliance for National Human Rights Institutions (GANHRI), affiliated to the UN High Commissioner for Human Rights, has deferred National Human Rights Commission (NHRC) re-accreditation until November 2017.

### Reasons cited

- **Flaws in Selection process**
  - ✓ not sufficiently broad and **transparent**
  - ✓ lack of **uniform and precise criteria** for appointing members
  - ✓ no advertisement for vacancies in top posts is given out.
- **Flaws in Investigation process**
  - ✓ **Non-independent investigators** - involvement of serving or retired police officers in the investigation of human rights violations, particularly where the alleged perpetrators are the police itself.

NHRC is a statutory body, constituted under the Protection of Human Rights Act, 1993, to protect and promote human rights related to life, liberty, equality and dignity of individuals

NHRC (National Human Rights Commission) consists of:

- Chairperson, should be retired Chief Justice of India.
- One Member who is, or has been, a Judge of the Supreme Court of India
- One Member who is, or has been, the Chief Justice of a High Court.
- Two Members to be appointed from among persons having knowledge of, or practical experience in, matters relating to human rights.
- In addition, the Chairpersons of four National Commissions of (Minorities, SC and ST, Women) serve as ex officio members.

- **Composition**
  - ✓ Only 20% of the NHRC's staff is women and since 2004, there hasn't been a single woman on the governing body.
  - ✓ The legislative requirement of having an ex-CJ as Chairperson and choosing members of the senior judiciary **restricts the potential pool** of candidates who can be appointed, especially women.
- **Other problems**
  - ✓ mammoth backlog of cases-around 40,000 cases pending
  - ✓ the complaint redressal mechanism and the quasi-judicial functioning of the NHRC is not satisfactory as all **stakeholders do not have equal and unfettered access** to the process

**PARIS PRINCIPLES**

The UN Paris Principles provide the **international benchmarks** against which NHRIs can be accredited under five heads: The institution shall

- **Monitor** any situation of **violation of human rights** which it decides to take up.
- Able to **advise the Government** on specific violations, on issues related to legislation and general compliance and implementation with international human rights instruments.
- Be able to relate to regional and international organizations.
- Have a **mandate to educate** and inform in the field of human rights.
- **Some institutions should be given a quasi-judicial competence.**

**Need For Accreditation**

- Accreditation confers international recognition and protection of the National Human Rights Institution besides its compliance with the Paris Principles
- A-status accreditation (full compliance with Paris Principles) grants participation in the work and decision-making of National Human Rights Institutions (NHRI)'s International Coordinating Committee (ICC) as well as the work of the Human Rights Council and other UN mechanisms.

**Other issues in NHRC**

- It only has recommendatory powers with no penal provisions for its non-implementation.
- Its annual report is not timely laid in parliament.
- Lack of adequate manpower.
- Major portion of its budget goes for office expenses leaving less for research and awareness generation purposes.
- It can't investigate a case after 1 year of its occurrence.

**4.3. NATIONAL COMMISSION FOR BACKWARD CLASSES****Why in news?**

- The Lok Sabha passed a **constitutional amendment** which renames NCBC as **National Commission for Socially and Educationally Backward Classes** in the Constitution.
- An accompanying bill, The National Commission for Backward Classes Bill 2017, was also passed to repeal the 1993 law.

**Features of the bill**

- **Constitutional status:** Constitution of a Commission **under Article 338B** for socially and educationally backward classes.
- **One list instead of two:** It stipulates only one central list for OBC, same as that for SC and ST. There would be no parallel existence of central and state OBC lists.
- **Parliament to decide on inclusion/exclusion-** Under **Article 342A** the President may specify the socially and educationally backward classes in the various states and union territories. He may do this in consultation with the Governor of the concerned state. However, a law of Parliament will be required if the list of backward classes is to be amended.

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- **Development:** The bill has recognised the developmental needs in addition to reservations. It will hear the grievances of socially and educationally backward classes, a function which has been discharged so far by the National Commission for Scheduled Castes under the article 338.
- **Definition of socially and educationally backward classes:** Insertion of Clause (26C) under Article 366 to define “socially and educationally backward classes” as such backward classes deemed so under Article 342A.

#### Benefits of amendment

- **Transparency:** It is difficult to get an arbitrary decision passed in the parliament than through an executive order.
- **Political opportunism:** The exposure of state and central governments to pressures of non-backward communities to force their way into the list would reduce as opposition cannot easily blame the government and garner brownie points during elections.
- **Constitutional authority:** Giving it a constitutional authority will ensure it has more power in terms of hearing complaints from OBC members like SC/ST commissions

#### Issues

- **Composition:** In the light of the SC judgement on Mandal case to have NCBC as an expert body, NCBC act 1993 provided that the chairman should be a **former judge** and member secretary should be a former secretary level officer of the government of India, one member should be a social scientist, and two persons with special knowledge of the socially backward classes. This feature of expert body is **not provided** for in the composition of the NCBC Bill.
- **Federal structure:** It reduces the power of state government to handle reservation demands brewing up in their states, thus, affecting federal structure. However, the amendment still needs to be passed by the Rajya Sabha with 2/3<sup>rd</sup> majority and ratified by >50% state governments. It will ensure the agreement of states on the issue.
- **Recommendations** of new NCBC still not binding.
- **Revision of list:** Article 338B (5) is also silent on the mandate of SC on periodic revision of the SEBC list in consultation with the NCBC.
- **Amending Article 366:** There is a possibility of definition of OBCs going beyond its current confinement to social and educational criteria.
- **On a similar footing as SC/STs:** The amendment has brought both BCs and SC/STs in the same league in terms of discrimination, exclusion and violence which lacks logic and historical justification.

## 4.4. TRIBUNALISATION

### Why in news?

Currently there are numerous Tribunals with varied jurisdictions in the country which has led to problem of over-tribunalisation.

### Background

- The **first Administrative Reforms Committee** (1966-70) recommended setting up of ‘Civil Service Tribunals’ to act as final appellate body for smaller cases.
- **42<sup>nd</sup> Constitutional Amendment Act, 1976**, introduced two articles in constitution, viz, **Article 323A & Article 323B** that defined the spheres of Administrative and other Tribunals.
- A similar recommendation was made by the **J C Shah Committee (1977)** for the establishment of an administrative tribunal to adjudicate on the service matters.

- The **Administrative Tribunal Act (1985)** was enacted to provide for the adjudication or trial of disputes & complaints with respect to recruitment & conditions of services of public servants. Administrative Tribunals set-up under it exercise **original jurisdiction** in respect of service matters of employees covered by it.

#### Difference between Courts and Tribunals

- The Tribunals are set up as a less formal, less expensive and a faster mechanism to resolve disputes as compared to the traditional judicial courts.
- Tribunal members usually have special knowledge about the topic they are asked to consider, whereas judges are not. However the members of any tribunal are not judges.
- Tribunals are established by federal or provisional legislation.

#### Concerns about Tribunalisation

- Increasing tribunalisation is a cause of concern as it has been viewed as an attempt by the executive to gain control over judicial functions.
- Appointments to tribunals are usually under the control of the executive. At stake are core principles of an independent judiciary and separation of powers, a part of the basic structure of the Constitution.
- There is an inherent difficulty for many litigants in accessing justice as benches of some tribunals were located only in New Delhi.
- Some tribunals are also facing serious problems of inadequate workforce.
- There is no uniform recruitment conditions for service, retirement age etc, throwing them at the mercy of the parent ministries for existence completely.
- Administrative tribunals were originally set up to provide specialised justice delivery and to reduce the burden of caseloads on regular courts but due to litigations against the decisions of these tribunals this objective remains unfulfilled as ultimately the matter reaches the judiciary. The result is that the court system is now getting congested by cases from tribunals.
- Judicial overreach by tribunals - Armed Forces Tribunal granted non-functional upgrade to armed forces which is objected because it **does not have the power** to pass such an order.

#### Way forward

- The Court in *Chandra Kumar* (1997) and *NCLT* (2010) suggested that the tribunals which were replacing the jurisdiction of the Courts should enjoy the same constitutional protections as them.
- Further, the decision of the Supreme Court in *Madras Bar Association v. Union of India* clarifies the extent of tribunalization that is permissible under our Constitution. Therefore, effort should be made by the legislature in making the respective laws consistent with these constitutional principles.
- Tribunals must not only be independent but also seem to be independent. They should not be seen as departments of ministries or as part of the executive branch of government.

**Article 323A**-Parliament may, by law, provide for the adjudication or trial by administrative tribunals of disputes and complaints with respect to recruitment and conditions of service of persons appointed to public services and posts in connection with the affairs of the Union or of any State or of any local or other authority within the territory of India or under the control of the Government of India or of any corporation owned or controlled by the Government.

**Article 323B**-The appropriate Legislature may, by law, provide for the adjudication or trial by tribunals of any disputes, complaints, or offences with respect to all or any of the matters like levy, assessment, collection and enforcement of any tax, industrial and labour disputes, etc.



Therefore, there is an immediate need for bringing the tribunals together into a single system and formalizing the tribunal structure.

## 4.5 CCI AND SECTOR-SPECIFIC REGULATORS

### Why in news?

Competition Commission of India (CCI) has rapped the Telecom Regulatory Authority of India (Trai) on its consultation paper on tariff assessment, saying the aspects of dominant position and predatory pricing being examined by the telecom watchdog encroached upon the anti-trust body's domain.

### Background

- Competition Commission of India (CCI) is a statutory body responsible for enforcing the Competition Act, 2002 throughout India to ensure level playing field and uphold consumers'/public interests.
- On the other hand, given the need for specific regulation, several sector-specific regulators have been constituted over the years.
- Sector-specific regulators usually refer to a diverse set of instruments by which governments set requirements on market behavior or structure on different stakeholders for a specific sector e.g. such as TRAI, SEBI, IRDA etc..

### Issues involved

While the role of CCI and sector-specific regulators are required to be complementary-

- **Generalist v/s specialist** – The sectoral regulators have domain expertise in their relevant sectors whereas the CCI has been constituted with a broad mandate to deal with promoting competition in all the economic sectors.
- **Proactive v/s reactive** - Sector specific regulation identifies a problem *ex ante*, and builds an administrative machinery to address behavioral issues before the problem arises, while on the other hand, CCI would usually address the problem *ex post* in the backdrop of market conditions.

**Overlapping jurisdictions** at times can be a source of parallelism and friction in areas such as:

- Licensing Conditions
- Market Dominance
- Monopoly Pricing
- Restrictive Business Practices
- Merger Control.

### For Instance:

- In the past, financial sector has also witnessed face-offs between the RBI and CCI regarding mergers in the banking sector.
- In past both CCI and TRAI have had issues related to tariffs in telecom sector.
- In the case of CCI and SEBI overlap exists pertaining to merger or acquisition or amalgamation to fructify in India.
- CERC and CCI's jurisdiction overlaps to a considerable extent on, say for e.g., anticompetitive agreements in the electricity sector.

**Way forward**

- Inculcating appreciation of the difference between the technical domain of the sector regulators and anti-competitive behavior within the domain of competition authorities. The realm of competition law enforcement ought to be left in the hands of the competition authority.
- As a matter of policy, formal and informal exchanges between various sectoral regulators and CCI should be encouraged. For instance, exchange of personnel on deputation or internship basis.
- Learning from international best practices a clear understanding on cooperation can be inculcated between competition regulator and sector specific regulator e.g. in Finland both the entities have signed MoU defining ways to eliminate overlap.

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## 5. ELECTIONS IN INDIA

### 5.1. ISSUES RELATED TO RPA

#### 5.1.1. RELIGION AND ELECTIONS-SECTION 123(3) OF RPA

##### Why in News?

- A seven-judge **Supreme Court** bench ruled by a 4-3 majority that **“religion, race, caste, community or language would not be allowed to play any role in the electoral process”**
- It also said that election of a candidate would be declared null and void if an appeal is made to seek votes on these considerations.

##### The Judgement

- The judgment was handed out as an interpretation of **Section 123(3) of the Representation of the People Act, 1951 which deals with abiding to “corrupt practices”** for canvassing votes in an election.

- The bench had at hand the task of the interpreting the word **“his” in section 123(3) in RPA.**

- ✓ The majority believed that “his” here refers to the any candidate or his agent or any other person making the appeal with the consent of the candidate or the elector.

- ✓ It also said that to maintain the “purity” of the electoral process; certain arguments must be taken off the table such as religion, caste and language.

- ✓ The dissenting judges on other the hand believed that Section 123(3) of the RPA does not require such a broad interpretation and the word “his” does not include the elector/voter.

- ✓ The dissenting judges remarked that markers such as religion are deeply rooted in the structure of the Indian society.

##### Section 123(3) of RPA Act, 1951 declares a corrupt practice if:

- “The appeal by a candidate or his agent or by any other person with the consent of a candidate or his election agent to vote or refrain from voting for any person on the ground of **his** religion, race, caste, community or language.....”
- The word **“his”** was included through an amendment in 1961.

##### Arguments in favour

- Seeking votes in the name of religion could affect the secular concept of elections in our democracy, and hence such a thing could not be allowed.
- Fundamentalism of any colour or kind must be curbed with a heavy hand to preserve and promote the secular creed of the nation.
- Seeking votes in name of religion may exclude some sections cause a deep feeling of insecurity among minorities, free thinkers, atheists etc.

##### Criticism

- It is difficult to define what kind of an appeal is religious appeal.
- This interpretation violates the right to freedom of speech under Article 19.
- RPA already has provisions to curb hate speech or speech that spreads enmity.
- A broad interpretation “outlaws” parties like Akali Dal whose very name violates this interpretation.
- Imposing democratic processes involving caste and religion as corruption, may not be in touch with reality.

- The change should be incremental and it should come from the society itself.
- **Judicial overreach:** it was for parliament to revisit provision 123 (3). Poll process is heavily interlinked with caste and religious issues. So this is a political question and parliament itself has to solve this.

### 5.1.2. VOTER'S RIGHT TO KNOW CANDIDATE'S QUALIFICATION

#### Why in news

Recently Supreme Court has held that every **voter has a fundamental right to know** the educational qualification of a candidate.

#### Key facts

- According to the provisions of the Representation of the People Act 1951, Rules and Form 26 that there is a duty cast on the candidates to give correct information about their educational qualifications.
- Any false declaration can warrant rejection of nomination papers.
- Right to vote would be meaningless unless the citizens are well informed about the antecedents of a candidate.

### 5.1.3. DISCLOSURE OF INCOME SOURCES BY CANDIDATES

#### Why in news?

- Recently, government has approved EC's suggestions on disclosing **sources of income** of candidates along with their spouses and dependents at the time of filing nomination papers and amended the rules in RPA accordingly.

#### Reasons

- According to EC, Candidates should have the same yardsticks of uprightness that public servants are bound under service jurisprudence. It may reduce money power in elections as well.
- Enables voters to form an informed opinion.

The earlier format only allowed disclosure of PAN (permanent account number) details of the candidates, his spouse and his dependents but no other details.

### 5.1.4. LIFE TIME BAN OF CONVICTED LAWMAKERS

#### Why in news?

- **Election commission (EC)** has supported a **Public Interest Litigation** in Supreme Court demanding a **life time ban** on **convicted politicians** from contesting elections and entering legislature.
- **EC** is of the view that such a uniform ban is in spirit of **Fundamental rights** of the Constitution including **Right to Equality**.

#### Present Provisions for banning convicted lawmakers

**Section 8 of Representation of People Act, 1951** lays down certain rules for disqualification of MP's and MLA's such as:

- Under **Section 8 (1), (2)** of the Act if any of the lawmakers are convicted of crimes like **rape; murder; practicing Untouchability or Sati; violating Foreign Exchange Regulation Act; causing enmity over religion, language or region; indulging in electoral violations, insulting Indian Constitution; importing and exporting banned goods, indulging in terrorist activities;** etc. will be disqualified for a minimum period of **six years**. It is irrespective of whether they are **fined or imprisoned**.

- Crimes under **section 8(1) and 8(2)** are related to various sections of **Indian Penal Code; Protection of Civil Rights Act 1955; Prevention of Corruption Act 1988; Prevention of Terrorism Act 2002, Unlawful Activities (Prevention) Act 1967**, etc.
- Moreover any lawmaker convicted of any other offence under **section 8(3)** and sentenced to imprisonment for not less than **two years**, he/she will be disqualified from date of conviction and further **six years** from the time released.
- **Section 8(4) of RPA, 1951** had provisions for convicted lawmakers to hold on to their seats provided they filed an appeal in higher court within **three months** of their conviction against the order of lower court. However in **2013 Lily Thomas vs. Union of India case**, SC struck down **section 8(4) of RPA, 1951** calling it unconstitutional.
- Henceforth there is **automatic disqualification** (his/her seat becomes automatically becomes vacant) of any lawmakers if they are convicted under **sections 8 (1), 8 (2) and 8 (3)**.

#### Argument for

- This will be help in **Decriminalization of politics**. As per **Association for Democratic Reforms** in 16<sup>th</sup> Lok Sabha (2014) **34%** of newly elected MP's have **criminal cases** filed against them. In **2009** this figure was **30%**.
- It will act as a **deterrent factor** in future for candidate to not indulge in criminal activities.
- As candidates with clean background entering the legislature, common people will have more faith in Political system thereby strengthening the roots of **Democracy**.

#### Argument Against

- **Life-long punishment** may seem **disproportionate** as candidate guilty of committing even minor crimes like breaking traffic rules, indulging in minor scuffling unlike heinous crimes like rape, murder, terrorism still he/she will be disqualified for life term from contesting elections.
- There may be chances that ruling party leaders may deceitfully frame their **rival leaders or genuine political activists/ innocent people** to wipe out their opposition.

#### Way forward

Such a lifelong ban on convicted lawmakers will go a long way in **cleansing** the Political system of India and serves as a confidence building measure. However care should be taken that such ban happens only for **heinous crimes**.

## 5.2. ELECTORAL REFORMS

### 5.2.1. REFORMS IN FUNDING TO POLITICAL PARTIES

#### Why in news?

The union budget 2017-18 announced certain reforms to bring transparency in funding to political parties.

#### Reforms

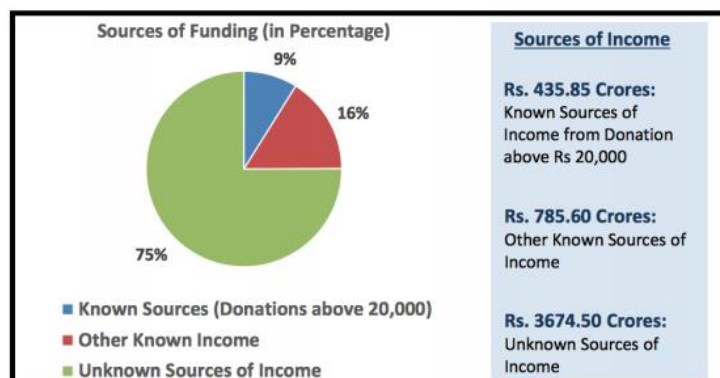
- The maximum amount of cash donation that a political party can receive will be **2000/- from one person**.

#### Electoral bonds

- The bonds will only be issued by a notified bank.
- It could only be bought using cheques or digital payments.
- The bonds purchased by donor will be given to a political party for a fixed period of time.
- A political party using their notified bank account can convert these bonds into money.
- All political parties are required to notify their bank account to the Election Commission.
- This bond will be like a bearer cheque which will facilitate donor's anonymity.



- Political parties will be entitled to receive donations by **cheque or digital mode** from their donors.
- An amendment is being proposed to the **Reserve Bank of India Act** to enable the issuance of **electoral bonds (India will be the first country in the world)** in accordance with a scheme that the Government of India would frame in this regard.
- Every political party would have to file its return within the time prescribed in accordance with the provision of the Income-tax Act.
- The existing exemption to the political parties from payment of income-tax would be available only subject to the fulfillment of above conditions.



### Background

- Election Commission had asked the government to amend law to ban anonymous contributions of Rs. 2000 and more to political parties.
- Association for Democratic Reform highlighted in its report that **75% funding** to parties came from anonymous sources between 2004-05 to 2014-15

### Impact

- It will help to root out the problem of financing of Political Parties using black money.
- Money power in elections will decrease significantly as parties can now accept only up to RS 2000 in cash.
- Functioning of Political Parties will become more transparent and thus become more accountable towards public.
- It will reduce nexus between big corporate houses and political parties.
- In long term it will result in ethical politics and reduction in criminalization of politics.

### Challenges

- The proposal does not disrupt the flow of illicit political donations but only channels it differently, and will not reduce the proportion of cash from unverifiable sources in the total donations received.
- The political parties would now have to do is to find more people to lend their names to these donations, hence transparency would still be compromised in funding.
- Electoral bonds provide a mechanism of anonymity for its buyers. The move though aimed to safeguard general public can be used by corporate houses to fund political parties to develop nexus with party at the receiving end.
- The Budget makes it mandatory for political parties to file returns within a time limit, but in the absence of extreme penal provisions compliance is likely to be low.

### Way forward

- There is a need to put cap on funding by big corporate houses. Such donations should be made public as done in US. Also, law could be enacted to prohibit political parties giving any undue benefits to corporates
- Political parties should be brought under the ambit of RTI as followed in countries like Bhutan, Germany etc.

- Budget should have placed a cap on the amount a party may receive in cash as a donation.
- State funding of elections should be considered as recommended by Dinesh Goswami committee (1990).
- To ensure transparency stricter provisions should be enacted so that parties maintain list of donors and which can be scrutinized easily by IT department.
- The funds of the political party should be audited by an independent auditor .The responsibility should not be given to the inside auditor. The details should be placed in public domain.

#### Arguments in favour of state funding

- 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
- Through state funding the demand for internal democracy in party, women representations, representations of weaker section can be encouraged.
- 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.

#### Arguments against state funding

- 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.
- 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

### 5.2.2. REFORMS IN CORPORATE FUNDING

#### Why in News?

Various changes have been introduced by the government in regards to the **Corporate Donations to Political Parties**, through Financial Bill, 2017 to further make the process transparent.

In 1987, the government of India issued **Indira Vikas Patra** bearer bonds issued at post offices which gave anonymity to the holders of the bonds.

#### Background

- Lack of transparency in electoral funding has long been an issue of debate in India. A recent report (Association for Democratic Reforms report) has shown that 2/3<sup>rd</sup> funds of political parties come from unknown sources.

**Electoral Trust**-It is a non- profit company that is created in India for the orderly receipt and voluntary contributions for distributing them to respective political parties registered under Section 29 of RPA, 1951

#### Why do corporates and politicians prefer electoral trusts?

#### Rules Governing Corporate Donation:

- **Companies Act 2013, Section 182-** It lays down following norms for corporate donation:
  - A Company must be 3 years old to donate.
  - Company can donate a maximum of 7.5% of its average net profits it made in last 3 consecutive years.

- It spares them the embarrassment of baring their political leanings (maintaining anonymity).
- It also spares them the resultant pain of retribution by the political party not benefiting from the company's munificence.
- Even Political parties lack anonymity.

- Such contributions need to be disclosed in the profit & loss accounts of the company.
- Contribution must be approved by the Board of Directors.
- Company found guilty of violating the rules will be liable to pay fine that may extend up to five times the contributed amount.
- **Electoral Trust Scheme, 2013**- It provides for the establishment of Electoral Trust.
  - Electoral trust must donate at least **95% of the contributions** acquired for the political parties.
  - Failing to do so would mean **no exemption** from paying income tax.
  - Various Companies having Electoral Trust are, Vedanta Group, Reliance Group, Bharti Group, etc.
- **Section 29B of Representation of People's Act (RPA)**- It entitles the Political Parties to accept any contribution made by an individual or company (except a government unit)
- **Section 29C of RPA**- It mandates the political parties to disclose the name of person or company making donations exceeding 20,000, through a report in each financial year. Failing to do so the party gets disentitled from tax relief under Income Tax Act, 1961.
- **Section 2(e) of Foreign Contribution and Regulation Act (FCRA), 1976**- It prohibits any contribution from a **foreign entity**.

#### Changes Introduced through Finance Bill, 2017

- The 7.5% (on average net profit) cap on funding has been removed.
- The limit of 20,000 has been reduced to 2000 for revelation of the name of individual or company in an annual report.
- To further cleanse the system donations can be made by purchasing **electoral bonds** issued by authorised banks. They could be purchased against **cheque and digital payments** only.
- Political parties will have to **file Income Tax Returns** and the funding will be on record.
- The companies are now allowed to keep the name of the party they contribute funding to as **confidential** in their profit and loss account, however the amount of donation is to be mentioned.
- In **FCRA a provision** has been introduced that legalises donation from a foreign company, provided that its **nominal value of share capital** is within the limits specified for foreign investments under the FCRA, 1999, or rules and regulations thereafter. The proviso shall be inserted with effect from 26 September, 2010.

#### Concerns

- People seek transparency in electoral proceedings in India. The electoral bonds may digitalise the process but its **principle of anonymity** is a matter of concern.
- Scrapping the 7.5% cap (that was kept to check a company's excessive desire to please Political Parties for capital gains) is an anti-shareholder step. **No redressal mechanism** has been suggested for shareholders in this regard.
- It leaves a wide scope of **corporate lobbying**. Big donations now may be divided into amounts smaller than 2000/. It may make things **more opaque**.
- **Influence of foreign entities** may increase and may also affect the welfare character of Indian state.

#### Way forward

- According to many people since the funds are donated through digital mode there may be **more transparency** in electoral funding.
- It would facilitate larger **funds through single channel** rather than multiple channels, as before, which are difficult to keep a track of.

- The step is well intended; however how it comes out to be on ground can well be seen once the laws come into effect.

### 5.2.3. PAID NEWS AND ELECTORAL REFORMS

#### Why in news?

The Election Commission (EC) has disqualified Madhya Pradesh Minister Narottam Mishra for three years for filing wrong accounts of election expenditure. The membership has been revoked under section 10A of the Representation of the People Act, 1951.

**What is paid news:** As per Press Council of India, paid news refers to propaganda in favour of a candidate masquerading as news reports or articles 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. Paid news is not an electoral offence yet.

#### Impact

- It misleads the public and hampers the ability of people to form correct opinions.
- It causes undue influence on voters and also affects their Right to Information.
- It seeks to circumvent election expenditure laws/ ceiling
- It adversely affects level playing field.

#### Steps taken by 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.
- The Committee 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.

#### Law commission recommendations: Report No. 255 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: The purpose of disclosure is two fold; first, to help the public identify the nature of the content (paid content or editorial content); and second, 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.

#### Challenges in dealing with paid news

- There is circumstantial evidence, but little proof. 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**

- Make 'paid News' an electoral offence through amendment of Representation of the People Act, 1951.
- Use existing mechanisms of expenditure ceiling to curb the menace.
- Partner with stakeholders, including political parties and media to fight the menace.
- Sensitize people on the subject.

**5.2.4. FREEBIES IN ELECTION****Why in news?**

- In recent times, various parties are promising freebies in their election manifesto like free laptops, education loan waiver, free water supplies etc.
- It led Supreme Court to intervene in 2013 and ask the Election Commission to frame guidelines regarding what political parties can promise in their manifestos.

Election commission has added **Section 8 in Model Code of Conduct (MCC)** which says:

- Election manifesto should not contain anything against ideals of constitution and should be consistent with the spirit of the Model code of conduct.
- In the interest of transparency, level-playing field and credibility of promises, it is expected that manifestos also reflect the rationale indicate the ways and means to meet the financial requirements.
- Trust of voters should be sought only on those promises which are possible to be fulfilled.

**Issues**

- MCC is not enforceable by law. There is no enactment that directly governs the contents of the manifesto.
- Section 123 of RPA makes bribery an offence – but giving free things to everybody without any condition of voting to a particular party, cannot be construed as bribery

**Impact of such freebies on democracy**

- It may influence and allure voters in the favour of their party.
- Supreme Court said Freebies shake the root of free and fair elections to a large degree as it affects the level playing field.
- But one view is that
  - ✓ Voters cannot be fooled and influenced easily through these freebies - once voter understands the fiscal implications, they are less likely to support them.
  - ✓ Secrecy of ballot ensures that goodies does not impact decision making of voters. In fact, giving freebies is a dilemma for political parties as they can rarely figure out whom they voted for.
  - ✓ some experiments have also shown no relation with likeliness to votes for a party and its promise of giving freebies
- **On economy**
  - ✓ It puts heavy burden on public exchequer when party comes into power and limits the fiscal space.
  - ✓ The debt burden of states is increasing manifold and certain states have huge revenue deficit.
  - ✓ It diverts resources from essential services and development programmes.
- **On people's welfare**



- ✓ Certain things announced like bicycles for school girls reduces dropout rates and giving laptops increases opportunities for students
- ✓ These freebies are actually delivered with much less corruption at ground levels which is rampantly seen in the government welfare schemes
- ✓ But it shifts the social welfare of government to giving freebies and affects the attention required for basic amenities like education, health, sanitation etc.
- **On governance**
  - ✓ It streamlines decision making which leads to better service delivery in certain cases.
  - ✓ But goes against democratic nature of our polity

#### Way forward

- If party promises something then there should be a plan of action and clear indication of source of funds.
- Legislation can be brought with respect to rules governing election manifestos.

### 5.3. MULTI PHASE POLLS

#### Why in News?

- Recently, Chief Election Commissioner of India (CEC) advocated for continuation of **multiple-phase elections**.

#### Representation of People Act 1951

- **Section 126** – It forbids display of election matter through print or television, 48 hours before the polling starts.
- This is valid only for the constituency in which the polling would begin and not in other constituencies in multi-phase polls.

#### Need

- The Constitution provides us with **the right to have free and fair elections**. Single phase election may be hard to monitor and may lead to unfair election practices.

#### Significance

- Conduct of elections involves **elaborate security management**, including security of polling personnel, polling stations and polling materials.
  - Multi-phase polls help in **overcoming any challenges of manpower shortage** related to security.
  - It also **improves monitoring and coordination** between agencies conducting the election.
- Multi-phase polls also **distribute costs of conducting** elections over a period of time rather than application of one-time costs thus removing logistical challenges.
- Multi-phase polls **reaches maximum amount of voter population** preventing occurrence of violence and malpractices in elections.

#### Criticism

- Multi-phase polls are also considered to be a **hindrance to free and fair polling** because –
  - Even if election campaigning stops in one area, it still continues in other area due to the **Section 126 of RPA 1951**.
  - This **indirectly influences the voter** of the other constituencies, thus violating the spirit of the law.
- Model Code of Conduct is extended over a larger period of time in multi-phase poll. This causes **hurdles to start new development projects** in these poll states.
- Many oppose the move as multi-phase polls **undermine the authority of State Police** in law and order because of the preference given to the Central police forces.

**Way forward**

- Although there are limitations of multi-phase polls, still in the present scenario of limited financial and human resources, the multi-phase poll is a way to remove any logistical challenges to the conduct of free and fair elections.

**5.4. SIMULTANEOUS ELECTIONS****Why in news?**

Prime Minister has emphasized on the idea of holding Simultaneous elections for the Lok Sabha and State assemblies.

**Need**

- Governance
  - ✓ Allows governments to devote four years for governance. If elections are frequent winning elections becomes the first priority of all politicians during elections.
  - ✓ As a result, running an administration and attending to people's grievances take a back-seat for politicians and the bureaucracy rules the roost.
- Legislative working
  - ✓ Results in logjam in assemblies/ Lok Sabha as every party wants to be in the spotlight.
  - ✓ Vicious circle of continuous elections affects stability. If local elections are included there is always an election taking place in our country.
- Economy
  - ✓ Reduce the huge economic burden of frequent elections.
  - ✓ Pace of economic development is hampered as Model code of conduct is in operation wherein new welfare schemes and measures are usually not announced.

**Examples from the World**

Law commission had recommended an amendment of the rule of no-confidence motion (Rule 198 of Rules and Conduct of Business of the Lok Sabha), on the lines of the **German Constitution**:

- In this system the opposition party leader moves both the no-confidence motion and a confidence motion, and he would become the new leader if the both the motions are passed.
- In this way premature dissolution would be avoided without diluting the cardinal principle of democracy. It will also be consistent with the notion of collective responsibility of the government to the House as mentioned in Article 75 (3) of the Constitution.
- Simultaneous elections are also held successfully in **South Africa and Sweden**.

**Recommendations of Parliamentary Panel**

- Elections of legislative assemblies whose term ends six months before/after the general elections to Lok Sabha should be clubbed together.
- Elections **should be held in two phases**. In 1st phase, elections to almost half of legislative assemblies should be held during the midterm of Lok Sabha and remaining elections should be held with the end of term of Lok Sabha.
- To hold early elections to state legislative assemblies along with other states/Lok Sabha, a motion for an early general election or a no confidence motion must be passed by the House.

**Challenges**

- It is almost impossible to achieve in practice as Assemblies might get dissolved at an untimely manner due to political realities. Earlier dissolution, which breaches the principle of simultaneous elections, is brought about by several methods like
  - ✓ The PM or CM advises the president or the governor, as the case may be, to prematurely dissolve the Lok Sabha or state assembly and force snap elections to gain electoral advantage.

- ✓ By passing the no-confidence motion against a government or defeating the government's confidence motion.
- ✓ Central government has misused its powers under Article 356 by imposing the president's rule in states ruled by opposition parties and dissolving assemblies resulting in premature elections.
- According to Article 85 and Article 174, elections to Lok Sabha and Legislative assemblies have to be held within six months (respectively) of dissolving either of them. This is not feasible if elections are held only at fixed durations. Also, if elections are not held within six months, it would be a travesty of democracy.
- Founding fathers of the Constitution envisaged a federal polity of a sui-generis nature. So, multi-party system with elections is the most fundamental manifestation of this will of the popular sovereign.
- Frequent elections bring the politicians back to the voters and enhance the answerability and accountability of politicians to the public.
- Will keep the politicians in touch with 'pulse of the public' and the result of elections at various levels can ensure the government the necessary 'course correction'.
- May mix up issues of local and national issues in the minds of the voters, This may give a boost to regional and local issues, while national issues can take a set-back.
- The issue of logistics and requirement of security personnel, election and administrative officials: there is a dearth of enough officials to conduct simultaneous elections throughout the country in one go.

#### Way Forward

- Simultaneous elections to Panchayats, assembly and Lok Sabha are desirable however they are not feasible. To make the election process more transparent, cost effective, peaceful and quick we should consider some easily implementable solutions such as:
  - ✓ To cut the role of money power in elections, **putting a cap on political party expenditure** and state-funding of political parties.
  - ✓ **Also ban on all private, especially corporate funds should be considered.**
  - ✓ **Reduce the duration of the election process** by half by conducting the elections in one day.

### 5.5. RIGHT TO RECALL (RTR)

Recall is basically a process whereby the electorate has the power to remove the elected officials before the expiry of their usual term.

#### Why to go for RTR?

- **Enhance accountability** - At present, there is no recourse for the electorate if they are unhappy with their elected representative.
- **International experience** - It has been in place in one of Canada's provinces. In US, some states allow for recall on specific grounds such as misconduct or malfeasance.
- **Logic and justice** - Like election, people should also have the power to remove the

**Table 1: Provisions for RTR at Municipal Level in India**

Madhya Pradesh, 2000	Section 24 of the Madhya Pradesh Municipal Corporation Act, 1956 and Section 47 of the Madhya Pradesh Municipalities Act, 1961 <sup>1</sup>
Chhattisgarh, 2007	Section 47 (recall of President) of the Chhattisgarh Nagar Palika Act, 1961 <sup>2</sup>
Rajasthan, 2011	Section 53 of the Rajasthan Municipalities Act, 2009 <sup>3</sup> was amended in 2011 as the Rajasthan Municipalities (Amendment) Bill, 2011 <sup>4</sup>
Bihar, 2007	Section 17 of Bihar Municipal Act, 2007 <sup>5</sup>

Source: Author's compilation based on data from state election commissions.

representatives when they engage in misdeeds or fail to fulfill their duties.

- **Decrease role of Money power** - It may limit campaign spending, as morally skewed candidates would weigh the risk of recall.

#### Issues with RTR at local level

The experience with RTR in Madhya Pradesh (where it is operational for the past 16 years) revealed functional problems with the reform like-

- The grounds for recall were arbitrary.
- The signature verification procedure by the district collector was unsatisfactory.
- New voters who participated in recall elections had not voted in the general elections.

In MP, since 2000, 33 recall elections at municipal level were held, where incumbent was recalled 17 instances.

#### Possible challenges with RTR at state and national level

- **De-stabilise**- it may destabilise the country as everywhere there is any discontent, people will start recalling
- **Political tool**- It could be misused to put out an unintended political message, especially in places such as Kashmir and North-Eastern states where people already feel alienated.
- **Election fatigue**- by recalling/rejecting the candidates and having another election may cause election fatigue & lower voter turnout.

#### Way forward

- RTR can be introduced but with adequate safeguards. For ex- a proposal for RTR would be initiated only after two years of election etc.
- There is a need to evolve a unique model suitable to our needs, by learning from the rich experience at the local level, which does not threaten the political stability here.

## 5.6. VVPAT

#### Why in news?

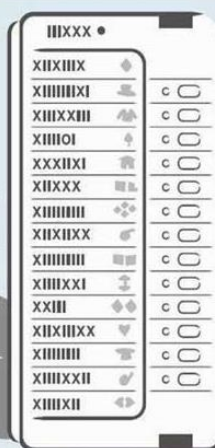
- The Centre gave clearance for allocation of Rs 3,174 crore to the **Election Commission** to buy 16.15 lakh **Voter Verifiable Paper Audit Trails (VVPATs)** units for use in the 2019 Lok Sabha polls.
- This comes at a time when controversy regarding **EVMs (Electronic Voting Machines)** being rigged during the recent state assembly elections of 2017.

#### Background

- EVMs were first used in **Kerala Assembly Elections in 1982** while it was first used for **Lok Sabha elections in 1992**.
- EVMS brought simplification in the voting procedure. It has resulted in drastic decline in electoral fraud which includes rigging and stuffing of ballot boxes.

#### VOTER VERIFIABLE PAPER AUDIT TRAIL (VVPAT)

- 1 The EVMs currently display only the total number of votes polled, followed by votes secured by the individual candidates.
- 2 In the VVPAT system, when a vote is cast, a slip will be printed showing the name of the candidate, voter serial number and poll symbol.
- 3 Voter can see printout but not take it out. He can verify his vote was registered correctly. The paper trail can be used during a recount.



- VVPATS have been used in few constituencies in order to corroborate the EVMs with a paper trail.
- In **Subramanian Swamy vs Election Commission, 2013**, Supreme Court held that VVPAT is “indispensable for free and fair elections” and had directed the EC to introduce VVPAT in a phased manner.

#### Advantages

- The addition of the VVPAT machine to the process will allow for **cross-checking of EVM results** through a paper audit, completing **another layer of accountability** to the indigenously produced machines.
- It serves as an additional barrier to changing or destroying votes.

## 5.7. NOTA

### What is NOTA?

- NOTA is one option among the list of candidates on an Electronic Voting Machine (EVM). When a voter is not satisfied with any of the candidates posed by the political parties in an election they can register their discontent through NOTA.
- It is a form of negative voting.
- NOTA is an expression to the **Right to Secrecy**.
- It is also seen as a part of Article-19 (Freedom of Expression and speech).
- It is similar to Right to reject but not the same.

### Background

In 2001, Election Commission of India addressed a letter to Secretary, Ministry of Law & Justice, to rectify serious defect pertaining to secrecy with regard to Right to reject. But no action was taken.

- In 2013 Supreme Court, in *People’s Union for Civil Liberties v. Union of India* judgement, struck down section **41(2), 41(3) & 49(o) of Conduct of Election Rules 1961**.
- The authorities were directed to implement **None Of The Above (NOTA)** in the Electronic voting machine (EVMs) and also create awareness regarding the same.
- In Indian Parliament Negative voting is already a frequently used option.

### Significance

- It helps to maintain secrecy of invalid votes.
- The negative voting would encourage people who are not satisfied with any of the candidates to turn up to express their opinion and reject all contestants.
- It helps in preventing bogus voting that took place in the name of those voters who abstained from voting to register their protest.
- Higher ratio of NOTA votes puts pressure on political parties to nominate candidates with integrity.

**Rule 41 (2):** If an elector after obtaining a ballot paper decides not to use it, he shall return it to the presiding officer, and the ballot paper so returned and the counterfoil of such ballot paper shall be marked as "Returned: cancelled" by the presiding officer.

**Rule 41(3):** All ballot papers cancelled under such conditions shall be kept in a separate packet

**49-O.** Elector deciding not to vote: If an elector, after his electoral roll number has been duly entered in the register of voters in Form 17A and has put his signature or thumb impression, decides not to record his vote, a remark to this effect shall be made against the said entry in Form 17A by the presiding officer and the signature or thumb impression of the elector shall be obtained against such remark. (Infringing right to secrecy).



**NOTA in Indian politics**

- Voters are not just using NOTA to reject a candidate but to also register their protest against many things they perceive wrong in political system.
- For example there is a trend of higher ratio of NOTA votes in areas facing left wing extremism, to show their disappointment with the state.

**Concerns**

- NOTA will have no effect on the election result as such because no matter how many negative votes are polled, the candidate who gets the highest number of votes wins.
- There are some unanswered questions like- What if more than 50% voters choose NOTA? Such voids need to be filled with appropriate rules/laws.
- NOTA acts merely as a pressure mechanism on the Political parties to nominate good candidates.
- Even after having negative voting the candidates of parties are selected on the basis of popularity and not integrity *per se*.

**Way ahead**

NOTA is an important step towards ensuring people's participation in democracy but it is also important to keep walking towards a more responsible democracy where such an option is not required at all and the choices given to the voters are competitive enough.

**5.8. ISSUES RELATED TO ECI****5.8.1. CONTEMPT POWERS TO EC****Why in news?**

- Election commission (EC) has urged Law ministry to amend election laws to enable EC to use contempt of court Act against parties making unfounded allegations.

**Arguments in favour of such powers**

- **International examples** – Election management bodies (eg: Kenya, Pakistan) have direct power to initiate contempt proceedings.
- **Effect on Credibility** – Such allegations affect the credibility of the commission as one of the important guardian of the democratic process.

**Arguments against giving such power**

- **Need of transparency**– The body, custodian of secret ballot, should choose transparency rather than contempt powers to maintain its track record of honesty and fairness.
- **Undemocratic** – Contestation is part and parcel of elections. Thus, powers to silence criticism will undermine this democratic process..
- **Against freedom of expression** – Because of this reason even big democracies such as USA and Canada have not given contempt powers to election panel.
- **Rejected earlier** – Dinesh Goswami committee on electoral reforms, three decades earlier, had rejected this proposal of EC then.
- **Satisfaction of people is supreme** – EC does not have to satisfy every politician. It enjoys public confidence and reputation of impartiality. Thus, it just needs to reach out to people and explain process transparently.
- **Prone to abuse** – Fair criticism in future may be silenced. Even powers with judiciary has come under question in recent times

## 5.8.2. INDEPENDENCE FROM GOVERNMENT

### Why in news?

- The Election Commission of India (ECI) has sought complete independence from government control in a recent meeting with government.
- At present only Chief Election Commissioner has security of tenure.
- Also its budget is not a charged expenditure, but is voted by the Parliament.

### Demands made by ECI

#### Constitutional Protection

- It has demanded for constitutional protection for all three of its members as opposed to just one at present. Its two Election Commissioners can be removed by the government on the recommendation of the Chief Election Commissioner.

#### Independence and financial freedom

- It also demanded a provision either in law or by some government resolution that 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.
- It has also sought absolute financial freedom from the Law Ministry. Like the CAG and UPSC, the ECI wants its budget to be 'charged' to the Consolidated Fund as opposed to the current practice of being voted and approved by Parliament.
- It has also proposed an independent secretariat for itself with which it will not have to depend on DoPT to appoint its officers. If it is approved by the Law Ministry, the poll panel will be free to frame its own recruitment rules and shortlist and appoint officers on its own. It can then also draw competent professionals and experts from the job market.

## 5.8.3. OTHER REFORMS DEMANDED BY ECI

- The ECI wants print media to be included in Section 126 of the RP Act. This **section** currently prohibits publication of ads by political parties in electronic media (TV, radio) and recently added social media, 48 hours before voting ends.
- The ECI sought amendment to RPA to include specific powers to postpone or countermand polls on the grounds of use of money power. At present, there is no specific provision in the law to this effect and commission has to resort to extraordinary powers under **Article 324** of constitution which, it feels should be used sparingly. The election commission used Article 324 to cancel the by-election to RK Nagar constituency in Chennai after death of CM.

## 5.9 REVIEW OF STATUS OF NATIONAL PARTY

### Why in news?

- The Election Commission of India (EC) accorded national party status to the All India Trinamool Congress (TMC), making it the seventh party that can contest Lok Sabha and assembly polls across the country on its own symbol.
- Election Symbols (Reservation and Allotment) order was amended.

### Recent changes made by ECI

- Under the revised rules of EC, a party's performance over two consecutive Lok Sabha or assembly elections is considered, as opposed to one previously, for granting recognition as a national party.

- The changes have helped other parties that performed badly in 2014 elections to maintain their nation party status.
- The other six are the Bharatiya Janata Party, the Congress, the Bahujan Samaj Party, the Nationalist Congress Party, the Communist Party of India (Marxist) and the Communist Party of India.

#### Criteria for becoming national party

A political party shall be eligible to be recognised as a National party if either of following conditions is met:

- It secures at least **six percent**(6%) of the valid votes polled in any **four** or more states, at a general election to the House of the People or, to the State Legislative Assembly; **and** in addition, it wins at least **four** seats in the House of the People from any State or States.
- It wins at least **two percent** (2%) seats in the House of the People (i.e., 11 seats in the existing House having 543 members), and these members are elected from at least **three** different States.
- A party has got recognition as a state party in at least four states.

#### Benefits of being recognized as national party

- National party recognition leads to a reserved symbol for its candidates contesting from across the country. This is critical for political parties since a large section of voters in the country are illiterate and depend on symbols to identify the party they want to vote for.
- Candidates from a national party require only one proposer to file their nominations and are entitled to two sets of electoral rolls free of cost.
- National parties get dedicated broadcast slots on public broadcasters Doordarshan and All India Radio during the general elections.

A national party can have a maximum of 40 'star campaigners' while a registered unrecognised party can nominate a maximum of 20 'star campaigners', whose travel expenses are not accounted for in the election expense accounts of candidates.

### 5.10. RELEVANCE AND SUITABILITY OF 'REFERENDUM'

#### What is a referendum?

- Referendums are instruments of direct democracy where citizens get to directly vote on specific and important issues rather than for representatives who will make a choice on their behalf on those issues.
- They are perceived to be a better democratic instrument especially in modern states where people have a better say in the decision making.

#### Is it a right democratic tool?

In light of growing acceptance of referendums across the world, especially in western European countries, the demand to have referendums in India has also initiated.

#### Argument for

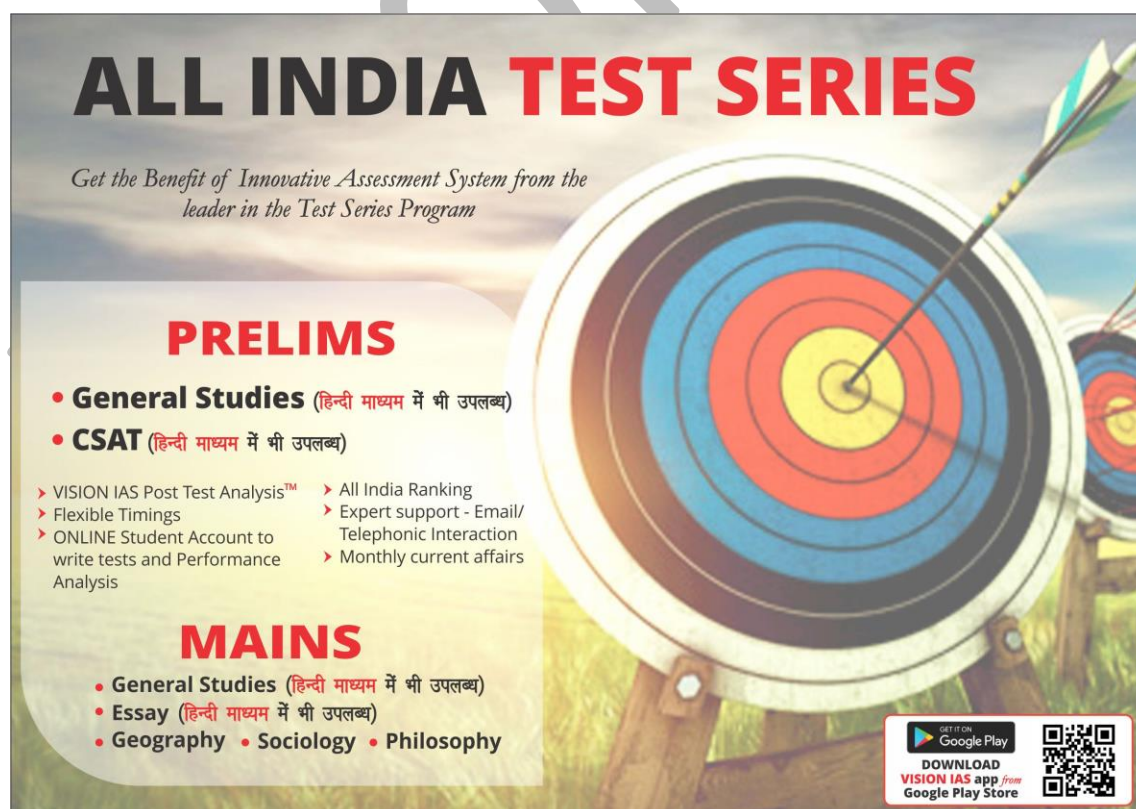
- It is a form of true democracy as it gives the power to the people directly.
- Referendums tend to add legitimacy to difficult legislative choices as it is more risky to take unpopular decisions without that stamp of legitimacy.
- Increasing demands for referendums (32 in 18 countries of EU) shows the growing frustration of people on various issues. Earlier this used to take the form of protests, uprising and even violence. Now, the change can be brought peacefully.

## Argument Against

- **Tyranny of the majority:** For example in a referendum on whether to build mosque minarets in Switzerland in 2009, the people voted against building those. This was mainly because the majority of people were convinced that it was an Islamic invasion even though there were **just a total of 4** in the entire country.
- It reduces complex questions to simple 'yes or no' answers. Arguments without sufficient backing of evidences are enough to drive popular sentiments and demagoguery e.g. In Brexit, the popular opinion that migrants are responsible for their economic hardships made them vote. However, there wasn't evidence to support this argument.
- Many times key legislations may go against the popular opinion but the wisdom of the elected legislators could make them happen e.g. against racial discrimination, abolishing death penalty etc.

## Way forward

- Decisions that profoundly affect not only the present but also succeeding generations should not be taken in a rush, or through one-time referendums.
- A mechanism can be developed that calls for referendums on select Bills and Acts based on a large quantum of public signatures seeking to vote on them. This could go a long way in not just sensitising the public towards important laws but also for a means of getting popular approval for them. E.g. a question on whether public welfare legislation like Aadhar should be made mandatory to avail social services could be put in a referendum.



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## 6. JUDICIARY

### 6.1. NATIONAL COURT OF APPEAL

#### Why in news?

- The idea of NCA has been mooted several times before but the SC has rejected its feasibility. Recently in the PIL filed by Chennai-based litigant *V. Vasanthakumar* the SC had shown its openness to the idea for the first time.

#### What is it?

- The National Court Appeal with regional benches in Chennai, Mumbai and Kolkata is meant to act as final court of justice in dealing with appeals from the decisions of the High Courts and tribunals within their region in civil, criminal, labour and revenue matters.
- In such a scenario, a much-relieved Supreme Court of India situated in Delhi would only hear matters of constitutional law and public law.

#### Need

- The SC is overburdened with work much of which comprises appeals from lower courts. Due to this, it is not able to fulfill its primary duty of deciding upon constitutional matters and acting as the interpreter of the constitution. For instance,
  - ✓ The number of decisions by Constitutional benches has drastically come down; from about 15% of total decided cases in 1950s to a worryingly paltry 0.12% in last decade.
  - ✓ Art. 145(3) mandates that minimum 5-judge bench should sit to decide a matter involving 'substantial question of constitutional law'. Clearly this mandate is not being followed. E.g. the Naz Foundation case involving the question of decriminalization of homosexuality, Shreya Singhal case dealing with the illegality of section 66A of IT Act were all decided by 2-judge benches.
- The accessibility to SC due to its seat in Delhi is less especially to the poor and those living in far-off places like north-east. Studies show that most number of appeals come from Delhi HC.

#### Limitations

- This would fundamentally the character of Supreme Court, its constitution and also its aura as the Apex court. It would require amending **Article 130** which might not stand the test of basic structure.
- The NCA is silent on the issue of indiscriminate use of SLPs (special leave petitions). SLPs obviously have a role to play- settling questions of law with broader public purpose- but this power has been used too frequently.

#### Suggestions

- Experts say that the focus should be more on improving the functioning of lower judiciary.
- Improving the appellate structure in HCs;
  - ✓ All High Courts must entertain writs, including in the burgeoning service matters, only before Single Benches in the first instance and then to a Division Bench in the form of a Letter Patents Appeal so as to provide at least a two-tier accessible hierarchy of approach.
  - ✓ The appeals from Tribunals should follow the same route.
- Need to improve the judicial decision making at subordinate level- better judges etc.



**Conclusion**

- NCA is a drastic measure, a last resort with lot of practical problems- hard to become reality. Till then other measures need to be taken to address the issue- like reducing appellate burden (rationalization of SLP, subordinate judiciary reforms, improving judicial strength, quality, infra etc).
- For proximity issue benches of SC like that of HC can be set up in 4 important cities.

**6.2. ALL INDIA JUDICIAL SERVICES**

Prime Minister recently revisited the possibility of recruiting judges through an All India Judicial Service (AIJS).

**Rationale for AIJS**

- It **focuses on quality** of judges rather than quantity.
- Appropriate way to **recruit the best talent required** for fulfilling the role that is demanded of a judge.
- **Currently** the subordinate judiciary depends entirely on **state recruitment**. But the brighter law students do not join the state judicial services because they are **not attractive**.
- With **no career progression**, no one with a respectable Bar practice wants to become an additional district judge, and deal with the hassles of transfers and postings. Hence the quality of the subordinate judiciary is by and large average.
- In this scheme of things, the measure of uniformity in the standards for selection will improve the quality of personnel in different High Courts, as one-third of the judges come there on promotion from the subordinate courts.
- In addition, the objective of inducting an outside element in High Court benches can be achieved in better way as a member of an all India judicial service will have no mental block about interstate transfers.

**Previously recommended by**

- **First Law Commission of India (LCI) in its 14th Report** on Reforms on the Judicial Administration, recommended an AIJS in the interests of efficiency of the judiciary. In its **77th Report the LCI once again** said the AIJS needed serious consideration.
- The idea of an AIJS was **approved in the chief ministers' conference** in 1982
- The **Supreme Court has itself** said that an AIJS should be set up, and has directed the Union of India to take appropriate steps in this regard.
- After the **Swaran Singh Committee's recommendations in 1976, Article 312 was modified to include the judicial services.**

**Way forward**

- A **career judicial service will make** the judiciary more **accountable, more professional**, and arguably, also **more equitable**.
- It can have far-reaching impact on the **quality of justice and on people's access to justice** as well.

**6.3. CONTEMPT OF COURT**

India's courts have routinely invoked its contempt powers to often punish expressions of dissent on purported grounds of such speech undermining or scandalising the judiciary's authority.

- **Contempt of court consists of** words spoken or written which tend to bring the administration of Justice into contempt, to prejudice the fair trial of any cause or matter

which is the subject of Civil or Criminal proceeding or in any way to obstruct the cause of Justice.

- **Need of Such Powers:** Contempt provisions have been provided to ensure that the Judges do not come under any kind pressure either from media criticisms or by general public opinion and discharge their duties without any kind of fear and favour or any external influence whatsoever.

### Arguments against Contempt of Court

- Contempt of Court proceedings have the **effect of muzzling free speech** guaranteed under Article 19(1)(a) of the Indian Constitution.
- Article 19(2) includes 'contempt of court' as a reasonable restriction on free speech but its justification in its present form is not tenable in a democracy.
- **Pandit Thakur Das Bhargava** in the Constituent Assembly said that powers to reprimand contempt concerned only actions such as the disobedience of an order or direction of a court, which were already punishable infractions.
- Speech in criticism of the courts, he argued, ought not to be considered as contumacious, for it would simply open up the possibility of gross judicial abuse of such powers; which has now been proved true in many instances.
- Interestingly, in England, whose laws of contempt we have adopted, there hasn't been a single conviction for scandalising the court in more than eight decades.

#### Constitutional provision

Article 129 and 215 of the Constitution of India empower the Supreme Court and High Court respectively to punish people for their contempt and the Judiciary was provided with this power under Contempt of Court Act, 1971 which defines contempt powers of judiciary. It is aimed to:

- Prevent scandalisation or lowering the authority of any court.
- Prevent interference with the due course of any judicial proceedings.
  - Strengthen court's image as legal authority and that no one is above the law.
  - Ensure one could not defy court orders according to one's own free will.

### Conclusion

The Contempt powers should be used in such a way as not to violate Right to Freedom of Speech while also ensuring independence of the Judges. The judiciary must be highly liberal while respecting freedom of speech and allow fair criticism as permitted under 1971 act. In addition to that, the Contempt of Court Act, 1971 must be suitably amended or repealed on the lines of United Kingdom and United States where such a law does not exist. But amendment in 1971 act in 2006 also did not lead to restrain by judiciary. Thus, the right balance between freedom of speech and contempt powers of court can be achieved by the judiciary itself.

## 6.4. APPOINTMENT OF JUDGES

### Why in news?

The Supreme Court Collegium has handed over the finalised Memorandum of Procedure (MoP) for appointment of judges to the government.

### Background

- The government had established National Judicial Appointment Commission by way of 99th Constitutional Amendment.

- It was envisaged as an independent commission to appoint and transfer judges of High Court and appoint judges of Supreme Court of India.
- It was composed of three senior judges, two eminent outsiders and the Law Minister.
- However, before it was notified, it was challenged in Supreme Court as an attempt by government to interfere with the independence of the judiciary.

#### Evolution of Collegium System

- **First Judges Case, 1981:** The Supreme Court ruled that the recommendation made by the CJI to the President can be refused for “**cogent reasons**”, thereby giving greater say to executive.
- **Second Judges Case, 1993:** It is also known as *Supreme Court Advocates-on Record Association vs Union of India*. It led to the **creation of the collegium system**. The Supreme Court said that the Chief Justice of India should be given the “**primal**” role in appointments.
- **Third Judges Case, 1998:** The President K. R. Narayanan issued a **Presidential Reference** to the Supreme Court over the meaning of the term “consultation” under article 124 and 217 of Indian Constitution. In response, the Supreme Court laid down **guidelines for the functioning collegium system**.

#### Supreme Court's verdict

- The Court struck down the **Amendment** and concluded that NJAC did “**not provide an adequate representation, to the judicial component**”.
- The new provision in Constitution are insufficient to preserve the **primacy of the judiciary** in the matter of selection and appointment of Judges”
- It was held that the amendment impinged upon the principles of “**independence of the judiciary**”, as well as, the “**separation of powers**”.
- After quashing the proposed National Judicial Appointments Commission, Supreme Court's Constitution Bench had **asked the Centre to consult the CJI for drafting the new memorandum for appointments of judges to the higher judiciary**.
- **Acting on the above a Group of Ministers (GoM) headed by External Affairs Minister** had finalized the new Memorandum of Procedure (MoP) for appointment of Judges

#### Primacy of the judiciary is required as

- **Government is major litigant:** Since the government is a major litigant, giving it an edge in appointments would amount to fixing the courts.
- **Independence of Judiciary:** It has been regarded as basic structure of constitution and NJAC was termed as violating the independence of judiciary
- To enable **Separation of Powers** between executive and judiciary as directed by Constitution of India.

#### Appointment of Judges in India

The President on recommendation of Collegium appoints the judges of Supreme Court and High Court. The constitutional provisions related to their appointment are:

- **Article 124** says the President should appoint Supreme Court judges after consultation with such judges of High Courts and the Supreme Court as he/she may deem necessary. The Chief Justice of India is to be consulted in all appointments barring his/her own.
- **Article 217**, which deals with the appointment of High Court judges, says the President should consult the CJI, Governor, and Chief Justice of the High Court concerned. **Neither of them speaks about collegium system.**

#### Key highlights of MoP

- For the first time, it has been asked to include “**merit and integrity**” as “**prime criteria**” for appointment of judges to the higher judiciary.

**MEMORANDUM OF PROCEDURE**

- Appoint up to 3 SC judges from members of the Bar, distinguished jurists
- HC acting chief justice's term must be limited to 3 months
- Document reasons if a senior judge is overlooked for elevation to SC
- Union Law Minister must seek CJI's recommendation for appointment of his successor at least a month before his retirement
- Set up permanent secretariat to maintain records

- Evaluation of judgments delivered by a high court judge during the last five years and initiatives undertaken for improvement of judicial administration should be a yardstick of merit for promotion as chief justice of a high court.
- It seeks to introduce performance appraisal as a standard for appointing chief justices of high courts and Supreme Court judges.
- It proposes that for appointment of judges in the Supreme Court, the “prime criteria” should be “seniority as chief justice/ judge of the high court”.
- The MoP states that up to three judges in the Supreme Court need to be appointed from among the eminent members of the Bar and distinguished jurists with proven track record in their respective fields.
- A permanent secretariat to be set up in the 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.
- The Union Law Minister should seek the recommendation of the incumbent CJI for appointment of his successor at least one month prior to his retirement.
- A notice for vacancies of judges should be put up on the website of the high courts at the beginning of the year for appointments.
- National security and public interest have been included as the new ground of objection to appoint a candidate as a judge. If the government has objections on the ground of national security and public interest, it will convey the same to the collegium. The collegium will then take a final call.

**6.5. JUDICIAL CONDUCT AND ACCOUNTABILITY****Why in news?**

- Earlier this year, a sitting judge of Madras High Court Justice CS Karnan remained at controversy for his behaviour. This issue has thrown light on various issues & problems in Judiciary which are being discussed in the various subsections

**Concerns Raised**

- **Absence of any machinery** for taking disciplinary actions against judges of the superior courts other than their impeachment.
- **Problems with the impeachment** - long-drawn-out and difficult process along with its political overtone.
- **Only informal measures available** – such as change in workload, relieve judge of all judicial work, or transfer to another high court but these may not create credible deterrence as has happened in Justice Karnan case.
- **Disrepute to judiciary** – because of flouting all norms of judicial conduct and challenging the highest court openly. Thus, affecting trust and image of the institution
- **Mockery of democracy and rule of law** - by his continuance as judge for so long after indisiplinary behavior.
- **Judiciary removing itself** – Contempt of court ruling may amount to removing him as a judge, thus, amounting to judicially-ordered “impeachment”

**Transfer of a High Court Judge**

Article 222(1) of the Constitution says that the “President may, after consultation with the Chief Justice of India, transfer a judge from one High Court to any other High Court.”

- **Freedom of expression** - Stopping media from publishing any statements by him, is unreasonable from the point of view of freedom of speech and expression.

#### Issue in removal of judges

- The behaviour of Justice Karnan has exposed the helplessness of the judicial system in dealing with its own over-the-top functioning.
- He was earlier reprimanded by the SC for his conduct 2 years ago. Yet, he was allowed to continue with his ways, each subsequent episode marking a new low.
- The only option available is transfer of the judge. But rather than solving the problem it just shifts it to another High Court
- Short of impeachment, very few effective measures seem to be available. But it has various issues
  - Only Parliament can take cognizance of a case of a tainted judge. No space is given to a common man.
  - The law does not define what misbehaviour is and hence ultimately fails to recognize the wide range of misbehaviour.
  - The process is very long
  - It also involves political considerations. For example, the Congress abstained from voting on the resolution when the motion for removal of Justice V. Ramaswami was moved in 1993 resulting in failure of the process.
  - The Judge under investigation is not prohibited from discharging his duties in court of law.

#### Way forward

- Bringing a **new Judicial standards and accountability bill** along the lines of Judicial Standards and Accountability Bill 2012 (which lapsed) 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.
- **Authority outside judiciary to take disciplinary actions** – This is one solution being discussed. However, it has several shortcomings
  - potential threat to judicial independence
  - may inject fear in judges while taking any decision that it may annoy powers as seen during the time of emergency

#### Removal of judges: a background

- Under A.124(4) of the Constitution a Judge of SC can be removed only by the President on ground of 'proved misbehaviour' or 'incapacity' only after a motion to this effect is passed by both the Houses of Parliament by special majority.
- Constitution requires that misbehaviour or incapacity shall be proved by an impartial Tribunal whose composition is decided under Judges Enquiry Act 1968.
- A. 217B provides for removal of HC Judge.
- The Act has only been invoked three times since 1950. Still then no judge could be successfully impeached till date.

#### Main features of the 2012 Bill

- Presently the judicial standards are governed by an informal code called 'Restatement of values of judicial life'. The Bill would give it legal backing including provisions like:
  - ✓ It would include Mandatory declaration of assets by the judges
  - ✓ Non-sharing of residence with members of Bar
  - ✓ A judge must not develop relationships with the members of the Bar.
- Setting up an National Judicial Oversight Committee (NJOS) and a Complaints Scrutiny Panel (CSP) to decide upon the complaints.
- There is provision for an advisory or warning to the concerned judge in case of minor misconduct. But with regard to gross misbehaviour removal could be suggested to the



- design of constitution has been to ensure absolute judicial independence, with no scope for Parliament or the executive interference in judicial conduct or decisions
- **Appointment-** the collegium should take adequate safeguards so that only judges of high caliber and impeccable integrity are appointed to the higher courts. This requires infusion of **greater transparency** in the selection of judges.
- **Greater Internal regulation-** in Justice Karnan case, there were several instances where the Judge behaved inappropriately, disciplinary actions should have been taken promptly at very first instance of such misconduct. For this, a **National Judicial Oversight Committee** should be created by parliament which shall develop its own procedures to scrutinizing the complaints and investigation. The composition of such committee should not affect judicial independence.

## 6.6. JUDICIAL TRANSPARENCY

### Why in news?

- **Supreme Court** has ordered installation of **CCTV cameras** in **courtrooms** and its **premises**, without audio recording, in at least in **two districts** of all states and union territories within three months.
- Such a move came after several rounds of deliberations happened between **Union Executive** and **Supreme Court India** to record court proceedings. **Law Commission** have recommended for audio-visual recording of court proceedings.
- Earlier chairman of 20<sup>th</sup> **Law Commission Ajit Prakash Shah** have recommended for audio-visual recording of court proceedings.
- However SC made it clear that footage of the CCTV cameras **will not be available** under **Right to Information Act** and anybody who want the video footage of court proceedings have to get permission of **concerned High Court**.

### 6.6.1. SHOULD JUDICIARY COME UNDER RTI?

#### Court's reluctance to come under RTI

- Even though the courts general pronouncements on the right to information have been very liberal (declaration of assets, bringing political parties under RTI etc), its practices have often not been in conformity with the declared right.
- Though the Act clearly applies to courts which are obviously included in the definition of Public Authorities, most High Courts did not even appoint Public Information Officers (PIOs) even months after the Act came into force. Some have still not appointed them, thus effectively denying the right to information to the people about the courts. Moreover, many of even those which appointed PIOs have framed their own rules which effectively deny information.
- Many High Courts such as Allahabad and Delhi ask for an application fee of Rs 500 as opposed to Rs 10 in other public authorities. Many have framed rules which prohibit the disclosure of information on administrative and financial matters.
- The Supreme Court has recommended to the government that so far as the Supreme Court is concerned, the decision of the Registrar General of the Court should be final and not subject to any independent appeal to the Central Information Commission.
- The argument given is for protection of independence of judiciary. SC has recommended that the Chief Justice should have the unfettered right to interdict the disclosure of any information including the disclosure of income and assets by judges or the formation of any

independent disciplinary authority over judges, which in his opinion, might compromise the independence of the Judiciary.

- Almost all the high courts have strongly opposed the contention that collegium minutes can be disclosed under the RTI Act.

#### Argument for opposition of RTI

- Collegium discussions can be freewheeling and include the examination of fairly invasive government intelligence reports and the expression of judges' personal opinions.
- For judges, their credibility and reputation is hugely important, and many feel that the slightest potential slight on this could be debilitating and prevent judges from doing their job.

#### Arguments in favour of bringing judiciary under RTI

- In a democracy all institutions, including the judiciary, must be transparent and accountable. Transparency in judicial functioning and accountability for judicial actions and inactions inspire public faith and confidence in the institution.
- The lack of stringent in house accountability and transparency mechanisms has allowed the judiciary to keep itself free from regular public scrutiny. The Right to Information Act is a step forward towards opening a closed and secretive judicial system.
- The Chief Justice of India, as the high priest of the legal system, must uphold the RTI Act and realise that no institution can be considered credible and inspire public confidence unless it is open and transparent. The judiciary can only occupy the high moral ground it often claims, by setting an example, and leading from the frontlines of transparency; not by hiding behind the veil of secrecy.

## 6.7. JUDICIAL BACKLOG & DELAYS

The long pendency of cases and shortage of judges are frequently discussed crises of the Indian judiciary. A first-of-its kind study by DAKSH has now estimated their precise magnitude and identified, through the analyses of publicly available data, from cause lists, websites of courts, and the e-courts websites.

#### Pendency

- Among the High Courts, pendency in Allahabad is the longest and Sikkim has the shortest pendency of cases.
- The report found that in Bombay, Gujarat, Kerala and Orissa high courts, over 86 per cent of cases had taken 10-15 years to be disposed of.

#### Workload

- Judges in high courts hear between **20 and 150 cases every day**, or an average of **70 hearings daily**.
- The average time that the judges have for each hearing, derived from the number of cases they hear and the daily working hours that they put in, could be as little as **2 minutes**.
- Calcutta HC has the most frequent hearings, Delhi has the least.
- The frequency of hearings is closely linked with efficiency, and has an impact on the concept of fair hearings.

#### Reasons for pendency

- Delays in disposal of cases due to **inefficient case management and vacancies** on the bench are two major problems before the Judiciary.

- **Poor Judges to Population Ratio:** India has only 17 judges per million population and nearly 5000 posts in subordinate courts are vacant. The Law Commission in 1987 had proposed 50 judges per million population. In contrast, US has 151 and China has 170 judges for a million population.
- **Impasses over Appointments of Judges:** Memorandum of Procedures for appointment of judges remains work in progress while vacancies in various High Courts have reached nearly 50% of their sanctioned strength.
- **Inefficient and time-consuming procedures:** liberal adjournments of cases must be avoided and witnesses once produced must be examined on consecutive dates.
- **Management of cases** depend not on judiciary but on availability of lawyers.
- **Police lacks training** for scientific collection of evidences and also police and prison official often fail to fulfil their duty leading to long delays in trial.

### Steps taken

- The Supreme Court issued guidelines for fixed time-bound hearing and disposing of criminal cases.
  - High Courts should decide bail applications within a month and subordinate courts within a week.
  - Magisterial trials, where accused are in custody, should normally be concluded within six months and sessions trials, with accused in custody, within two years.
  - High Courts to ensure that subordinate courts dispose of cases pending for five years by the end of 2017.
  - Cases before High Courts where accused are in custody for more than five years should be concluded at the earliest.
- Recently, at least 15 judges of the Supreme Court decided that they will be sitting in the forthcoming summer vacation to deal with three cases of Constitutional importance.

### Significance of timely justice

- Supreme Court has said that Article 21 of the Constitution entitles prisoners to a fair and speedy trial as part of their fundamental right to life and liberty.
- It has been estimated that if court decisions were quick and delays reduced, economic growth could receive a boost to the tune of 1-2% of gross domestic product.
- Speeding the process will also help the poor and those belonging to disadvantaged social groups.

### Way forward

- Identify problem areas and rectify it. For example high criminal cases in Jharkhand HC than civil cases. The pending cases can be disposed of by incorporation of special benches.
- The issue of the appointments in higher judiciary should be resolved soon. The judiciary and executive must reach a common ground and prepare a workable memorandum of procedure.
- **Information and communication technology (ICT)** tools and **modern case management systems** should be used to improve transparency and the flow of information.
- **Alternate Dispute Resolution** mechanism should be strengthened and people must be made aware about it.
- **International best practices** such as judicial management of cases, plea bargaining, trial readiness, settlement conferences, fixed times for certain filings by attorneys, the elimination of preliminary inquiries, etc. have been developed that have proven to be most effective in eliminating delay and consequently reducing backlogs.
- **Police Reforms:** The police administration need to be provided with more resources - financial and human both for its effective functioning and improvement of investigation system.

- **Physical infrastructure** needs to be expanded and the necessary support staff be provided to declog the system.
- The implementation of setting up **Gram Nyayalayas** to ensure that “opportunities for justice were not denied to any citizen by reason of social, economic or other disabilities” need to be sped up.

## 6.8. ARTICLE 142 AND THE NEED FOR JUDICIAL RESTRAINT

### Why in news?

- There are criticisms on the frequent usage of Article 142 by the apex court in various cases such as highway liquor ban, ordering joint trial of the two Babri Masjid demolition cases.

**Article 142** states that “the Supreme Court in the exercise of its jurisdiction may pass such decree or make such order as is necessary for doing **complete justice** in any cause or matter pending before it...”

### Causes of concern

- **Unlimited power** - Article 142 is not a source of unlimited power and there should be self-restraint in using it that the orders under 142 does not amount to **judicial overreach**.
- **Affects rights of citizen** – these two judgments affect rights of accused in one case and render lakhs of people unemployed in the other.
- **Unconstitutional** - It is against the **doctrine of ‘separation of powers’**, which is part of the basic structure of the Constitution.
- **Uncertainty about discretion** as in the apex court, 31 judges sit in thirteen divisions of two or three to decide the cases and each bench is independent of the other.

### Way out

Although apex court has used Article 142 in good ways such as Union carbide case, cleansing of Taj Mahal, release of undertrials in jail etc., yet following restraints should be considered to bring complete justice to various deprived sections of society under Article 142 in general:

- Cases invoking Article 142 should be referred to a Constitution Bench of **at least five judges** to decrease uncertainty around article 142.
- In cases where the court invokes Article 142, the government must bring out a **white paper** to study the beneficial as well as the negative effects of the judgment after a period of six months or so from its date.
- Supreme Court should follow it’s much reiterated principle that recourse to Article 142 of the Constitution is inappropriate, wherever a statutory remedy is available.

## 6.9. ALTERNATIVE DISPUTE REDRESSAL MECHANISM

### 6.9.1. ARBITRATION AND MEDIATION

#### Why in News?

The tremendous increase in the number of pending cases in Indian judiciary calls for an alternate method for resolving disputes, like **Alternate Dispute Redressal (ADR)**.

#### What is ADR?

- As the name suggests, ADR is a dispute resolution mechanism to bring together the disagreeing parties for an agreement short of litigation.
- The ADR processes conform only to civil disputes, as explicitly provided by law. ADR methods, stated to be alternatives to the court and the formal legal system, is said to be

one of the best-suited methods to be adopted for resolving a dispute speedily and in an amicable manner.

- There are three tools of ADR system:
  - ✓ **Arbitration-** Arbitration is a process in which a neutral third party or parties render a decision based on the merits of the case.
    - The process of arbitration can start only if there exists a valid arbitration agreement between the parties prior to the emergence of the dispute.
  - ✓ **Mediation-** The Process of mediation aims to facilitate the development of a consensual solution by the disputing parties.
    - The Mediation process is overseen by a non-partisan third party - the Mediator. The authority of the mediator vests on the consent of the parties that he should facilitate their negotiations.
  - **Conciliation-** This is a process by which resolution of disputes is achieved by compromise or voluntary agreement.
    - In contrast to arbitration, the conciliator does not render a binding award. The parties are free to accept or reject the recommendations of the conciliator.

### Background for Provisions of ADR

- **Panchayats** in India are the earliest known alternate dispute redressal mechanism. It has long been the part of Indian culture to take the help of an unbiased third party to reach a decision. However with introduction of Modern Judicial System this tradition has been lost.
- The ADR mechanism was, for the first time, provided by the **East India Company** through **Bengal Regulation Act 1772 and Bengal Regulation Act 1781** which provided parties to submit the dispute to the arbitrator, appointed after mutual agreement and whose verdict shall be binding on both the parties.
- In Indian constitution, the mechanism finds its basis in the **Article 14** (Equality before Law) and **Article 21** (Right to life and personal liberty).
- Right to Constitutional remedies, **Article 32** provides for the right of people to seek justice.
- ADR can also be implicitly related to the **DPSP for Equal Justice and Free legal Aid** under **Article 39A**.
- Settlement of Disputes outside the Court is a part of the Civil Procedure Code (Section 89).
- The report of Justice **Malimath Committee (1989-90)** comprehensively reviewed the working of court system in India and suggested the need for establishing ADR mechanism as a viable alternative.
- Other laws that were enacted to implement ADR system in India are-
  - Arbitration and Conciliation Act, 1996 (part I of this act formalizes the process of Arbitration and Part III formalizes the process of Conciliation),
  - The Gram Nyayalayas Act, 2009.
  - Legal Services Authorities Act (1987) (established Lok **Adalat System**)

### Need for ADR

- Indian judiciary currently has approximately 3 crore pending cases, with many more increasing with every passing day. Due to this overburden on judiciary, there was an urgent need felt for the establishment of a system to address the disputes outside judiciary.
- The right to timely justice is an implicit part of the fundamental Right to Life and liberty. The clogged judicial system results in delayed justice which infringes the fundamental right of citizens. Thus, in order to ensure timely delivery of justice, judiciary needs to be unclogged while an alternative to litigations in appropriate cases through ADR system is need of the hour.



- Judicial proceedings in India not only take time but are also expensive and capable of burning a hole in a poor man's pocket. Arbitration, mediation and conciliation are the ways to provide inexpensive justice to the people. The technique of ADR is an effort to design a **workable and fair alternative** to our traditional judicial system.
- This mechanism also plays a crucial role in internalising the culture of conciliation and mediation among the people. It fosters cooperation among the parties.
- It is not as technical as our normal judicial system therefore it suits common people's needs for simplicity of laws. The parties can freely discuss their cases.
- The results achieved from utilising ADR system can be kept confidential in cases where the parties do not want the issue to come out in public.

#### Institutions that provide services of ADR system:

- IIAM- Indian Institute of Arbitration & Mechanism
  - ICA- Indian Council for Arbitration
  - ICADR- International Centre for Alternate Dispute Redressal
- They also find lacunae in existing ADR laws & recommended reforms to overcome them.

#### Limitations

- There is no guarantee of resolution unlike the case in traditional Judiciary.
- The arbitration decisions are final and cannot be repealed in any court. In such a situation chances of one party feeling cheated are higher in case of a biased arbitrator.
- Unfamiliarity with the procedure and lack of awareness
- Informal and more opportunity for abuse of power.

### 6.9.2. NATIONAL LOK ADALAT

#### Why in News?

- Around 6.6 lakhs cases were resolved at National Lok Adalat held across the country at all levels from **taluk level to high court level**, according to the **National Legal Service Authority (NALSA)**.
- The Lok Adalat resolved both **pre-litigation and pending cases**.

The **National Legal Services Authority (NALSA)** has been constituted under the Legal Services Authorities Act.

The principal objective of NALSA is to provide free and competent legal services to the weaker sections of the society.

#### About Lok Adalat

- Lok Adalats meaning **People's Court** is a system of **alternative dispute resolution**.
- Unlike court where a judgement is passed, Lok Adalats resolve disputes through mutual settlement of parties.
- The system of Lok Adalats were developed in India through the **Legal Services Authorities Act, 1987** which is in accordance with the constitutional mandate in **Article 39-A** of the Constitution of India.
- Lok Adalats can be held by **State Authority, District Authority, Supreme Court Legal Services Committee, High Court Local Services Committee, or Taluk Legal Services Committee**.
- The Lok Adalats can deal with all **Civil Cases, Matrimonial Disputes, Land Disputes, Partition/Property Disputes, Labour Disputes etc., and compoundable criminal Cases**.

#### Significance

- Lok Adalats can help alleviate the judiciary of the burden of pending cases.
- It can provide speedy settlement without any trial.

## 6.10. SCHEMES RELATED TO JUDICIARY

### 6.10.1. INTEGRATED CASE MANAGEMENT INFORMATION SYSTEM

#### Why in news?

- The 'Integrated Case Management Information System' (ICMIS) has been introduced in the apex court for digital filing.

#### Functions of ICMIS

- Its functions include the option of e-filing cases, checking listing dates, case status, online service of notice/summons, office reports and overall tracking of progress of a case filed with the apex court registry.
- It will operate as an online gateway for payment of court fee and process fee, an online court fee calculator.

#### Benefits of ICMIS

- This will streamline the filing process for both the advocates and the registry.
- This will ensure transparency, provide easy access to case information and help in reducing the time in filing pleadings which, in turn, would increase the pace of judicial process.

### 6.10.2. TELE-LAW INITIATIVE

#### Why in news?

In order to make legal aid easily accessible to the marginalized communities and citizens living in rural areas, Government of India has launched the 'Tele-Law' pilot project on June 11, 2017.

#### Details

**Union Ministry of Law and Justice** has partnered with the **Ministry of Electronics and Information Technology**, to provide legal aid services through its **Common Service Centres (CSC)** at the Panchayat level across India.

- In the first phase, 'Tele-Law' scheme will be tested as a pilot across 500 CSCs in UP and Bihar to understand the challenges and make necessary corrections before it is scaled up and rolled out across the country.
- A portal called 'Tele-Law' will be launched, which will be available across the CSC network. It will enable people to seek legal advice from lawyers through video conferencing.
- Law school clinics, District Legal Service Authorities, voluntary service providers and NGOs working on legal aid can also be connected through the CSCs in order to strengthen access to justice for the marginalized. The National Legal Services Authority (NALSA) will also provide a panel of lawyers from State capitals.
- A fully functional monitoring and evaluation system is also being designed that will help to assess the quality of legal advice.

#### Para Legal Volunteers

- They will be the first point of contact for the rural citizens and will help them in understanding the legal issues, explain the advice given by lawyers and assist in further action required.
- Women PLVs will be encouraged and trained under the Scheme. The aim is to promote women entrepreneurship and empowerment and ensure women participation.

- Every CSC will engage a Para Legal Volunteer (PLV), who will be the first point of contact for the rural citizens.

### Other recent initiatives of government

'Tele-Law' is one the three key legal aid and empowerment initiatives of the Department of Justice along with '**Pro bono legal services**' and '**Nyaya Mitra scheme**' that were announced in April 2017.

**Pro bono legal services:** It is a web-based initiative which can be accessed through the website [www.doj.gov.in](http://www.doj.gov.in).

- Litigants who cannot afford legal services can apply for legal aid and advice from pro bono lawyers.
- The idea behind this online initiative is to promote the concept of legal aid in an institutionalized manner and ensure that those lawyers who volunteer for such services are duly recognized.

**'Nyaya Mitra' scheme:** It aims to reduce pendency of cases across selected districts, with a special focus on those pending for more than 10 years.

- This scheme would play a pivotal role in assisting litigants who are suffering due to delay in investigation or trial, by actively identifying such cases through the National Judicial Data Grid, providing legal advice and connecting litigants to government agencies and civil society organizations.
- This initiative would be launched in 227 districts—27 districts in the North-east and J&K and 200 in Uttar Pradesh, Bihar, Maharashtra, Rajasthan, Odisha, Gujarat, West Bengal.

**Access to Justice Project for Marginalized Persons:** The schemes are continuation to the "Access to Justice Project for Marginalized Persons" which is being implemented by Department of Justice and United Nation Development Programme (UNDP). The Access to Justice Project has already partnered with CSC-E-governance Services India Limited to mainstream legal literacy through CSCs in Jharkhand and Rajasthan.

**Importance:** Using technology for providing access to justice is in tandem with the Digital India initiative, the primary focus being transparency, good governance and digital delivery of services.

These initiatives will serve as a tool to give the poor, rural, marginalised communities a voice and ensure that everybody has equal access to justice.

### 6.10.3. MIDDLE INCOME GROUP SCHEME

- The Supreme Court introduced '**Middle Income Group Scheme**' to provide affordable legal services where fees would be charged as per the schedule attached to the scheme.
- The scheme will be administered through a society named '**Supreme Court Middle Income Group (MIG) Legal Aid Society**' registered for this purpose. The Patron-in-Chief of the society is Chief Justice of India and the Attorney General is its ex-officio Vice President.

- A recent report points that 31 per cent of individuals accused of bailable offences claimed that they continue to be in jail as they cannot afford bail or guarantors to stand surety.
- It also shows that less than 3 per cent of litigants used legal aid, despite being eligible to take the benefit of government-appointed lawyers.

- Its **beneficiaries** will be litigants in the SC whose gross income is less than Rs. 60,000 per month or Rs. 7.5 lakh per annum.

#### Relevant Constitutional Provisions

- Right to free legal aid or free legal service is an essential fundamental right guaranteed by the Constitution and forms the basis of **reasonable, fair and just liberty under Article 21** of the Constitution of India.
- **Article 39-A** says that the State shall “ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.”

### 6.11. SEPARATE TRIAL FOR DISTINCT OFFENCES

#### Why in news?

- SC recently gave a judgement that separate trials should be conducted in all cases related to multi-crore fodder scam saying “joint trial is an exception and the norm is separate trials for distinct offences.”

#### Background of the issue

- Fodder scam involved fraudulent withdrawal of around Rs 1,000 crore by the Animal Husbandry department from various districts between 1990 and 1997.
- Various cases were filed against the accused persons for amounts withdrawn from different treasury in different points of time.

#### Reasoning given by apex court

- Although there was “one general conspiracy”, the “offences are distinct for different periods”, i.e., misappropriation of funds are from different treasuries for different financial years
- The Constitution bars double punishment for the same offence but conviction for such offence does not bar for subsequent trial and conviction for another offence even if the modus operandi is same.
- Only one trial for one conspiracy for separate offences would enable the accused person to go undamaged and commit number of offences

Article 20(2) says that no person shall be prosecuted and punished for the same offence more than once.

#### Other related issues

- Jharkhand High Court gave a “contradictory” judgment in the matter of another accused in the same case. Thus, showing inconsistency in decision making which will affect people’s faith and credibility of institution.
- Delay by CBI in filing appeal against dropping of charge, thus, agency also failed to live up to its reputation.

## 7. IMPORTANT ASPECTS OF TRANSPARENCY & ACCOUNTABILITY

### 7.1. ISSUES RELATED TO RTI

#### 7.1.1. INTRODUCTION

The Right to Information (RTI) Act was enacted by parliament in 2005 to empower citizens, promote accountability and transparency in the working of the government and contain corruption. It has completed 10 years of implementation in which it has changed the thinking and the style of functioning of government machinery.

#### How RTI act has spawned a new breed of activism and citizenship?

- Despite challenges in RTI act, **people have used it fiercely** and owned the law like no other.
- In the unequal battle of trying to hold power to account, **it offers sense of hope** for the human desire for dignity, equality, & the capacity to enforce these to some extent.
- RTI addresses the issue of constitutional rights and empowers people to demand answers – basis of democracy. It encourages a **culture of asking questions** in ordinary people.
- It can help us escape from policy paralysis, and build a more informed, equitable and robust **decision-making** process.
- Beside good governance RTI has helped in the development process as well:
  - effective delivery of socio-economic services, awareness and realization of entitlements
  - Guarantee of income and Food Security: Reduction in leakages and corruption in social welfare schemes, better scrutiny, allocation of resources, effective delivery of services
  - Human Capital: Education and Health Care: Schemes like SSA, National Rural Health Mission are better implemented

#### 7.1.2. EXEMPTIONS AND SECTIONS UNDER RTI

**Exemption to intelligence & security organisation-** Section 24 of RTI says that RTI is not applicable to the intelligence and security organisations specified in the **Second Schedule** with only exception for information on allegations of corruption and human rights violations.

- Second Schedule includes 26 intelligence and security agencies under its ambit. Some of them are IB, RAW, Cabinet Secretariat, BSF, NSG etc.
- Recently, Strategic Forces Command (SFC) which forms part of the National Command Authority (NCA) has been added to this schedule.

#### Exemption to certain Information under Section 8 of RTI

- National security or sovereignty
- National economic interests
- Relations with foreign states
- Law enforcement and the judicial process
- Cabinet and other decision making documents

#### Status of Attorney General (AG) Under RTI

Delhi HC ruled that AG is not a public authority under **section 2(h)** of the act. Reasons:

- The relationship between AG and GOI is of a **lawyer and client** as AG is appointed **under article 76** to provide advice on legal matters to the government and to perform other duties of only legal character as may be assigned.
- AGI maintains a **legal and trustworthy relationship** with the Government of India and does not occupy an office of profit
- The functions performed by AG are similar to an advocate, thus, he is not empowered to change relations or rights of others.
- AG cannot put in public domain his opinions or materials forwarded to him.



- Trade secrets & commercial confidentiality
- Individual safety
- Personal privacy

**"Public authority" according to Section 2(h) of Right to Information Act, 2005 includes:**

- Any authority or body or institution of self-government established or constituted
  - By or under the Constitution (or)
  - By any other law made by the Parliament or State Legislature (or)
  - By notification issued or order made by the Central Government or a State Government
- Bodies owned, controlled or substantially financed by the Central Government or a State Government
- NGOs substantially financed **directly or indirectly** by the Central Government or a State Government

### 7.1.3. OFFICIAL SECRET ACT AND RTI

It is clearly stated in the Section 8(2) of RTI Act, 2005 that in case of a clash with the OSA, the public interest will prevail, that is, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

Thus, there are demands of repealing the Official Secret Act, 1923. Even second administrative reforms commission also recommended the same. But it has not been repealed citing the reason that it is the only law to deal with cases of espionage, wrongful possession and communication of sensitive information detrimental to the security of the State.

#### Impact of OSA on RTI

- RTI implementation faces roadblocks as information is withheld citing vague reasons of document being sensitive or disclosure of information sought would be detrimental to public interest
- The colonial era relic is still promoting secrecy and confidentiality

**However, this can be solved by the following steps**

- Amending Departmental Security Instructions such that only such information is given a security classification which would qualify for exemption from disclosure under the RTI Act
- A national security bill can be introduced, as recommended by ARC-2, to address the concerns of national security

### 7.1.4. PERFORMANCE ANALYSIS OF RTI

#### Performance of the adjudicators of the RTI Act

- Information commissions (ICs) imposed the **penalty for denial of information** (in violation of the RTI Act) **in only 1.3% of the cases** where penalty was imposable. This promotes a culture of impunity. Its impact
  - By foregoing of penalties (Rs. 25000 under RTI Act) has caused an estimated **annual loss of Rs. 290 crore** to the exchequer.
  - Even **more important than the revenue lost is the loss of deterrence value** that the

**Reasons** for denying the information are:

- information pertained to previous years,
- information sought was voluminous,
- PIOs claimed the information could not be traced,
- the IC determined that the applicant "had no good reason" for seeking information.

**None of these are valid grounds** for denial of information.

threat of penalty was supposed to have provided.

- Two provisions of the RTI Act invoked the most for denial of information were **section 7 (9) (disproportionate diversion of resources) and section 11 (1) (third party information)** - not valid grounds form denial
- Many of the state commissions had **not posted their annual reports** on the web and very few had updated the information.
- Despite the dictum of the Supreme Court, **more than 60 per cent** of the IC orders analysed contained deficiencies in terms of **not recording critical facts**. This leads to failure in furnishing information in stipulated time of 30 days. It is further aggravated due to non-availability of trained PIOs & enabling infrastructure (computers, scanners, internet, photocopiers etc.)
- Rajasthan and Bihar's State Information Commissions (SIC) were the worst performers, with 74 per cent and 73 per cent of the orders not describing the information sought.
- The **collective backlog** in the disposal of appeals and complaints in the 16 SICs studied, was an **"alarming 1,87,974 cases pending** as on December 31, 2015.
- The Chief Information Commission (CIC) saw a rise in pendency of 43 per cent.

YEAR: PERCENTAGE OF MINISTRIES REPORTING RTI STATISTICS			
2005-06	89.23%	2011-12	68%
2006-07	83%	2012-13	79%
2007-08	86.53%	2013-14	73%
2008-09	86.33%	2014-15	75.27%
2009-10	77.26%	2015-16	94%
2010-11	67.5%		

- As per the RTI Act, every year **all public authorities** have to provide information regarding number of:
  - ✓ RTI applications received, disposed of & applications still pending.
  - ✓ Applications rejected & ground for rejection.
  - ✓ Number of first appeals filed.
- However over the years public authorities have been stubbornly reluctant to submit their RTI statistics reaching as low as **67.5%** in 2010-11 who followed the rule.

### Performance of Public authorities

- As per the **Central Information Commission (CIC) Report 2015-16**, **94%** of central ministries and departments have provided details about RTI Act implementation.
- It is the **first time** since the rollout of RTI in 2005-06 that compliance rate of public authorities has been **more than 90%** indicating progress towards establishing a transparent and corruption free regime.
- Limited efforts to generate awareness among citizens by government & public authority, despite clearly defining the responsibility in the Act. The efforts have been restricted to publishing of rules and FAQs on websites.

Proper monitoring of Public Authority for compliance of the Act, one of the responsibilities of information commission could result in even reducing the number of appeals.

### Involvement of citizens in RTI

According to the Information Commission's annual reports

- There are at least 50 lakh RTI applications filed in India every year
- Over the last decade, at least 2 per cent of the Indian population has used the law

### Fivolous applications

In 2016 several MPs in Rajya Sabha demanded amendments to the act because of following reasons:

- Using it to **blackmail public functionaries** which affect objectivity in making decisions.

- Filing of large number of **frivolous RTI applications** is affecting efficiency of governance.
- The Act poses **threat to national security** as anybody, without establishing their locus, can ask questions on sensitive issues such as - missile programs and international relations.

However, studies carried out by the RTI Assessment and Advocacy Group (RaaG) & National Campaign for Peoples' Right to Information (NCPRI) had noted facts opposite to the issue raised:

- **Less than 1 per cent** applications are frivolous.
- **Majority** of applicants sought **basic information** about actions of government, functioning of public authorities & use of public resources.
- A little over 1 per cent applications only require vast information which could divert time
- 70 per cent of the information sought should have been made public proactively
- Section 8 of Act clearly outlines exceptions that can be used in matters of national importance.

### 7.1.5. STEPS TAKEN TO IMPROVE RTI

#### 7.1.5.1. REFORMS IN CIC

Digitisation of Central Information Commission (CIC) has been done. It now functions like an e-court. It has added following new features in the RTI process

- Real time updates on filing a complaint or appeal under Right to Information (RTI) Act.
- As soon as an RTI applicant files an appeal/complaint, he/she would be given a registration number and would get an alert on email and mobile phone about his case and progress.
- Digitally transferring the case immediately to concerned information commissioner's registry
- Digital record keeping - CIC has already scanned 1.5 lakh files in electronic form.
- The Commission would also be able to separate complaints from the appeals.
- CIC started the policy of **naming and shaming** the authorities in their annual report who fail to comply.

#### Impact of these changes

- **Currently**, the entire process of RTI takes a few days but after the changes are incorporated entire process would be done within hours.
- Faster hearings & more convenience.
- The facility would not only benefit the appellants but also information commissioners in quickly disposing off the cases.
- The changes could facilitate hearing of multiple appeals of the same person on a given day.
- Reducing pendency as more cases would be disposed in a day.

#### 7.1.5.3. BY DOPT-DRAFT RTI RULES 2017

The **Department of Personnel and Training (DoPT)** has released the **Draft RTI rules 2017** for implementing the **Right to Information Act, 2005**. The new rules will replace the existing RTI Rules 2012 as previous rules did not include:

- **Provisions for dealing with non-compliance of orders and directives of the Central Information Commission (CIC)** to deal with increasing no. of non-compliance cases
- In new rules, Non-compliance cases of public interest will be put before larger benches of the CIC. And Procedure for filing complaints has been clearly defined.

### But still following issues remain in RTI rules

- **Separate Format for complains and appeals** - This implies that an appellant/complainant cannot merge an appeal and complaint into one making the entire procedure lengthier.
- **Withdrawal of an appeal if an appellant makes a written request** – It is nothing less than a deadly blow to the RTI. Activists can be pressurised to withdraw their appeals thereby putting their life in danger.
- **It is up to the CIC to decide whether an appeal is fit for trial** - This is being seen as a draconian measure. Every appeal must be given a hearing.
- **Complainant is required to submit an advance copy of all documents and written submissions to the public authority** prior to submitting the complaint to CIC - This is standard court procedure but totally uncalled for in the case of CIC.
- **Decision on first appeals** – The draft rules opens up the possibility of decision of first appeals by “any other person competent” who is not designated as the first appellate authority. This is a contravention of Section 19(1) of the RTI Act.
- While the Draft Rules introduce time limits that complainants must observe for filing complaints, there are no time limits for ensuring that notice of a hearing in an appeal or complaint reaches the citizen well in advance.
- **Posting matters of non-compliance before other Commissioner(s):** CIC has been empowered whether to post a matter of non-compliance before a bench other than which decided the initial matter or before a larger bench. Hearing by a bench is not required in case of administrative tribunals like CIC.

#### About CIC

- It is an independent body constituted under the RTI Act. It is a **statutory body**.
- The jurisdiction of the Commission extends over **all Central Public Authorities**.
- It is the **final appellate authority** as per RTI Act 2005 and its decisions are **final** and **binding**.

### 7.1.6. STEPS NEEDED TO IMPROVE PERFORMANCE IN RTI

#### Regarding RTI adjudicators

- There needs to emerge, through a broad consensus, an **agreement on the number of cases a commissioner should be expected to deal with every month**.
- Well before a commissioner is due to demit office, the **process of appointment** of his replacement should be initiated so that the **new commissioner joins as soon as the previous one leaves**.
- The study has called for a **review of the structures and processes of the ICs**. With the help of a trained cadre of officers, the burden of work will be shared and the process of first communication from the IC can be restricted to 30 days.
- Suggestions by former information commissioner **Shailesh Gandhi** –
  - ✓ At the time of the selection of the information commissioners itself, a deposition should be taken from them stating that they would strive to clear at least 5,000 cases per annum.
  - ✓ In most of the cases, templates can be followed for quick disposal.
  - ✓ Another prerequisite is the adequate staff which should be provided for.
  - ✓ Also payment of compensation for denial of information to the applicants is a quick and sure shot way of reducing litigation.

### Regarding new draft rules

- There should be provisions for an applicant to **combine appeal and complaint** in a single petition.
- It should not be mandatory for appellant/complainant to serve the copy of the appeal to the respondent. It should be served by registry if it is not served by the appellant/complainant.
- Format on decision on first appeals must be charted out
- A time limit of 15 days must be set for the CIC to furnish the notice of a hearing an appeal /complaint in advance.

- A **time limit for disposal of appeals** must also be set.

### Regarding public authorities

- The Public Authorities have to enhance the level of ownership to ensure that RTI delivery happens as per the spirit of the Act. Thus, they should
  - Identify the gaps in their offices in the delivery of the information, thereafter identify the resources needed and appropriately budget for it.
  - Maintenance of the information required to be furnished to the SIC
  - Providing support to Public Authorities for training, development of software applications, e-Training modules, generating awareness amongst citizens etc.

ARC has recommended setting aside 1% of the budget of flagship programmes of each ministry for improving the poor state of management of public records

## 7.2. PREVENTION OF CORRUPTION

Corruption has been one of the most serious issues with Indian administration and polity. Various promises of clean governance has been made in the past. The situation has improved a little bit as measured by improvement in ranking on Transparency International's Corruption perception Index from 85 in 2015 to 79 in 2016 and according to **CMS- India Corruption Study 2017**, corruption cases in public services have significantly declined since 2005 (in comparison to 2016). However, the situation needs to be improved because of the following issues:

### 7.2.1. DELAY IN APPOINTMENT OF LOKPAL

#### Why in news?

Supreme court slammed government for uncharacteristically "dragging its feet" on the appointment of anti-corruption ombudsman, Lokpal, to usher in probity in public life.

#### Background of the Issue

- The **Lokpal and Lokayuktas Act** has not seen the light of day since it was made into law in 2013.
- The law requires **Leader of Opposition** in the Lok Sabha to be member of the selection panel.
- But there is **no designated leader of opposition** in the Lok Sabha as the Congress does not have the requisite numbers.
- Government **introduced an amendment** to the Lokpal law to address the situation.
- But the amendment bill 2016 **also proposed many other changes** and there have been **no consensus** over them like:
  - Removing time limit of 30 days of furnishing details of assets and liabilities by public servant after joining the government service.
- SC says if the government takes too long to clear the legal hurdle, it will order inclusion leader of largest opposition party in the selection panel as the law otherwise was workable in the present condition.



- The leader of the single largest opposition party in the Lok Sabha, in case of an absentee LoP, has found a place in other high-profile appointments like the Central Vigilance Commissioner.

#### Other Issues with lokpal

- **Dilution of provisions through amendment** – The bill passed in 2016 has done away with statutory requirement of public disclosure the assets of public servants' spouses and dependent children.
- **Non-convergence with PCA** – The vesting of power of prior sanction with Lokpal has been almost nullified with amendments in prevention of corruption act which strengthen the requirement to seek government's permission.
- **Against separation of power** – Lokpal, being an administrative committee (a part of the executive), amounts to judiciary being proposed for executive duties .
- **Free hand to states** – The determination of nature and type of lokayuktas has been completely left on the state's discretion which leads to various problems. For example – misuse of power in appointment such as the lokayukta of UP remained in the post even after the once extended duration was also ended.
- **Ambit of Lokpal** – judiciary is totally excluded.

#### Way forward

While the Lokpal bill has been passed by Parliament, a number of steps still needs to be taken to make it effective such as:

- Effective implementation of the passed bill.
- Passing of other supporting bills which address issues related to tackling corruption such as citizen charter and electronic public service delivery, whistle blower protection, judicial accountability, etc.
- 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.

#### Some features of Lokpal & Lokayuktas Act, 2013

- **Constitution** of Lokpal at the Centre and Lokayukta in states - States to set up lokayukta within a period of 365 days from the date of commencement of the Act.
- **Composition** - Lokpal will consist of a chairperson and a maximum of eight members, of which 50% shall be judicial members and 50% of members of Lokpal shall be from SC/ST/OBCs, minorities and women.
- **Selection committee** - The selection of chairperson and members of Lokpal shall be through a selection committee consisting of Prime Minister, Speaker of Lok Sabha, Leader of Opposition in the Lok Sabha, Chief Justice of India or a sitting Supreme Court judge nominated by CJI, eminent jurist to be nominated by the President of India on the basis of recommendations of the first four members of the selection committee.
- **Jurisdiction of lokpal** - Prime Minister has been brought under the purview of the Lokpal. All entities receiving donations from foreign source in the context of FCRA in excess of Rs 10 lakh per year are brought under the jurisdiction of Lokpal.
- **Power with respect to CBI** - Lokpal will have 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 with the approval of Lokpal.
- **Attachment of property** - The act also incorporates provisions for attachment and confiscation of property acquired by corrupt means, even while prosecution is pending. The act lays down clear time lines for preliminary enquiry, investigation and trial.

## 7.2.2. PRIOR SANCTION IN SECTION-19 OF PREVENTION OF CORRUPTION ACT

### Why in News?

- Recently Supreme Court **upheld a past judgement** that a court initiated investigation against a public servant **would require** previous sanction of government.

### Background

- Section 19 of the PC Act** puts a bar on the **court** to take cognizance of an offence by a public servant **except with the previous sanction of government**.
- The bar is against the court to take cognizance **for the purposes of trial**.
- But** as per Sec 19, there is **no prohibition** to start an investigation by lodging an FIR or through a court-initiated investigation **under Section 156(3) CrPC**.

### Issues involved

- The objective of Sec 19 of PC Act is –
  - ✓ **Obligating the government** to Protect honest officers and those acting in good faith towards their duty from frivolous complaints.
  - ✓ Letting the public servants take decisions for good governance without fear or harassment.
- Previous sanction** protects **the corrupt public servants**, which goes against transparency and accountability.
- SC decisions have **created confusion** over the status of Sec 19 in PC Act and previous sanction. This can be a potential harm to the delivery of good governance.
- Such judgement may also erode trust of the public over the public administration and judiciary.

### Prevention of Corruption Amendment Bill 2016- Contentious provisions on prior sanction

- Complaints regarding corruption on decisions taken or recommendations made by public servants on official duty shall not be investigated without the **prior approval of the Lokpal or Lokayuktas**, as the case maybe.
- The prior approval will be extended to the retired officials too.

Citizens are also becoming active to tackle the issue. For example - A group of eminent citizens will set up a **Citizens Whistleblower Forum (CWF)** to hear complaints of corruption from whistleblowers because Whistleblower Protection Act was passed in 2011 by the Parliament. But the **government has still not notified the Act**. The founding members of the initiative are retired Justice, former CIC, social activist etc. The independence of criminal investigation from

### Previous Sanction under Sec 19 (1) PC Act

- It is given by Union government if Union government has power to remove the official.
- It is given by State government if State government has power to remove the official.
- In case of other public servants, it is given by competent authority.

### Chronology of the previous judgments

- 1951 - R.R. Chari v/s State case** - SC held that there was no requirement of sanction for investigation under Section 156(3) CrPC.
- 1998 - State of Rajasthan v/s Raj Kumar case** - SC upheld no need for sanction before filing a charge sheet under Section 173 CrPC.
- 2013 - Anil Kumar v/s M.K. Aiyappa case** - SC upheld that Section 19 applies at the threshold itself and investigation under Section 156(3) CrPC requires a prior sanction.
- 2014 - Subramanian Swami v/s Union of India case - Section 6A of Delhi Special Police Establishment Act** requiring prior sanction, was made unconstitutional.
- 2016 - L. Narayana Swamy v/s State case** – SC upheld the decision of 2013.
- 2016** – Karnataka High Court in **NC Shivkumar v/s the State** has said that 2016 SC judgement ignored the settled principles of earlier judgments rendered by larger benches.

the executive is a sine qua non for success of a criminal justice system, especially in corruption cases. It is imperative that the SC should correct the apparent anomalies in the state of the law on sanction.

### 7.3. BENAMI TRANSACTIONS (PROHIBITION) AMENDMENT ACT, 2016

#### Why in news?

- The Benami Transactions (Prohibition) Amendment Act came into force on November 1, 2016.
- Following this, the existing Benami Transactions (Prohibition) Act will be renamed as the Prohibition of Benami Property Transactions Act (PBPT Act).

#### Background

- Benami Transactions (Prohibition) Act 1988 had several loopholes such as lack of proper implementation machinery, absence of appellate mechanism, lack of provision with centre for vesting confiscated property etc.
- The current government had introduced Benami Transactions (Prohibition) Amendment Bill in July 2016 in parliament. This bill has been now passed in both the houses of parliament and will come into effect from 1 November 2016.

#### Features of the bill

- **Objective:** The main aim is to route the unaccounted money into the financial system and seize Benami properties and punish those who are involved in these properties.
- The Act **defines benami transactions**, prohibits them and further provides that violation of the PBPT Act is punishable with imprisonment up to 7 years and fine.
- It also prohibits recovery of the property held benami from benamidar by the real owner.
- Properties held benami are liable for **confiscation by the Government without payment of compensation**.
- An appellate mechanism has been provided under the PBPT Act in the form of **Adjudicating Authority and Appellate Tribunal**.
- The Adjudicating Authority and the Appellate Tribunal have been notified on similar lines from **Prevention of Money Laundering Act, 2002 (PMLA)**.

#### Inter-Departmental Task Force for Benami Firms

- A task force comprising members of various regulatory Ministries and enforcement agencies has been set up for a major crackdown on shell companies under Benami Transactions (Prohibition) Amendment Act.
- The move comes days after the government, during a small sample analysis of shell companies, found that RS.1, 238 crore in cash was deposited in these entities during the November-December period, after demonetisation.
- The Serious Fraud Investigation Office filed criminal prosecutions for cheating the national exchequer after a probe against the entry operators running a group of 49 shell companies and other proprietorship concerns
- There are about 15 lakh registered companies in India and only 6 lakh of them file their annual returns, raising suspicion that a large number of these companies are indulging in financial irregularities.

#### Significance

- This law will have **long term impacts on real estate industry** in the country.

- ✓ It will increase the practice of including the correct name in property transactions. This in turn would **bring transparency in residential market**.
- ✓ The stringent law would also **bring down the prices of real estate** because such transactions are done by cash rich investors to park their unaccounted wealth in real estate.
- It will also **boost the confidence of lenders** esp banks and also private individuals.

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before time runs out.**

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## 8. GOVERNANCE

### 8.1. REPEAL OF OLD STATUTE

#### Why in news?

- Parliament has managed to repeal outdated 1200 laws in just 3 years. Further, about 1800 more have been identified for repeal.

#### Identification of old statutes

- At the Union government level, the Law Commission of India prepared four reports in 2014 (248th, 249th, 250th, 251st), identifying old statutes that could be repealed.
- Subsequently, a Committee headed by R. Ramanujam was formed to identify Central Acts which are not relevant or no longer needed or require repeal/re-enactment.
- As per the Ramanujam Committee, 2781 Central Acts were in existence as on 15 October 2014. Out of these, it recommended the repeal of 1741 Central Acts. Of these 1741 Acts, 340 were Central Acts on State subjects that had to be repealed by the respective state legislatures.

#### Why is it needed?

- The purpose of old statute law repeals work is to
  - ✓ Modernise and simplify the statute book,
  - ✓ Reduce its size and save the time of lawyers and others who use it.
- This in turn helps to avoid unnecessary costs.

Further, the plethora of laws passed by the legislatures over the years create problem in bringing efficiency in the administration. Many of such laws have become outdated and impractical to apply, create all round confusion and hardship to common man in the following ways-

- **Corruption**-A study by Bibek Debroy, Niti Ayog expert, finds out that India has 6 central statutes from 1830s, 34 from 1850s and many other colonial era legislations. The study mentions Sarais act 1867 which mandates free drinking water to passerby. This act was allegedly used by some Delhi municipal authority officials to force five star hotels to pay bribe.
- **Delays and inefficiency**-Indian bureaucracy has large number of rules relating to service conditions, conduct etc. framed during British rule. They restrict the freedom of operation of government servants to take speedy decisions and deliver effective services.
- **Ease of doing business**- is hampered by old laws regulating the industries such as 'The Indian Boilers' Act, with mandate of monitoring all industrial boilers, created inspectors raj. The correct approach, on the other hand, requires self-certification as done in Gujarat.
- **Restrictions on Civil & Personal Freedoms**- Vaguely worded laws like The Young Persons (Harmful Publications) Act prohibits the dissemination of certain harmful publications to 'young persons'. This is used by government to reduce marijuana consumption by closing down shops that sell Bob Marley t-shirts. Similarly, section 124A of IPC belongs to colonial legacy hurting democratic rights of people.
- **Inefficient cesses and taxes**- Most cesses are ineffective, expensive, rarely serve the purpose they were levied for and generate insignificant amounts in revenue. For example, the salt cess, generates Rs3.3 crore in 2013 and the cost of collection was Rs1.5 crore.



- **Litigation and Judicial delays-** vague language and poor drafting of such laws leads multiple interpretation, litigation and judicial delays

### Way forward

Just like labour reforms, old statutes aren't always at the level of the Union government. There are several old statutes also at the level of the States. For instance, Rajasthan has repealed more than 60 old statutes recently. Similar exercise must be carried out by other states as well.

## 8.2. ISSUES RELATED TO NGOS

### 8.2.1. REGULATION OF NGOS

#### Why in news?

- There was also a proposal to bring all NGOs under home ministry.
  - As Presently, Home Ministry monitors foreign funds donated to NGOs and organisations through the **FCRA**. But for **effective monitoring it** wants the Finance Ministry to surrender its powers to monitor NGOs under FEMA as many International donors such as the Ford Foundation, the U.K.'s Department for International Development and Canada's International Development Research Centre are registered under FEMA.
- In a separate case, Supreme Court asked Law Commission of India to bring an effective law to regulate the flow of money to a total 29.99 lakh NGOs functioning in the country.

#### Necessity of regulation

- A Intelligence Bureau report, "Concerted efforts by select foreign-funded NGOs to take down Indian development projects", in 2014 alleged that several foreign-funded environmental NGOs were targeting development projects across the country. This report says **~2% of GDP is lost** due to these activities.
- The CBI records filed in the Supreme Court in the case show that only 2,90,787 NGOs file annual financial statements of a total of 29,99,623 registered ones under the Societies Registration Act. In the Union Territories, of a total of 82,250 NGOs registered and functioning, only 50 file their returns.
- Also NGOs are getting money from all over the world and these may include enemy countries.
- Independent analysis has revealed that nearly Rs 6000 crores have been amassed as cash and cash equivalents and for acquisition of vast tracts of real estate by NGOs in violation of FCRA.
- Recently, Supreme Court (SC) voiced its concerns on the NGO becoming a "proxy litigant" and a front for settling corporate rivalry or personal vendetta.

#### Steps taken by government

- Under the Foreign Contribution (Regulation) Act 2010 (FCRA 2010), licences of around 20,000 of 33,000 NGOs were cancelled by the government thus barring them from receiving foreign funds.
- Centre framed new accreditation guidelines for NGOs and voluntary organisations in the country which are as follows:
  - Evaluating past track record of applicant and internal governance and ethical standard of the NGOs.
  - Their outcome evaluation through independent third parties and performance audit by the CAG

- Prescribed the manner of maintenance of their accounts
- Prescribed procedure for recovery in case they fail to submit their balance sheets as according to CBI, only about 3 lakh of about 32 lakh NGOs file their balance sheets with the government.
- The government will not only blacklist such NGOs as earlier but also move to file civil suit for recovery of money siphoned off.
- There is also planning for roping in Income Tax authorities for criminal conviction.

### NGOs argument

- Registration for the FCRA was easy a few years ago, it has now become a lot more stringent.
- Often, the larger NGOs do not face a problem when it comes to funding, but smaller ones does.
- There are several NGOs that exist only on paper. These have given others a bad name too and so the funding has dried up for many sectors.

### Way forward

- Anyone can register a society and it becomes an NGO. So there is a need to form an appropriate law.
- Sensitize all NGOs about compliance of FCRA act and rules when they receive funds from abroad.
- Agencies involved in creating engineered dissent just to influence the polity and economy of India should be selectively handled.
- Issues like misappropriation of funds, lack of transparency and accountability of NGOs need to be addressed to bridge trust deficit between government and civil society.
- All NGOs must respect the law of the land, maintain transparency and remain above board. For this a comprehensive, clear legal and institutional framework should be formulated
- Cooperation with NGOs similar to sessions by Niti Ayog with Civil societies and key ministeries. This will help in efficient utilisation of resources, innovative solutions, service delivery improvement and inclusive growth.

#### National Policy on Voluntary Sector, 2007

It aims:

- To create an enabling environment for VOs that stimulates their enterprise and effectiveness, and safeguards their autonomy;
- To enable VOs to legitimately mobilize necessary financial resources from India and abroad;
- To identify systems by which the Government may work together with VOs, on the basis of the principles of mutual trust and respect, and with shared responsibility; and,
- To encourage VOs to adopt transparent and accountable systems of governance and management.

NGOs have become an indispensable tool for social development. This was highlighted in National Policy on Voluntary sector. Success of various SHG initiatives, government schemes and laws such as FRA, CAMPA and processes such as EIA etc., is due to NGOs. So streamlining them will increase their productivity for the nation.

#### 8.2.1.1. REGULATION OF NGOS UNDER FCRA

FCRA prohibits acceptance and utilization of foreign contribution or foreign hospitality for any FCRA FCRA prohibits and regulated such activities of NGOs which may be detrimental to national interest. As per FCRA, if an NGO is put under prior permission category, it is barred to receive foreign funding from abroad without taking permission from the Home ministry.

However, there are some issues with the Act

- **Abuse of legal procedures**- Government seems to be rejecting licenses non-objectively. This has been observed by NHRC as well.
- **Arbitrarily curbing dissent**- could be used to silence any opposition to government and target rights-based advocacy groups
- **Human rights issue** – may affects human right of people as they have served basic facilities to citizens of India since decades
- **Non-conformity to international standards** - India is a party to the International Covenant on Civil and Political Rights under which, right to freedom of association is incorporated.
- **FEMA and FCRA** – presently, Home Ministry monitors foreign funds donated to NGOs and organisations through the FCRA. But for effective monitoring it also wants to monitor NGOs under FEMA (under finance ministry) as many International donors such as the Ford Foundation, Canada’s International Development Research Centre etc. are registered under it.

#### FCRA

The Foreign Contribution (Regulation) Act was enacted in 1976. It regulates all grants, gifts and donations from NRIs. Also, all eligible NGOs should receive donations from abroad in a single designated bank account.

This act was amended in 2010 and brought out following three main changes:

- FCRA registration would expire after 5 years, and had to be renewed afresh, unlike earlier where it was permanent.
- Restriction (50%) on the proportion of foreign funds that could be used for administrative expenses, thereby controlling how a civil society spends its money.
- The new law shifts focus from only political parties to “organisations of a political nature”. This enables government to target inconvenient NGOs, especially those working on governance accountability.

#### Justification by government for such regulation

- **Public servants** - any organisation, trust or NGO that gets Rs 10 lakh as foreign aid or Rs 1 crore as government aid comes under the definition of “public servants” under Lokpal and Lokayuktas (Amendment) Bill, 2016
- **Protecting sovereignty** - to curb foreign interference in domestic politics.
- **Regulating misuse of funds** - As per the Report of the Intelligence Bureau, some of the terror funding was also being done through this route.

#### Thus, following steps should be taken to resolve the issue

- **Legitimate restrictions** – Although freedom of association is not an absolute right, restrictions should be precisely articulated as criteria of “public interest” and “economic interest” give state discretion
- **National Accreditation council of India** – An autonomous and self-regulating body should be established to regulate corrupt and unscrupulous NGOs that may be laundering money
- **Only one source of funding is curbed** - FCRA cancellation only means that the NGOs cannot get foreign funds. They do not cease to exist.
- **FCRA-PFMS system** envisioned as far back as 2015 need to be operated smoothly. Thus, NGOs that have received foreign funding should have their bank accounts with institutions that have core-banking facilities so that RBI, and therefore the MHA, have real-time updates on transactions.

## 8.3. CRIMINAL JUSTICE SYSTEM

### Why in news?

- Indian Criminal Justice system is one of the most complicated, abused and lethargic systems in the world. The conviction rate is abysmally low, the pendency runs in decades and they generally favor rich and powerful.
- The demand for reforms has been a long pending one.

### Components of CJS

Broadly, the criminal justice systems have the following three components:

- **Law Enforcement:** Law enforcement agency takes report for crimes. It is also responsible for investigating crimes and gathering evidence. It includes police forces in India.
- **Adjudication:** This pertains to judicial processes and can be further divided into:
  - ✓ **Prosecution:** Prosecutors are lawyers who represent the state throughout the court process-from the first appearance of the accused in court until the accused is acquitted or sentenced. Prosecutors review the evidence brought to them by law enforcement to decide whether to file charges or drop the case and present them in the court.
  - ✓ **Defense Lawyers:** They defend the accused against the government's case. They are either hired by the defendant or (for defendants who cannot afford an attorney) they are assigned by the court.
  - ✓ **Courts:** Courts are run by judges, whose role is to make sure the law is followed and oversee what happens in court.
- **Corrections and Prisons:** They supervise convicted offenders when they are in jail, in prison, or in the community on probation or parole.

### Challenges of Current Criminal Justice System in India

- Because of delay and uncertainties involved, it does not deter criminals.
- Punishments for those convicted are ineffective.
- Wide discretion to police and prosecution makes system vulnerable to corruption and manipulation.
- Ignores the real victim, leading them to resort to extralegal method seeking justice.
- Heavy economic burden on the state without the returns.
- System is overburdened with nearly 30 million criminal cases pending and with 10 million being added every year.

### Strategy for Reform

- The Committee on the Reforms of Criminal Justice System in India (2003) suggests a three-fold strategy.
- **First**, procedural and substantive law needs a change based on changes in society and economy with the guiding principles being decriminalization and diversion.
  - ✓ A suggestion under this could be dividing the penal code into four different codes: Social Offences Code, Correctional Offences Code, Economic Offences Code and Indian Penal Code.
  - ✓ The Social Code includes matters of civil nature that can be settled without police intervention and prison terms through administrative processes.
  - ✓ The Correctional Code includes offence punishable up to three years imprisonment where plea-bargaining can be liberally invoked.

- ✓ Economic Code includes property offences, which affect financial stability of the country dealt with through combination of criminal and administrative strategies.
- ✓ Indian Penal Code will include only major crimes warranting ten years imprisonment or more or death.
- **Second** is the institutional reform of police processes. This includes investigation, professionalization, rationalization of court systems through technology and limiting appeal procedures to the minimum.
- **Third** is giving a bigger and more responsible role to the **victim** in the whole procedure.
  - ✓ It involves restoring the confidence of the victim in the system.
  - ✓ This would include conferring rights on the victim like, participating in proceedings, right to engage an advocate, track progress of case, to assist court in pursuit of truth etc.
  - ✓ Right to seek compensation for injuries suffered irrespective of the fate of proceedings.
  - ✓ Following a restorative means which enjoys community support, victim satisfaction and offender acknowledgement of obligations.

## 8.4. CORPORATE SOCIAL RESPONSIBILITY

### Why in news?

- Prime database recently released CSR expenditures by firms for financial year 2015-16.
- As per the report Indian companies spent Rs 9309 crore on CSR projects in 2015-16, which was Rs 163 crore more than the amount required by law, and Rs 703 crore more than the previous year.

### Problems with CSR law

- Most of the spending has been in areas which companies prefer. Of the nine different schedules prescribed by The Companies Act, two schedules: **combating various diseases** and **promotion of education** accounted for 44% of the total CSR expenditure.
- There is issue of **geographical equity**. More than 25% of all CSR spending happens in 5 states like Maharashtra, Gujarat, Andhra Pradesh, Rajasthan, Tamil Nadu while north east states are mostly neglected.
- Historically CSR spending has never been reported so it cannot be concluded whether CSR spending has increased or decreased after the law came into effect. Like a company who may be voluntarily spending more than 2% of their profit may now just spend just 2% to meet obligation and vice versa.
- There are evidences which suggests that companies under the garb of CSR spending have increased their profit as it results in brand building, employee engagement and good public relations. This saves lot of money for companies kept under marketing and promotion of products.
- CSR law can be seen as an indirect way to increase corporate tax, which is already among the highest in the world (As per KPMG, India – 34.61%, World Avg – 24.09%) as it is spent on social welfare programme which does not generate profit for the firms. This high rate not only makes Indian firms less competitive in international market but also hampers foreign investments in India.
- Though CSR law compel firms to contribute towards social welfare through spending a part of their profit in some initiatives but it does emphasize upon **outcomes of those initiatives**.
- There is also non-availability of well-organized nongovernmental organizations esp in remote and rural areas that can assess and identify real needs of the community and work along with companies to ensure successful implementation of CSR activities.



- Yet another reason is that there is a lack of consensus between various local agencies regarding CSR projects resulting in duplication of efforts by companies. This give rise to a competitive spirit between local implementing agencies rather than building collaborative approaches on issues.
- CSR law enlists only few genres of works like eradicating extreme hunger and poverty, promoting education, social business projects which is too vague to work as legal definition.
- CSR does not talk about enforcement mechanism or penalties in case of noncompliance.

#### Important CSR provisions under companies act, 2013

- CSR applicable to companies with at least 5 crore net profit or 1000 cr turnover or 500 cr net worth.
- Companies will have to spend 2% of their 3 year average annual net profit in CSR activities in each financial year starting from 2014-15.
- Activities included in CSR list are – **livelihood enhancement, rural development projects, preventive healthcare and sanitation, reduce inequalities faced by socially and educationally backward groups, conservation of natural resources, promotion of sports,** etc.

#### Way ahead

- There is a need to create awareness about CSR amongst the general public to make CSR initiatives more effective. For this various stakeholders like government, companies, NGO's, civil society, media, people themselves should be involved.
- Companies can overcome their duplication issue by pooling their efforts into building a national alliance for corporate social responsibility. This alliance, representing various industry interests, should take up broad development agenda and provide high value services to the poor and the underprivileged.
- CSR as a subject or discipline must be introduced at business schools, colleges and universities to sensitize students about social and development issues and the role of CSR in helping corporate houses strike a judicious balance between their business and societal concerns.
- Lastly government must reward corporate firms and other stakeholders implementing projects under CSR that effectively covers poor and underprivileged.

## 8.5. SPORTS GOVERNANCE

Sports governance in India is facing various issues in India. Thus demands for reforms are coming from bodies of different sports. Few of the demands are:

- **Revision of National Sports Code** – After Lodha committee recommendations, the demand for revision of **National Sports Code** for other sport bodies is picking up to minimize political interference, corruption, inefficiency. The government has established a committee for the same
- **Structured preparation for olympics** - The Union Ministry of Youth Affairs

#### TOP (Target Olympic Podium) Scheme

- The earlier scheme was formulated within overall ambit of National Sports Development Fund (NSDF) with the objective of identifying and supporting potential medal prospects for 2016 and 2020 Olympic Games.
- Under the scheme the selected athletes are provided financial assistance for their customized training at Institutes having world class facilities and other necessary support.
- Benchmark for selection of athletes under the scheme is in relation to international standards.
- Committee will decide its procedures and can invite subject experts when required. The Initial tenure of the committee will be one year from the date of notification.

and Sports has reconstituted Target Olympic Podium committee to identify and support potential medal prospects for 2020 and 2024 Olympic Games.

- **Promoting grassroots level talent** - through **Khelo India scheme** under which government also conducted “**Grameen Khel Mahakumbh**” specifically for rural games. The khelo India scheme also includes **Urban Sports Infrastructure Scheme (USIS) and National Sports Talent Search Scheme (NSTSS)**
- **Acceptance of Lodha committee recommendations**- has generated awareness about the declining levels of sport culture in the country. This has generated demand for reforms. The recommendations of Lodha committee which can be applied to sports in general are:
  - Barring civil servants and ministers from becoming member of the sports federations and associations
  - Limits on the duration of the tenure and the number of times a person can become a member of sports bodies
  - Former and existing Players should be associated with the bodies of their respective games
  - Auditing of accounts should be done by CAG nominee
  - Bringing sports bodies under RTI (Issue of BCCI under RTI is discussed in subsequent section).

### 8.5.1. INCREASING TRANSPARENCY

#### Why in news?

- CIC in its latest order has urged CoA (Committee of administrators) running BCCI to bring BCCI under RTI.

#### Arguments in favour

- **Public authority** – Supreme court has declared BCCI as a public body as it discharges public functions monopolistically with tacit approvals of central and state governments
- **Transparency and accountability to public** – If audit is already being done, then BCCI should not hesitate to come under RTI
- **Punishment to guilty** – Cricket is the most popular game in the country despite controversies and thus demands accountability not just players but officials who should get penalized too
- **Reducing role of black money** – Transparency will enable meaningful government-control of enormous amount of public-money earned regularly by BCCI.
- **Government order** which declared all the National Sports Federations (NSF) receiving a grant of ₹ 10 lakh or more as a Public Authority under Section 2(h) of the RTI, 2005. And BCCI has received concessions above this amount.
- **Lodha committee** also favored it in its recommendations.

#### Why BCCI is a public authority?

- It conducts cricket-matches with its teams named as ‘Indian team’ which gets all types of recognition and facilities from Union and state-governments.
- Support from the government includes:
  - Thousands of crores received towards tax concessions by BCCI
  - Making available land by state and UT governments for stadiums
  - Making available security during matches
  - Facilities for visa etc.
- It has complete monopoly and all-pervasive control over the sport of cricket in India.

#### Arguments against

- **Auditing done** – Auditing of their accounts is already being done by BCCI.

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- **Affect working efficiency** – due to interference and fear of officials of being scrutinized for every decision. This argument is however not valid as RTI is not absolute - there are sufficient exemptions under RTI. (see box)
- **Registered under societies act**- The national governing body for cricket was registered as a society under the Tamil Nadu societies registration act and thus, termed by BCCI as a private body.

### Way Forward

Parliament should bring a law to bring BCCI and other sports federations under RTI. It will help promote good sportspersons and sports culture, and professionalism in games. It will also put a check on extravagant expenditure of these federations and will help players to access complete funds transferred for their training as they will come under public scrutiny.

## 8.6. UNIVERSITY AND POLITICS

### Why in News?

The recent committee under **T S R Subramanian** has submitted its recommendation on the issue of politics in universities and ways to improve education sector in India.

### Culture of politics in Universities

- The linking of politics with the educational institutions in India is not a new phenomenon. During our independence movement universities were one of the most politically active arenas which saw vigorous political movements like **Boycott and Swadeshi**.
- Political awareness in educational institutions was regarded with utmost importance by our national leaders because vigilant students are in a better position to question the exploitative character of the state.
- However after independence, due to change in the dynamics of Indian politics, such values have also seen a transformation.
- Various cases ranging from Rohith Vemula to protests in JNU campus and violence in DU, have brought the concerns regarding increasing politics in educational institutions in India, to the surface.
- To look into the matter and to make suggestions in regards to improving the educational sector in India, T S R Subramanian committee was set up by the government.

### Recommendations of the committee on the issue

- The original report had banned the indulgence of political parties in the university campuses.
- An **Indian Education Services (IES)** must be established with permanent officers in the state government. The cadre controlling authority must lie with the Centre.
- It also talked about the need for a **Standing Education Commission** to assess the changing situation in universities and to make recommendations for changes accordingly.

Following educational committees have been established in India till now:

- Radhakrishnan Commission , 1948-49
- Mudaliar Commission, 1952
- Kothari Commission, 1964-66

### Politics in Universities

- **Positives**
  - As per many eminent scholars politics in universities is a part of educational programme, i.e, to **make students aware and more vigilant** about their surroundings and society. Only well informed students can bring positive changes in the society and be an asset for the nation.

- The Student's Political Organizations play a crucial role in **shaping the opinion** of the youth towards government policies and also in attracting the focus of the government towards specific academic and student issues. Student Unions form the only forum in the campuses through which the pupils get to voice their views and opinions regarding the administration of their colleges.
- Our constitution, under the **Right to freedom** and expression **and right to form associations**, supports such grievance redressal mechanisms and their activities.
- Denying them the consciousness to form associations and develop their view is thus grossly undemocratic, in the era when every individual in relations to the liberalized view wants autonomy and a space for free thinking.
- **Negatives**
  - Such organizations and their activities affect the routine classes and schedules of university campuses.
  - These student groups are supported by their parent political parties which work for their respective interests rather than the students' interests most of the time and these student organisations involve in **mindless hooliganism** against political adversaries.
  - Recognizing this, some of the best educational institutions of the country like the IIT's and IIM's have gone ahead and banned politicization of student unions, with some States like Kerala completely forbidding student union elections.
  - The **politicization of educational Institutions** often manifest in the habit of making academic appointments on the basis of party colour or of shaping the curricula along party lines. As a result, outdated curricula, erratic faculty members and degrees that barely lead to jobs gnaw many campuses in the country.

**Lyngdoh Commission (2006)** was formed to make following recommendations for Student Union Polls:

- Shorter and indirect system of elections.
- It suggested that the election campaigning should be strictly confined only to the university/ college premises.
- There should be a cap on election expenditure.
- The commission insisted that no politicians and ex-students should be allowed to enter the university.
- There would be certain academic, character and age related eligibility criterion for the contestants of the elections.

### Way forward

*'Well aware students make a well aware nation'.*

However on many counts the politicization of Indian university campuses has been derogatory for the quality education. Thus it becomes essential to find the right balance between awareness and unnecessary politicization of premier institutes for the purpose of partisan politics.

Therefore steps must be taken, as recommended in the Lyngdoh Committee, to respect and improve the right to express and right to form associations while, also, not politicizing the campuses, because after all colleges are places for education and not stages of petty politics.

## 8.7. PARITY ISSUES RELATED TO ARMY

**About the issue:** There are two kinds of inequalities around army:

- Between combat and non-combat officers
- Between military and civilian officers

### Combat vs Non-Combat officers

- The promotion of officers from combat support arms like engineers, logistics, signals etc are not at par with the promotions in combat services.
- In an unprecedented move, recently the Supreme Court ordered the army to pay financial compensation of Rs 20,000 to each of 141 officers from combat support arms, who continue being denied promotion despite a verdict from the apex court.
- The case relates to a discriminatory promotion policy instituted by the army in 2009, which the SC found biased in favour of officers from two arms — infantry and artillery — whose officers dominated decision-making during that period.

### Way forward

- There is a need to avoid a situation where officers refuse to serve in logistics due to low promotions there.
- Further, a less meritorious officer should not get precedence over other only for the reason that he is from combat arm. This is against meritocracy.

### Military vs Civilian Officers

- There is widespread disparity in the pay and allowances of officers. For example, the difference in the status and salary of an Army Brigadier and DIG of police has continuously reduced since third Central Pay Commission. Now, the Seventh CPC recommendation has placed a brigadier's allowances below those of the DIG. This is despite the fact that only 5% of army officers become brigadiers and that too after 26 years of service, whereas more than 90% of IPS officers become DIGs after 14 years.
- There are similar issues with respect to disability pension, non-functional upgrade etc.
- A lowered pay status compared to civilian counterparts with much less period of service leads to operational problems for the armed forces working in a multi-cadre environment as the civil authorities refuse to listen to them. This affects morale of the forces and needs to be rectified.

### Suggestions

- Including the representatives of armed forces in Central Pay Commission or to constitute a separate Armed Forces Pay Commission
- An expert committee should be formed to inquire into the change in status and command and control issues of the armed forces, vis-a-vis the bureaucracy, and recommend course corrections in a time-bound manner. It is necessary to honour the military and give what is rightfully theirs.
- In a latest move, the defence ministry has decided to have re-look over this matter.

## 8.8. 7TH PAY COMMISSION

The 7th Central Pay Commission, headed by Justice A K Mathur, submitted its report to Finance Minister in November, 2015. Its recommendations took effect from 1 January, 2016.

- The government constitutes the Pay Commission almost every 10 years to revise the pay scale of its employees and often these are adopted by states after some modifications.
- Nearly 48 lakh central government employees and 55 lakh pensioners are benefitted by the pay commission.



**Key recommendations**

- 23.55 per cent increase in pay and allowances
- Minimum pay fixed at Rs 18,000 per month; maximum pay at Rs 2.25 lakh.
- The rate of annual increment retained at 3 per cent. Also, a 24 per cent hike in pensions.
- One Rank One Pension proposed for civilian government employees on line of OROP for armed forces.
- Annual increments are contingent on Performance benchmarks for
  - ✓ Modified Assured Career Progression (MACP) which has been made more stringent from “Good” to “Very Good”
  - ✓ a regular promotion in the first 20 years of their service.
- Recommended introduction of the Performance Related Pay (PRP) for all categories of Central Government employees, based on quality Results Framework Documents, reformed Annual Performance Appraisal Reports etc.
  - ✓ PRP should subsume the existing Bonus schemes.
- Abolishing 52 allowances; another 36 allowances subsumed in existing allowances or in newly proposed allowances.
- Grade Pay has been subsumed in the pay matrix to bring greater transparency. The status of the employee, hitherto determined by grade pay, will now be determined by the level in the pay matrix.
- Extending the financial edge accorded to IAS and IFS to the IPS and IFoS. However, the commission lacked unanimity on the issue
- Military Service Pay (MSP), which is a compensation for the various aspects of military service, will be admissible to the defence forces personnel only.
- Short service commissioned officers will be allowed to exit the armed forces at any point in time between 7 to 10 years of service.

Financial impact of implementing recommendations will be Rs 1.02 lakh crore – Rs 73,650 crore to be borne by Central Budget and Rs 28,450 crore by Railway Budget.

Implementation of 7th Pay Commission to impact fiscal deficit by 0.65%, compared to 0.77% of 6 Pay Commission.

The Seventh Pay Commission aim is to attract suitable talent to respond to the challenges of the 21st century. However, the commission did not significantly deviate from the past in “principles of pay determination” and, as a consequence, it is unlikely that civil administration will change either.

- The commission, as has been the practice in the past, relied on need-based wage calculation.
- Today, mechanism should be in place where high-performing individuals can be rewarded and nonperformers can be reprimanded on a regular basis.
- The commission has recommended introducing a performance-related pay and linking bonus payments to productivity. However, unlike the private sector, which is guided by profit motives, the government is guided by social considerations. This makes the measurement of productivity problematic.
- The commission has recommended phasing out non-performers after 20 years of service, meaning annual increment be stopped for people who don’t meet the benchmark for assured career progression.
- Recommendation ignores that government falls short in compensating employees in higher level unlike lower levels where minimum pay is more than double than the market standard in private sector

- Still concerns are there with respect to attracting domain knowledge, facilitating lateral entry, restructuring the personnel pattern of the government and linking productivity outcomes with the emolument structure.

These have to be corroborated with administrative reforms to reinvigorate the bureaucracy.

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## 9. E-GOVERNANCE

### 9.1. E-KRANTI: NATIONAL E-GOVERNANCE PLAN 2.0

#### Why in News?

Governments efforts to leverage the use of technology to transform the way it delivers services to the citizens is posing various challenges in the implementation of Projects envisioned through Digital India.

#### Background

- The Government of India approved the NeGP, comprising of 27 Mission Mode Projects (MMPs) and 8 components in **2006**, developed by **Department of information & Technology and Department of Administrative Reforms and Public Grievances**.
- The 11th report of the **Second Administrative Reforms Commission (2008)**, titled "Promoting e-Governance - The Smart Way Forward" called for government to expand its e-governance capacity.
- In 2015 the Union Cabinet gave its approval for the Approach and Key Components of e-Kranti -National e-Governance Plan (NeGP) 2.0.
- This programme provided for the establishment of **Common Service Centres** for citizens to have an easy access to government services through various applications.
- Currently, there are 44 (MMPs) being implemented by the government under e-Kranti.

#### Key Features

- e-Kranti is an important pillar of the Digital India programme. The Vision of e-Kranti is "**Transforming e-Governance for Transforming Governance**".
- The Mission of e-Kranti is to deliver all Government services electronically to citizens through integrated and interoperable while ensuring efficiency, transparency and reliability of such services at affordable costs.
- The programme management structure will be used for monitoring the implementation of e-Kranti and for providing a forum to ascertain views of all stakeholders, overseeing implementation, resolving inter-Ministerial issues and ensuring speedy sanction of projects.
- Key components of the management structure would consist of
  - *Cabinet Committee on Economic Affairs (CCEA)* for according approval to projects according to the financial provisions
  - *Monitoring Committee on Digital India* headed by the Prime Minister
  - *Digital India Advisory Group* chaired by the Minister of Communications and IT
  - *Apex Committee* chaired by the Cabinet Secretary- to undertake addition / deletion of Mission Mode Projects (MMPs) which are considered to be appropriate and resolve inter-Ministerial issues.
  - *Expenditure Finance Committee (EFC)*
- Central Ministries/ Departments and State Governments concerned would have the overall responsibility for implementation of the MMPs.

#### Thrust areas of the e-Kranti -

- 1) Technology for Education (e-Education)
- 2) Health (e-Healthcare)
- 3) Farmers
- 4) Financial Inclusion
- 5) Planning
- 6) Justice
- 7) Security
- 8) Planning and
- 9) Cyber Security.

At the same time, it is also clear that the weaknesses and threats under the current framework adversely affect implementation of various MMPs, resulting in sub-optimal outcomes.

**Way Forward**

The launch of Digital India shows the importance that the project of e-Governance holds in reaching the long-term objectives of the government.

National e-Governance plan is a well-intended programme that needs more care and evaluation in terms of its implementation both at the lower levels (Common Service Centres) and the higher levels (establishing a secure and reliable network).

**Challenges**

- Lack of digital infrastructure.
- Low degree of process re-engineering
- Weak standards and interoperability of e-Governance applications
- Weak monitoring and evaluation system
- Lack of last mile connectivity
- Sub-optimal use of the existing core IT infrastructure.
- Issues of cyber security

**9.2. OTHER RECENT INITIATIVES****9.2.1. ICT VISION DOCUMENT 2025**

Election commission has come up with ICT vision document 2025 which spells out the strategy of adopting recent technologies and consolidating existing technologies in the Election ecosystem. There are four major components of the ICT 2025.

- Integrated Software application.
- GIS, Analytic and Integrated Contact Centre.
- IT infrastructure including data center, IT security, disaster recovery.
- Knowledge Management, Capacity building and social media engagement.

**9.2.2. PRAGATI (PRO-ACTIVE GOVERNANCE & TIMELY IMPLEMENTATION)**

This is a platform which aimed at addressing common man's grievances, and simultaneously monitoring and reviewing important programmes and projects of the Government of India as well as projects flagged by State Governments.

**Features**

- Multi-purpose and multi-modal platform
- Unique integrating and interactive platform
- This platform will fulfill three objectives: Grievance Redressal, Programme Implementation and Project.
- Monitoring. This is an IT-based redressal and monitoring system.
- It uniquely bundles three latest technologies: Digital data management, video-conferencing and geo-spatial technology.
- With this, the Prime Minister is able to discuss the issues with the concerned Central and State officials with full information and latest visuals of the ground level situation.

**Significance**

- It will make government more efficient and responsive.
- It is a step in the direction of cooperative federalism since it brings on one stage the Secretaries of Government of India and the Chief Secretaries of the States.
- It is also an innovative project in e-governance and good governance.

**9.2.3. VIRTUAL POLICE STATION (VPN) FOR PUBLIC**

- **VPS** is being launched in the Capital to make functioning of a police station comprehensible for the public.
- International NGO **Commonwealth Human Rights Initiative (CHRI)** has developed the VPS.

- The VPS is a first-of-its kind training tool to acquaint the public with the functioning of a police station through the click of a mouse.
- It allows the police and public to enter every room of a computerised police station to explore and learn the key procedures such as arrest, registration of complaints of sexual assault, registration of FIRs and more.
- **“VPS is a step towards humanising the functioning of the police** as it demystifies the police station by exposing citizens to the layers of work – management, administration, investigation, going to court, forensics — that the personnel in the police station perform.
- This tool will empower women afraid to report rapes.

#### 9.2.4. PUBLIC FINANCIAL MANAGEMENT SYSTEM (PFMS)

- The government has decided to universalise the use of Public Financial Management System (PFMS) for all transactions or payments under the Central Sector Schemes.
- PFMS, managed by the Department of expenditure, is an end-to-end solution for processing payments, tracking, monitoring, accounting, reconciliation and reporting of transactions.

##### Significance

- It will provide information across Central Sector Schemes/ implementation agencies in the country on fund utilization leading to better monitoring, review and decision support system to enhance public accountability in the implementation of plan schemes.
- It will result in effectiveness and economy in Public Finance Management through better cash management for Government transparency in public expenditure and real-time information on resource availability and utilization across schemes.

The roll-out will also result in improved programme administration and management, reduction of float in the system, direct payment to beneficiaries and greater transparency and accountability in the use of public funds

#### 9.2.5. CPGRAMS

- The CPGRAMS is an online web enabled application to facilitate speedy redress of public grievances as it allows for online lodging and status tracking of grievances by the citizens.
- The system is flexible enough to be extended to multiple levels as per the requirement of concerned Ministry/Department/ Govt. Organization for speedy forwarding and redress of grievance.
- The Public Grievance Portal has evolved during the last few years aiming at the following objectives:
  - ✓ To serve as a platform for dissemination of information related to Public Grievances and to monitor the redress of these Grievances.
  - ✓ To enable the citizen to lodge and keep track of the status of his/her grievance online.
  - ✓ To enable Ministries/Departments/Organisations to scrutinize and take action without delay.
  - ✓ To reduce/eliminate physical forwarding of complaints to the Ministries/Departments Concerned.

### 9.3. CHALLENGES AND LIMITATIONS OF E-GOVERNANCE INITIATIVES

- **Funding:** Funding is the foremost issue in e-Governance initiatives.
- **Management of Change:** The delivery of Government services through the electronic media including EDI, Internet and other IT based technologies would necessitate procedural and legal changes in the decision and delivery making processes

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- **Privacy:** Whenever a citizen gets into any transaction with a Government agency, he shells out lot of personal information, which can be misused. Thus, the citizen should be ensured that the information flow would pass through reliable channels and seamless network.
- **Authentication:** Secured ways of transactions for the Government services are another issue of concern. The identity of citizens requesting services needs to be verified before they access or use the services.
- **Interoperability:** Infact the interoperation of various state Governments, the various ministries within a state Government is a critical issue.
- **Delivery of services:** Since the penetration of PCs and Internet is very low in the country, some framework needs to be worked out for delivery of the e-Services that would be accessible to the poorest of the poor.
- **Standardization:** The standards need to be worked out not only for the technologies involved but also for issues like naming of websites to creating E-Mail addresses.
- **Technology Issues:** The e-Governance initiative would have to address the Technology Issues/Objectives by identifying the appropriate hardware platforms and software application packages for cost-effective delivery of public services.
- **Use of local language:** The access of information must be permitted in the language most comfortable to the public user, generally the local language. There do already exist technologies such as GIST and language software by which transliteration from English into other languages can be made.

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# 10. LOCAL GOVERNANCE

## 10.1. MUNICIPAL BONDS

### Why in News?

- Recently, 94 cities across 14 states received credit ratings from agencies such as Crisil as part of their preparations for issuing municipal bonds.
- It rated the cities covered under Smart city Mission and AMRUT mission.
- 55 of these cities got “investment grade” ratings, 39 received credit ratings below the investment grade (BBB-).

### Need

- Indian cities revenue is **less than 1% of gross domestic product**. The net result is that cities do not have adequate financial autonomy.


### MUNI MATTERS

**FUND FUNDAS**

- In India, urban local bodies (ULBs) can raise funds of Rs 10,000cr from markets by issuing munis
- States willing to tap market need projects rated by Crisil, ICRA or Fitch
- Move to give municipal bodies more resources to fund infra needs
- Market for munis in India almost non-existent unlike countries such as US where this is principal mode of financing urban infrastructure
- Developing countries like South Africa, Hungary, Russia, and Mexico also have developed muni markets
- Push to govt's city-building project, munis seen as fund-raiser beyond Centre & state grants, PPPs
- Munis market saw promising start,

but drastically slowed last decade

- Market peaked in 2005-6 when ULBs raised Rs 3,000m (compared to Rs 750m in 2001)
- Fell sharply. In 2007, total turnover in muni market was Rs 300m
- Unrealistic to expect cities to have track record & credibility to mobilise private funding
- Small/medium ULBs can't access capital markets directly on strength of their balance sheets
- Only large ULBs such as Ahmedabad, Indore, Pune, Kolkata, Hyderabad etc able to utilize munis
- Now even these find it hard to raise funds via munis
- Ahmedabad Municipal Corp first ULB to access Indian capital market



**WHO'S IN CHARGE?**


- It's a complex web at the ULB level that hinders an enabling environment to access funds in India's debt market
- Multiple authorities have overlapping jurisdictions, both at city and state-level
- Urban Development' is a 'state subject'
- This led to problem of 'moral hazard' in municipal debt market where most of regulatory responsibility lies with municipal borrowers
- The borrower-lender interface with states but most of the responsibility affecting lenders with the Government of India
- In the event of municipal insolvency or bond default, difficult to visualise who will bail out the ULB
- For access to funds and to leverage additional resources, municipalities need to become creditworthy
- In all 22 munis have been floated in the market so far. The total amount of capital raised is a paltry Rs 1,200 cr (Vaidya, 2009)

City	Amount (Rs million)	Interest (%)
<b>WATER SUPPLY &amp; SEWERAGE</b>		
Ahmedabad	1,000	14%
Ludhiana	100	13.5-14
Nagpur	500	13
Nashik	1,000	14.75
Ahmedabad*	1,000	9
Tamil Nadu**	110	9.2
<b>CITY ROADS, STREET DRAINS</b>		
Bangalore	1,250	13
<b>IMPROVEMENT OF CITY ROADS</b>		
Indore	100	
Madurai	300	12.25

\*Tax free \*\*Pooled Financing

Source: Working paper on Financing via Municipal Bonds in India, International Growth Centre, London School of Economics (April 2013), Ichne, TD

**Amount of municipal bonds placements (1997-2007) in Rs million**



Source: World Bank studies on Municipal Financing Framework, Vol 1

### Background

- The **committee on urban infrastructure** headed by **Isher Judge Ahluwalia** (2011) had estimated that Indian cities would need to invest around Rs 40 trillion at constant prices in the two decades to 2031.
- **Municipal bond regulations were released by the SEBI in 2016.**
  - Municipal bonds in India shall enjoy tax-free status if they conform to certain rules and their interest rates will be market-linked.
  - Municipal Corporation needs to have **investment grade credit rating** and **must contribute at least 20 per cent of the project cost.**
  - The corporation must **not have defaulted on any loans in the last one year.**
  - The corporation is required to **maintain full asset cover** to repay the principal amount. Revenues from the project for which bonds were raised are to be **kept in a separate escrow account** and banks or financial institutions would monitor the account regularly.
- In 2017, NITI Aayog in its Three-year Action Agenda document also talks of utilizing Municipal Bond market.

### Significance

- Low cost of borrowing will be an advantage for the ULBs, whose projects typically have low viability, long gestation period and low to moderate cost recovery. Higher the rating of corporation, lower is the interest and cost of borrowing.
- Municipal Bonds are necessary for the financial independence of the Urban Local Bodies.

### Challenges

- Bond investors are unlikely to put money into cities unless they are convinced about their fiscal strength.
- Till now **most of the municipal bonds have been privately placed and not tradable.** This has disincentivized the adoption of municipal bonds. There is a **need of State guarantees** for the bonds.
- It **can also be a source of inequalities** because the better rated municipal corporations would corner most of the investment, crowding out the investment for the already infrastructurally backward cities.

### Way forward

- Best practices like
  - The Development Bank of South Africa using its balance sheet to support municipal bond issues
  - Denmark having an agency to protect bond-holders in case one city in the pool defaults
  - Japan Finance Corp. for Municipal Finance having a sovereign guarantee etc. should be followed by India.
- Municipal bonds should be seen as only one part of city finances. Cities need to generate more revenue as well as get more untied funds from the money collected through the new GST. For all this, city administrations need to be empowered.



## 10.2. 14TH FC AND LOCAL GOVERNMENT

### Why in News?

- The 14<sup>th</sup> Finance Commission has more than doubled the grant for local bodies and has recommended that all of this money be spent on improving basic services like sanitation, drinking water, maintenance of community assets etc.

### Finance Commission

- Indian constitution under **Article 280** provides for the establishment of Finance Commission by the **President of India**. Its main aim is to define the financial relations between the central Government and the individual state governments.
- The FC does not directly deal with local governments; it is required to recommend “the measures needed to **augment the Consolidated Fund of a State** to supplement the resources of the Panchayats and Municipalities in the state, on the basis of the recommendations made by the Finance Commission of the State.”

### Features of the Grant

- The 14th FC recognises the **need to trust and have respect for local bodies** as institutions of local self-governments.
- Out of the recommended money, approximately 2 lakh crore is to be given to Panchayat and rest to the municipalities and this amount is fixed.
- The grant for both Panchayat and Municipalities are to be divided into two categories-
  - ✓ **Performance Grant**
  - ✓ **Basic Grant**
- The ratio of the Basic Grant and the Performance grant will be 90-10 and 80-20 for Gram Panchayats and Municipalities respectively.
- Detailed procedure for the disbursal of performance grants is to be formulated by the state governments.
- The grants will go directly to the local bodies without any share for other levels.
- The focus has been on recognizing the critical role of the local bodies in delivering basic services to citizens.
- To augment the resources of local bodies the commission suggested the state governments to empower local governments to impose **Advertisement Tax** and to assign productive local assets to Panchayat.
- According to the commission, some **royalties from mining** should be shared with the local bodies because mining has impact on local environment & infrastructure. It will help the local bodies to ameliorate the effects of mining on local population.
- Unlike before, the conditionality on the fund transfer has been reduced.
- It provides **unconditional support** to the gram panchayats and municipalities for delivering the basic functions assigned to them.

**Performance Grant**- It is proposed to be introduced to achieve three main goals for the local governance that in long term will bring efficiency, viz,

**1)** To encourage the maintenance of Receipt and Expenditure account of the states (practice of keeping an audit account).

**2)** To help states augment their own revenues and demonstrate that there has been an increase in receipts.

**3)** Publish service level bench marks for urban services in case of Urban Local Bodies

**Basic Grant**- is the basic amount given to the local bodies.

**Assam** is the first state to prepare the Village Panchayat Development Plan (VPDP) guideline in the country and it is considered as the model guideline for other states.

- Distribution of resources to be made by States on the basis of recommendations of State Finance Commissions.
- To enable Village Panchayat to deliver their mandate in respect of delivery of basic services responsibly and efficiently instruction have been issued to prepare a **Village Panchayat Development Plan** in a participatory manner with focus on delivery of basic services viz. by the Village Panchayat.

### Significance

- These steps can augment funds for Consolidated Funds of States.
- This plan of devolution of power has the potential of making the process of development more inclusive with local bodies preparing their development plan with people's participation.
- The 14th FC has deepened the **decentralisation** process that was initiated by the 73rd and 74th constitutional amendments.
- The recommendations can play a crucial role when in sync with government policies to build better, safer and cleaner villages and cities like AMRUT.
- Lack of funds was a big handicap in the functioning of local governments. The commission has opened a wide range of improvement in the working of local bodies with these changes.

## 10.3. DIRECTLY ELECTED MAYOR

### Why in News?

A **private member's bill** was introduced in the parliament to make provisions for direct election and empowerment of the office of mayor in country.

### Present Position

- Mayor is the head and official in charge of the Municipal Corporations in India.
- Executive Officers monitor the implementation of all the programs related to planning and development of the corporation with the coordination of Mayor and Councilors.
- At present, **six states** namely Uttarakhand, Chhattisgarh, Jharkhand, MP, UP and Tamil Nadu, provide for mayors that are elected directly by voters for a five-year term.

### Proposed Changes

- The bill aims to establish strong leadership for cities by providing for a **directly elected** and empowered Mayor.
- It also suggests the **reforms** such as mandating the constitution of area sabhas and ward committees and strengthening the devolution of functions to local governments.
- Bill fixes the Mayor's term to be coterminous with that of the municipality.
- It makes the Mayor the executive head of the municipality.
- It also gives Mayor veto powers over some of the council's resolutions and also lets the Mayor nominate members of the Mayor-in-Council.

### Concerns

- The first challenge is the status quo itself and the vested interests it has entrenched. State governments do not wish to delegate more authority to city-level institutions.
- A fundamental issue with a directly elected Mayor is that instead of enabling efficiency, it might actually result in gridlock in administration, especially when the Mayor and the majority of elected members of the city council are from different political parties.



- The Bill centralises power in the hands of the Mayor and his nominees and creates a political executive which neither enjoys the support of the elected council nor needs its acquiescence for taking decisions.

### Benefits

- Mayor can be held accountable for the irregularities as they will be directly elected by people.
- It will also encourage better financial management of our municipalities.
- It will be helpful in creating more transparency as communication and reporting will be directly done by mayor.
- It will create the office of Mayor politically relevant, hence it will create a culture of meritocracy, performance and accountability.

## 10.4. MINISTRY OF URBAN DEVELOPMENT: NEW REFORM MATRIX

### Why in news?

Ministry of Urban Development has evolved a new reform matrix to enable State and City Governments to implement reforms over the next three years for a turnaround in urban governance, planning and finance.

### Major Reforms Suggested in the Reform

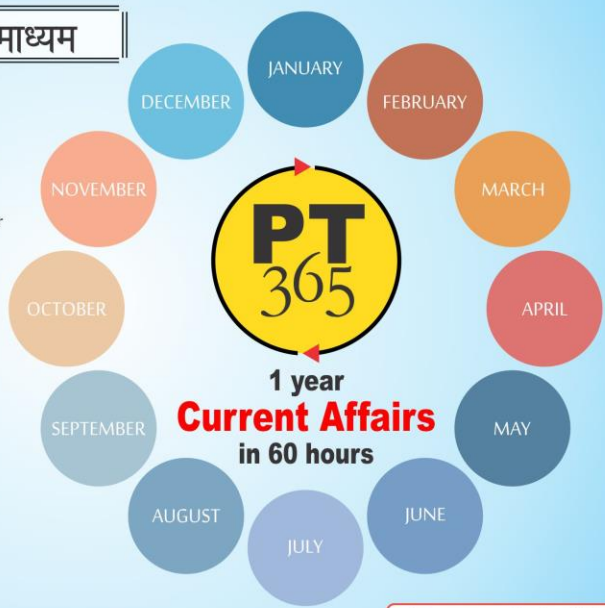
- **Moving to a Trust and Verify Approach:**
  - ✓ The present system requires verification first and then issuing approval. Instead trust needs to be reposed in the citizens and approvals may be accorded first and to be verified later.
  - ✓ This approach has been recommended in respect of Permissions for building construction, Change of title in municipal records (mutation) and Birth and Death registration, involving the largest number of physical interactions between city governments and citizens.
- **Formulating Land Titling Laws:**
  - ✓ As per McKinsey **over 90% of the land** records in the country are unclear. Land market distortions and unclear land titles cost the country 1.30% of GDP per year.
  - ✓ This calls for enactment of Land Titling Laws and their implementation in a specific time frame.
- **Credit Rating of Urban Local Bodies (ULBs) and Value Capture Financing:**
  - ✓ Total revenues of the municipal sector accounts for only 0.75% of the total GDP which is 6% for South Africa, 5% for Brazil and 4.50% for Poland.
  - ✓ So, municipalities need to recover some of the value it creates for private individual. This can be done by issuing Municipal Bonds for meeting the capital expenditure needs of cities.
- **Improving Professionalism of ULBs:**
  - ✓ As per Goldman Sachs, a bureaucracy that is based on merit rather than seniority could add nearly a percentage point annually to the country's per capita GDP growth.
  - ✓ Also, shortage of qualified technical staff and managerial supervisors in ULBs prevent innovation.
  - ✓ Professionals in city governments should be inducted by encouraging lateral induction and filling top positions in cities through open competition.



### Steps to Incentivize Above Steps

- Increase **Reform Incentive Fund** from Rs.500 cr during 2017-18 to over Rs.3, 000 cr per year over the next three years of implementation period.
- **Ranking of Cities** based on performance under each reform category for providing reform incentive under AMRUT Guidelines.
- Introduction of new initiatives viz., Transit Oriented Development Policy, Metro Policy, Green Urban Mobility Scheme, Livability Index for Cities, Value Capture Policy and Fecal Sludge Management Policy.

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# 11. OTHER IMPORTANT LEGISLATIONS/BILLS AND ACTS

## 11.1. AADHAAR ACT

### Why in news?

- The government has made Aadhaar mandatory for filing income tax returns; for obtaining PAN; for availing benefits under Mid-Day Meal; and also for verification of mobile phone connections.

### What is Aadhaar?

- Aadhaar is a **12-digit number** issued by the UIDAI to the **residents of India**, however, it does **not confer any right of citizenship or domicile** in respect of an Aadhaar number holder.
- Any resident, **irrespective of age and gender** may voluntarily **enrol free of cost** to obtain Aadhaar.
- Aadhaar is **proof of identity, proof of residence** and now also **financial address for its residents**.
- **Data collected** includes:
  - ✓ **Demographic information required:** Name, Date of Birth, Gender, Address, Parent/Guardian details (required for children, optional for adults), Contact details phone and email (optional)
  - ✓ **Biometric Information required:** Photo, 10 finger prints, Iris

### Features and benefits of Aadhaar

- Aadhaar has helped **save** government more than **INR 49,000 crore in subsidies** and more than **106 crore people** have already been allotted Aadhaar till date.
- **One Aadhaar:** As it contains biometrics which is unique, it helps in identifying fake and ghost beneficiaries in a government scheme, thereby helping in better targeting and stemming leakages.
- **Identification Services:** Agencies can check identity of a person online from anywhere in India by requesting UIDAI after obtaining prior consent of the person. This eliminates need of various identity documents required in opening bank accounts etc.
- **Blocking Biometrics:** Aadhaar card holder gets alerts every time his/her identity is authenticated and can also block biometrics, thus not allowing anyone to access details for identification.
- **Marginalized and excluded residents not having sufficient documentation** to meet the proof of identity or proof of address will also be issued Aadhaar number by way of "introducer" system.
- **Electronic benefit transfers:** Aadhaar acts as financial address and thus offers a secure and low cost platform to directly remit benefits to intended beneficiaries.
- **Improving Efficiency and Efficacy:** Clear accountability and transparent monitoring would significantly improve access and quality of entitlements to beneficiaries and the agency alike.
- **Self-service puts residents in control:** Using Aadhaar as an authentication mechanism, residents should be able to access up-to-date information about their entitlements, demand services and redress their grievances directly from their mobile phone, kiosks or other means.

### Issues with Aadhaar

- **Privacy Issues:** Right to liberty and freedom of expression is compromised if right to privacy is not there. In the absence of a comprehensive privacy law in India, making Aadhaar mandatory may lead to misuse of personal information and surveillance by the State thus taking away privacy.
- **Release of Information:** Information of an individual can only be revealed in two cases:
  - ✓ On the order of District Court
  - ✓ In the case of **national security** on direction of a “**joint secretary**” (Section 33(2))
- National security is a **vague term** and these safeguards are **weaker** than those for telephone tapping as given in Telegraph Act, 1885 which allows sharing of data for **public emergency or public safety** and second, the order to share information can be issued only by Home Secretary.
- **Potential to profile individuals:** The Act does not have provisions to protect against determining of behavioural pattern and profiling of a person using big data analytics.
  - ✓ It does not prohibit law enforcement agencies from using Aadhaar as a link across various datasets such as telephone records or air travel records
  - ✓ It does not prescribe maximum duration for which authentication record of an individual can be maintained.
- **Section 57** enables the government to impose Aadhaar identification in virtually any other context that is not mentioned in the bill.
- **Cognizance of offence:** No court shall take cognizance of any offence except on a complaint made by the UIDAI. Thus, a person who is aggrieved by breach of data has no remedy at his/her disposal.
- **Discretionary powers of UIDAI:** The Act empowers UIDAI to specify other information that may be collected, **without prior approval** from Parliament.
- **No provision for public or independent Oversight:** The Act does not provide for independent oversight or limitations on surveillance.
- **Prosecution:** The Aadhaar Act does not make UIDAI liable for criminal prosecution in case of breach of data as per Section 43 of the Information Technology Act.
- **Compensation:** Unlike in western countries, the Act does not have any provision for compensation to the person whose data is compromised.
- **Authentication Failure:** In addition to wrong inclusion, exclusion of poor households, and misuse of biometric data, failure of biometric authentication stands approximately at 30 % due to connectivity and other issues.

### Conclusion

Aadhaar presents a unique opportunity to improve governance processes and outcomes. It is a strategic policy tool for social and financial inclusion, public sector delivery reforms, managing fiscal budgets, increase convenience and promote hassle-free people-centric governance. It facilitates financial inclusion of the underprivileged and weaker sections of the society and is therefore a tool of distributive justice and equality.

## 11.2. ENEMY PROPERTY (AMENDMENT AND VALIDATION) BILL, 2016

### Why in news?

Recently, the Parliament passed the Enemy Property (Amendment and Validation) Bill, 2016 which amends the Enemy Property Act, 1968, to vest all rights, titles and interests over enemy property in the Custodian.

### Background

- When wars broke out against China in 1961, and Pakistan in 1965 and 1971, properties belonging to nationals of these countries were taken over by the central government under the Defence of India Acts, 1962 and 1971.
- These properties were designated as “enemy property” and vested in an office of the central government, the Custodian of Enemy Property. The Enemy Property Act, 1968 was enacted to regulate enemy property.
- Over the years, several disputes regarding powers of the Custodian and rights of enemies over enemy property went to the courts.
- In a 2005 decision, the Supreme Court held that the Custodian was a trustee of enemy property responsible for its management, and the ownership lay with the enemy and his legal heirs.
- To negate this decision, an Ordinance was promulgated in 2010, which subsequently lapsed. On January 7, 2016, an Ordinance with a similar purpose was promulgated.
- The Enemy Property (Amendment and Validation) Bill, 2016 was then introduced to replace the ordinance.

### Provisions

- **Amends definition of enemy:** Retrospectively amends the definition from 1968 to include: (i) legal heirs of enemies even if they are citizens of India; (ii) enemies who have changed their nationality; (iii) enemy firms which have partners who are Indians, etc.
- **Vesting of enemy property in the Custodian:** It adds retrospectively from 1968: (i) enemy property will continue to vest in the Custodian even if the enemy dies, or the legal heir is an Indian, etc.; (ii) **succession laws will not apply to such property**; and (iii) ‘vesting’ implies that all rights and titles over the enemy property will be with the Custodian.
- **Powers of Custodian:** It can dispose or sell enemy property within a time period specified by the central government under any circumstances.
- **Transfer of enemy properties by enemies:** The Enemy Property Act, 1968 permitted transfer of enemy properties unless it was against public interest or was intended to evade vesting of property in the Custodian. The amendment bill prohibits all such transfers retrospectively. Any such transfers conducted before or after 1968 are deemed to be void.
- **Bar against jurisdiction of civil courts:** It bars civil courts from hearing disputes related to enemy property.

### Issues

The Bill takes away ownership rights retrospectively. It may be argued that this provision is arbitrary, and in violation of Article 14 of the Constitution. Article 14 guarantees right to equality and protection from arbitrary actions of the state. The Bill prohibits civil courts from entertaining any disputes with regard to enemy property. It does not provide any alternative judicial remedy (eg. tribunals). Therefore, it limits judicial recourse or access to courts available to aggrieved persons.



## 11.3. MOTOR VEHICLES (AMENDMENT) BILL, 2017

### Why in news?

- Motor Vehicle (Amendment) Bill was passed by Lok Sabha in April 2017.

### Key provisions of 2017 bill

- **Third party insurance** - The 2017 Bill removes the cap on liability for third party insurance as provided for in the 2016 amendment bill
- **Scheme for providing interim relief to claimants seeking compensation under third party insurance** - The 2017 Bill removes the provisions related to penalties under the scheme.
- **Funds for hit and run accidents** – A motor vehicle accident fund has been constituted for the treatment of injured person, compensation to the person hurt or to the representatives of person died in hit and run case. The requirement of crediting the Fund with a cess or tax in 2016 bill has been removed.
- **Guidelines for aggregators** - State governments were to issue licenses to aggregators in conformity with guidelines issued by the central government which was made optional in 2017 bill.
 

The 2016 Bill defines aggregators as digital intermediaries or market places which can be used by passengers to connect with a driver for transportation purposes (taxi services).
- **Agency for road safety** - The 2017 Bill provides for a National Road Safety Board (as recommended by Sundar committee) to be notified by central government.
- **Road design and engineering** - The 2017 Bill provides that any contractor or consultant responsible for the design, construction, or maintenance of the safety standards of roads would need to adhere to specified standards by state/central government and would be held responsible through penalty for road accidents instead of bad drivers.
- **Hassle-free and quick services:** the Bill proposes increasing validity of driving licenses, getting learning licenses online and omitting the requirement of minimum qualification to get a driving license issued.
- **Stricter penalties:** for offences such as drunken driving, dangerous driving, non-adherence to safety norms by drivers (like wearing helmets etc.). The bill has proposed three-year jail term for parents of minors who are caught driving with 10-fold increase in compensation to victim.
- **Adhaar:** The number is required to apply for driving license.

### Benefits of the new bill

- **Integrated approach** - Liability is being fixed at every stage making everyone equally responsible to ensure road safety
- **Digitization** – It will make it difficult to obtain bogus driving licenses as it will be linked with Adhaar and e-registration of vehicles will discourage theft and encourage portability in terms of transfer of vehicle registration from one state to another.
- **Rule bound** – When implemented, obtaining a driving license without a test would be impossible for anyone, including politicians.
- **Road safety** - Specifically targeting traffic offenders, stringent penal provisions and identifying priority areas would improve road safety.

## Challenges

- Police force need to be made professional and accountable if we want to reduce traffic fatalities, which stood at 1,46,133 in 2015.
- State governments must prepare for an early roll-out of administrative reforms prescribed in the amended law, such as issuing learner's licences online
- Research shows that imposing stricter penalties tends to reduce the level of enforcement of road rules. According to IIT Delhi's Road Safety in India report of 2015, the deterrent effect of law depends on the severity and swiftness of penalties as well as the perception that the possibility of being caught for violations is high.

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