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Classroom Study Material

**POLITY**

July 2017 – September 20<sup>th</sup> 2017

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## TABLE OF CONTENTS

1. CENTRE-STATE RELATIONS.....	2
1.1 Centre State Finances.....	2
2. ISSUES RELATED TO CONSTITUTION.....	6
2.1. The Citizenship (Amendment) Bill 2016.....	6
2.2. Right to Privacy .....	7
2.3. Article 35A of the Indian Constitution .....	9
3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATURE AND EXECUTIVE .....	11
3.1. The Dilemma of Delimitation .....	11
3.2. Whip .....	12
4. ELECTIONS IN INDIA .....	14
4.1. Demand for a Hybrid Electoral System .....	14
4.2. NOTA in Rajya Sabha polls.....	15
4.3. NRIS Permitted to Vote through Proxy.....	17
4.4. CEC Appointment Issues .....	18
5. JUDICIARY .....	19
5.1. Making India Hub of Arbitration .....	19
5.2. A Case for Larger Benches.....	20
6. IMPORTANT ASPECTS OF TRANSPARENCY & ACCOUNTABILITY.....	22
6.1. Preventive vigilance .....	22
6.2. Amendments to Whistle Blower Protection Act.....	24
6.3. Need for Social Audit .....	25
7. GOVERNANCE.....	28
7.1. Prison Reforms .....	28
7.2. Push for Law to Ensure Transparency Rules.....	29
7.3. Civil Services Reforms .....	30
7.3.1. Lateral Entry into Civil Services .....	30
7.3.2. New Rating System for Bureaucrats.....	31
7.4. Government E-Marketplace.....	32
8. LOCAL GOVERNANCE .....	33
8.1. Financing Cities .....	33
9. OTHER IMPORTANT LEGISLATION/BILLS .....	35
9.1. DNA Based Technology (Use and Regulation) Bill, 2017 .....	35
9.2. Jharkhand's Anti-Conversion Bill .....	36
9.3. Nabard (Amendment) Bill, 2017 .....	37

# 1. CENTRE-STATE RELATIONS

## 1.1 CENTRE STATE FINANCES

### Background

In the 11th Standing Committee meeting of the Inter-State Council held in April 2017, the Punchhi Commission recommendations in Volume III related to Centre-State financial relations were discussed.

### Changes under 101st amendment (GST)

- **Article 246 (A):** a) Both Union and States in India now have “concurrent powers” to make law with respect to *goods & services*, b) The intra-state trade now comes under the jurisdiction of both centre and state; while inter-state trade and commerce is “exclusively” under central government jurisdiction.
- **Art 248** The residuary power of legislation of Parliament under article 248 is now subject to article 246A.
- **Article 249** has been changed so that if 2/3rd majority resolution is passed by Rajya Sabha, the Parliament will have powers to make necessary laws with respect to GST in national interest.
- **Article 250** has been amended so that parliament will have powers to make laws related to GST during emergency period.
- **Article 268** has been amended so that excise duty on medicinal and toilet preparation will be omitted from the state list and will be subsumed in GST.
- **Article 269** would empower the parliament to make GST related laws for inter-state trade / commerce.
- **Article 269A:** This article says that in case of the inter-state trade, the tax will be levied and collected by the Government of India and shared between the Union and States as per recommendation of the GST Council.
- **Article 279-A:** provides for constitution of a GST council
- **Article 268A** has been repealed so now service tax is subsumed in GST.

### Constitutional provisions dealing with Centre state fiscal relations:

- Article 246: division of taxation powers (now amended under GST)
- Articles 268 (refers to duties levied by the Union but collected and appropriated by the States) and 269 (taxes on the sale of goods and taxes on the consignment of goods)
- Art 271 relates to surcharges
- Article 275 (1) and Article 282: Grants to States
- Article 280 mandates the setting up of a Finance Commission
- Articles 292 and 293: define the borrowing powers of the Union and the States, respectively

### Issues in Centre-State Fiscal Relations

- Vertical Imbalance in Resource Sharing: The States feel that the resource transfers to them have not been commensurate with their growing responsibilities.
- Growing Central Expenditure on Functions in the State List: 12<sup>th</sup> Finance Commission estimated that a fifth of the expenditure incurred by the Centre was on subjects, which were in the domain of the States. The reasons are increasing discretionary transfers in the form of assistance for CSS, special plan assistance and special Central assistance. Further growing discretionary transfers from the Centre have severely constrained the States in drawing and implementing schemes according to their priorities and the felt needs of people.
- Regional Imbalances: Growing regional imbalances both inter-State and intra-State are matters of serious concern and are counter to the objective of realising the goal of inclusive

growth. The strategy consisting of area specific programmes and the area specific tax exemptions have so far failed to address the problem adequately.

- Compliance and Enforcement Cost of Central Legislation: There are a number of Central legislations, the compliance and enforcement cost of which are entirely borne by the States viz the Environment Protection Act, the Wildlife Protection Act, the Forest Conservation Act, the Biodiversity Conservation Act etc. At present, States are not compensated for the cost of compliance and the revenue loss on account of compliance.  
Central legislations/Administrative instructions also impose additional costs on the States. These mainly relate to (a) Schemes of Central Government like Sarva Siksha Abhiyan (SSA); (b) Climate Change and Environment Management; (c) Judicial work resulting in increased case load on the courts; and (d) fulfillment of international treaty obligations entered into by the Central Government.
- Impact of Pay Revision by the Central Government on State Finances: The periodic pay revision by the Central Government gives rise to demand on the part of State government employees for a similar pay hike. States have demanded that the Central Government should bear at least 50 per cent of the additional consequential burden, following the pay revision.
- Revision of Royalty Rates on Major Minerals: At present, the power to fix royalty on major minerals is vested with the Central Government. The main grievances of the States is that the provision of revision of royalty rates is not being adhered to and that there are undue delays in the revision of these rates at periodic intervals depriving the States of potential revenue.
- Sharing of Off-Shore Royalty and Sale Proceeds of Spectrum: With the increased exploitation of offshore oil and gas reserves, the non-tax revenues of the Centre have improved considerably through higher royalty collections. However, under the present Constitutional arrangements, offshore royalty accrues entirely to the Centre. Similarly, substantial revenue has accrued to the Centre through the sale of 3G/4G spectrum. States are largely responsible for the development of infrastructure and creating an enabling environment for the industry and business but they don't get share in revenue.
- Profession Tax: Under Article 276 (2), tax on professions, trades, callings and employments shall not exceed Rs. 2, 500 per annum. As income and salary levels are increasing, a limit on the profession tax constraints revenue mobilizations.
- Taxes under Articles 268 and 269: States have been nursing a grievance that the Centre has not been exploiting the revenue potential of taxes listed under Articles 268 and 269.
- FRBM Legislation: At present, the deficit reduction targets are uniform across all States. This 'one-size fits all' approach has constrained fiscally strong States to raise more resources.
- Market Borrowings: The Centre has been setting the limits on the market borrowings of States as part of the overall pattern of plan financing. States have been complaining from time-to-time that their share in overall market borrowings has come down significantly. States have contended that their share in market borrowings should be restored to the level of 50 per cent as was prevalent in the fifties.
- Direct Transfers to Local Bodies and Implementing Agencies: Over the years, a number of district level agencies have been created for the implementation of CSS. The Central Ministries are directly transferring substantial amounts of money to these implementing agencies in States bypassing the State Governments. This has given rise to a number of problems. It has eroded accountability. Large sums are reportedly lying unspent in the bank accounts maintained by the implementing agencies. There is no proper accounting of these funds.

### Recommendations of Punchi Commission for better Centre-State fiscal relations

- A comprehensive review of all transfers to States with a view to minimizing the component of discretionary transfers, particularly those channeled through CSS.
- Higher Central transfers to backward States to enable them to improve their physical and human infrastructure.
- adoption of a multi-pronged strategy in the backward regions of the country comprising public investment in infrastructure development, proactive policies to attract private investment, higher public expenditure on social sectors, such as health and education and area specific strategy for the growth of agricultural production.
- All future Central legislations involving States' involvement should provide for cost sharing as in the case of the RTE Act. Existing Central legislations where the States are entrusted with the responsibility of implementation should be suitably amended providing for sharing of costs by the Central Government.
- The additional expenditure liabilities on States on account of the implementation of Central legislations should be fully borne by the Central Government. An institutional mechanism should be put in place to verify the additional cost and to ensure reimbursement of such additional costs to States. It is recommended that issues giving rise to such liabilities may be included as a part of permanent Terms of Reference of the Finance Commission.
- The royalty rates on major minerals should be revised at least every three years without any delay.
- There is a case for reviewing the present arrangement regarding resource sharing between the Centre and the States and giving a share of the offshore royalty to States. A part of the sale proceeds of spectrum should be devolved to States for expenditure on infrastructure projects.
- The current ceiling on profession tax should be completely done away with by a Constitutional amendment.
- The scope for raising more revenue from the taxes mentioned in article 268 should be examined afresh.
- State-specific targets of fiscal deficit in the FRBM legislations of States. The fiscal correction path may factor in the variations in the initial fiscal situation across States and be made State-specific.
- Direct transfers to implementing agencies should be stopped. It should be ensured that the State Governments pay interest in case of delays in the transfer of funds beyond 15 days of their receipt from the Central Ministries.

### Impact of 14<sup>th</sup> Finance Commission Recommendations on Centre State fiscal relations

14<sup>th</sup> FC has changed the basic architecture of Centre-state financial relations in following ways:

- First, the states will have significantly higher and genuine revenue autonomy, with the enhancement of their share in central taxes to 42% from the present 32%.
- Second, there would be a drastic reduction in Centre's discretionary control on fiscal transfers to the states.
- Third, neither the Planning Commission nor the central ministries will have any significant role left. Institutionally, the inter-state council will occupy centre stage in managing the Centre-state financial relations.
- Fourth, the Centre will be left with a drastically reduced fiscal ambit, calling for a scaling down of several of its ministries dealing with state subjects.



- Fifth, the recommendation for abolition of the concept of 'effective revenue deficit' will improve the quality of fiscal deficit.

**Impact of GST on Centre State fiscal relations**

As per Y V Reddy implementing the Goods and Service Tax (GST) will pose the biggest challenge in the Centre, state fiscal relations.

- Till now the Centre and state used to levy their tax and the jurisdiction was clear. Under GST regime, the tax powers virtually cross each other. They have to agree on rates, the categories to be excluded. Tax powers are based on the recommendations of the GST Council. Now the Centre and states have to together determine the tax rates. And they also have to work together in implementation. This may give rise to coordination problem.
- It will make states a key stakeholder in the national economy.

Experts have voiced concerns of GST eroding Parliament and state’s powers to levy taxes. However, as per the Finance Ministry the taxation powers will continue to remain with state legislatures and will be used on the recommendations of the GST Council. Under the new GST tax regime, sovereignty will be shared between the Centre and states.

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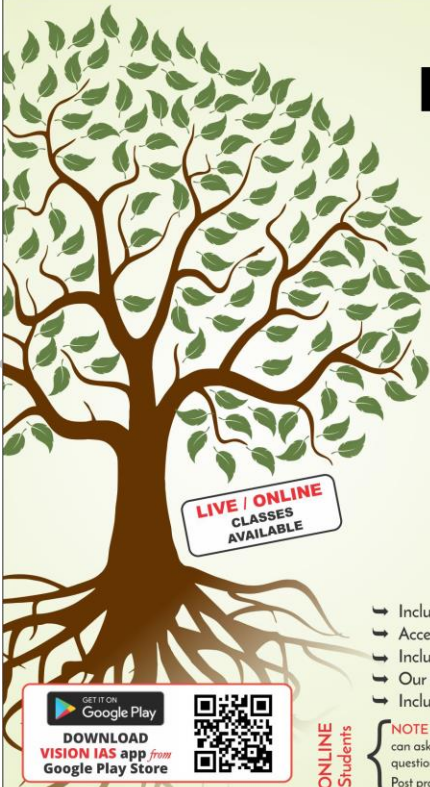
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## 2. ISSUES RELATED TO CONSTITUTION

### 2.1. THE CITIZENSHIP (AMENDMENT) BILL 2016

#### Why in News?

The government has recently proposed certain changes in Citizenship Rules through **The Citizenship Amendment Bill, 2016**.

#### Background

- The original **Citizenship Act, passed in 1955**, defines the concept of Indian citizenship and lists out ways to acquire the same, explicitly denying citizenship to all undocumented migrants.
- As per this law the citizenship can be acquired on following grounds:
  - Being born in the country, or
  - Being born to Indian parents, or
  - Having resided in the country over a period of time.
- The act prohibits illegal migrants from acquiring Indian citizenship.
- Under the Foreigners Act 1946, and Passport Entry into India Act, 1920, illegal migrants may be imprisoned or deported.

#### Who is an illegal migrant?

Illegal migrant is a foreigner who either:

- Enters the country without valid travel documents
- Enters with valid documents but stays beyond the permitted time.

#### Who are Overseas Citizens of India?

OCIs are foreigners who are persons of Indian origin. For example, they may have been former Indian citizens or children of current Indian citizen. They enjoy various rights like to travel to India without visa.

#### Features of Amendment

- It deals with two categories of people-
  - Illegal immigrants
  - Overseas Cardholders
- It makes illegal migrants who are Hindus, Sikhs, Buddhists, Jains, Parsis and Christians from Afghanistan, Bangladesh and Pakistan, eligible for citizenship.
- Now they cannot be imprisoned or deported on not having valid papers.
- The bill, also, widens the ground for the cancellation of an OCI registration by the Central Government, i.e. if a person violates any law in force in the country.
- The eligibility criteria has been reduced from 12 years to 7 years for citizenship by **naturalisation**.

**Article 14-** It requires that a law must only treat groups of people differently if there is a reasonable rationale for doing so. The statement of Objects and Reasons of the bill does not provide any such rationale.

#### Concerns

- The Bill does not take note of the refugees in India from among the Muslim community who have fled due to persecution and singles them out on the basis of religion, thereby being discriminatory. This may violate Article 14 of Indian constitution.
- The Bill allows cancellation of OCI registration for violation of any law. This is a wide ground that may cover a range of violations, including minor offences (e.g. parking in a no parking zone).

#### Way forward

- The proposed Bill recognises and protects the rights of refugees and represents a welcome change in India's refugee policy. But it would have been appropriate if the Bill had used the term "persecuted minorities" instead of listing out non-Muslim minorities in three countries.

- This may be a well-intended law but leaves out many exploited minorities from our neighbourhood like Rohingyas from Myanmar and Ahmadiyyas from Pakistan.

## 2.2. RIGHT TO PRIVACY

### Why in news?

- Recently, in *Justice K. S. Puttaswamy (retd.) vs Union of India*, a nine-judge Constitution Bench of the Supreme Court ruled that right to privacy is an intrinsic part of life and liberty under Article 21.

### Background

- Constituent Assembly after discussing this issue decided not to put right to privacy in constitution
- Earlier **M.P. Sharma** (8-judge Bench) and **Kharak Singh** (6-judge Bench) cases delivered in 1954 and 1961, respectively, held that privacy is not protected under the Constitution.
- In *Maneka Gandhi vs Union of India* (1978), it was held that any law interfering with personal liberty and right of privacy must be just & not arbitrary
- However, the IT (information technology) Act of 2003 was silent on privacy laws.
- Various bills have been tabled in the past including The Prevention of Unsolicited Telephonic Calls and Protection of Privacy Bill, draft Bill on privacy 2011 etc. However, still privacy is not provided in law.
- A Committee of Experts was constituted under Justice A P Shah to study the privacy laws & make suggestions on proposed draft Bill on Privacy 2011
- Recently, the Data (Privacy and Protection) Bill, 2017 was tabled in the Lok Sabha.

### Key features of judgement

- **Expands the individual's fundamental rights** – by guaranteeing it in Article 21 and including freedom from intrusion

### Why right to privacy is needed?

- **Rapid digitization in India** may result into problems of ID theft, fraud, misrepresentation
- **Welfare benefits through IT platforms** using computerised data collected from citizens.
- **Huge personal data collection** - Huge MNCs are taking data of millions of Indians abroad without including protection procedures
- **Increasing internet users** - India has around 400 million Internet users engaged in generation, transmission, consumption and storage of data.

### Recommendation of AP Shah Panel

- Enacting **new and comprehensive law** to protect privacy in the private & public spheres.
- Appointment of **privacy commissioners** at the Centre and in states
- Setting up of **Self-Regulating Organisations** by the industry which would develop a baseline legal framework enforcing right to privacy.
- Listed **nine principles of privacy** to be followed by data controllers - *Notice, Choice & consent, Collection limitation, Purpose limitation, Access & correction, Disclosure of information, Security, Openness, Accountability*
- Listed **exceptions** to the right to privacy - national security, public order & public interest, tackling criminal offences, protection of the rights of freedom of others.

**Heart of the matter**

**Salient points:**

- Privacy is a constitutionally protected right emerging primarily from the guarantee of life and liberty in Article 21 of the Constitution
- It includes the preservation of personal intimacies, sanctity of family life, marriage, procreation, the home and sexual orientation
- Privacy connotes a right to be left alone. It safeguards individual autonomy and recognises one's ability to control vital aspects of his/her life
- Privacy is not an absolute right, but any invasion must be based on legality, need and proportionality
- Informational privacy is a facet of this right. Dangers to this can originate from both state and non-state actors
- Government must put in place a robust regime for data protection. It must bring about a balance between individual interests and legitimate state concerns



into one's home, the right to choice of food, freedom of association etc.

- **Ensures dignity** – as it is not possible for citizens to exercise liberty and dignity without privacy
- **Etches firmer boundaries for the state** - Now right to privacy cannot be curtailed or abrogated only by enacting a statute but can be done only by a constitutional amendment
- **Increase responsibility of state to protect data** – as any data breach in national programmes involving collection of personal data would have to be compensated unlike in a police state.
- **Shows an admirable capacity of judiciary to self-correct** - This judgement overrules its previous stand in 6 and 8-judge benches.
- **Independent external monitoring** - Now citizen can directly approach Supreme Court or High Courts for violation of his fundamental right under Articles 32 and 226. Thus ensuring that the right is subject to reasonable restrictions of public health, morality and order only.
- **International significance** - as privacy enjoys a robust legal framework internationally and India has also signed and ratified the ICCPR in 1979.
- **Preventing digital colonisation** by digital & e-commerce businesses - such as ensuring checks on accessibility of data harvested and taken to servers outside the country by Facebook and Google.

#### Concerns arising from judgement

- **Bearing on government's welfare schemes & other cases** – such as Aadhaar, Section 377, WhatsApp privacy policy, restriction on eating practices etc.
- **Bearing on RTI** - A fine balance is difficult to be maintained between right to privacy & right to information such that disclosure of information does not encroach upon someone's personal privacy
- **Possible misuse by accused in investigations by accused** – on using personal information by law enforcement agencies

#### Data (Privacy and Protection) Bill, 2017

- **Rights-based approach** where consent of individual is mandatory for collection, processing, storing and deletion of personal data with very limited exceptions on case-by-case basis.
- **Differentiate data collectors and data processors** and mandates that they shall collect, store or access personal data in a lawful and transparent manner and implement necessary security measures for data collected
- Data intermediaries must inform individuals of data breach within a time frame
- Creation of position of **data protection officer** for grievance redressal of end-users with a provision for appeal to Data Privacy & Protection Authority

However, bill skips the issue of data sovereignty- the practice of subjecting information to the jurisdiction of data privacy laws on the basis of geographical boundaries. Unless explicitly specified, Indian IT laws are not applicable to data stored outside India and data intermediaries can claim immunity by exploiting this loophole.

#### Related International laws

- Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (**Convention 108**), signed by European Council in 1981, is the first legally binding international treaty dealing with privacy
- Article 12 of the Universal Declaration of Human Rights, 1948 and Article 17 of the **International Covenant on Civil and Political Rights (ICCPR)**, 1966, legally protect persons against "arbitrary interference" with one's privacy, family, home, correspondence, honour and reputation.
- European Union is planning to enforce its **General Data Protection Regulation (GDPR)** by May 2018.

- **Contours of privacy cannot be defined** as it pervades all other fundamental rights. It is a cluster of rights including surveillance, search and seizure, telephone tapping, abortion, transgender rights etc.
- **Undermines Separation of Power** – as it is not the job of court to amend fundamental rights. Inclusion or exclusion of fundamental rights is only the proviso of Parliament.

### Way forward

Since the global surveillance disclosures of 2013, the right to privacy has been a subject of international debate. Indian laws also talked about one component of privacy, i.e. data protection. The Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules of 2011 provides for the secure storage of personal data and Aadhaar Act 2016 also has full chapter on privacy and security of personal data. However India is still lagging behind over 100 countries that already have some form of data protection law. India should resolve the following concerns:

- **Increasing privacy consciousness** in India which is low compared to western countries. Indian institutions like joint family, marriage celebrations etc. do not encourage privacy. However, rapid changes in technology warrant people awareness about what to put in public realm.
- **Developing a national data protection framework** which will hopefully also define the contours of personal privacy in a broader context beyond just data.
- **Horizontal application of privacy**- where this right is available against private players also. If state is excluded from its role in society's data resources without constraining private corporations, it may lead to threatening of interests of weaker sections that depend on the state for justice and redistribution.
- **Encouraging use of privacy enhancing technologies (PET)** - These are essentially processes and tools that allow end users to safeguard the privacy of their personally identifiable information. It puts the end user in control over what information to share, with whom to share and a clear knowledge of the recipients of this information.
- **Balance individual's privacy right with benefits of data mining and big data** by clearly laying down a legal framework.

## 2.3. ARTICLE 35A OF THE INDIAN CONSTITUTION

### Why in news?

- In response to a petition filed in supreme court, the bench has indicated that the question of constitutionality of Article 35A is likely to be handled by a 5-judge constitution bench.

### What is Article 35A?

- Article 35A was incorporated into the Constitution in 1954 by a Presidential order issued under Article 370 (1) (d) of the Constitution
- Article 35A of the constitution empowers J&K legislature to define state's "permanent residents" and their special rights and privileges without attracting a challenge on grounds of violating the Right to Equality of people from other States or any other right under the Constitution.
- Article 35A protects certain provisions of the J&K Constitution which denies property rights to native women who marry from outside the State. The denial of these rights extend to her children also
- The Article bars non-J&K state subjects to settle and buy property in J&K.

### Why is Article 35A debated?

- It was not added to the Constitution through amendment under Article 368 thus bypassing the parliamentary route of lawmaking.
- It is contended that it is discriminatory against non-residents as far as government jobs and real estate purchases are concerned. Thus, violating fundamental rights under Articles 14, 19 and 21.
- Some refugees from West Pakistan, who had migrated to India during Partition, have moved the Supreme Court challenging Article 35A of the Constitution relating to special rights and privileges of permanent residents of Jammu and Kashmir.

### Arguments against

- It is feared that it would lead to further erosion of J&K's autonomy and trigger demographic change in valley.
- It increases the possibility of flooding the valley by people from outside the valley which may increase trust deficit.

**फाउंडेशन कोर्स**  
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## 3. FUNCTIONING OF PARLIAMENT/STATE LEGISLATURE AND EXECUTIVE

### 3.1. THE DILEMMA OF DELIMITATION

#### Why in News?

An increase in number of seats in both Houses of the Indian Parliament is expected after the lifting of the freeze imposed by the Constitution (42<sup>nd</sup> Amendment) Act, 1976, which is due in 2026.

**Delimitation** means the act or process of fixing limits of boundaries of territorial constituencies in a country or a province having a legislative body.

Delimitation in the J&K is done under the state constitution.

Under 31st Amendment Act, delimitation exercise doesn't apply to states and Union Territories having population less than 6 million.

#### Background

- The power to determine the aspects and manner of delimitation lies with the Parliament. This power has been exercised 4 times through enactment of the Delimitation Commission Acts 1952, 1962, 1972 and 2002.
- The 42<sup>nd</sup> Amendment Act 1976, froze the allocation of the seats in the Lok Sabha to the states and the division of each state into territorial constituencies till year 2000 at the 1971 (census) level.
- This amendment took care of the concerns of the states which took a lead in population control faced the prospect of their number of seats getting reduced.
- The prohibition on readjustment was extended for another 25 years, i.e. upto 2026, by the 84<sup>th</sup> Amendment Act of 2001. The main objective behind extending this was to encourage population limiting measures.
- The 87<sup>th</sup> Amendment Act 2003 provided for delimitation of constituencies on the basis of 2001 census, which was done without altering the number of seats or constituencies.

#### Other Important Provisions

**Article 82** provides for the readjustment of seats in the House of the people to the States and the division of each State into territorial constituencies after every census.

**Article 170** provides for the composition of Legislative Assemblies.

#### Delimitation Commission

The Delimitation Commission in India is a high-power body whose orders have the force of law and cannot be called in question before any court.

The Commission consists of the Chief Election Commissioner of India and two judges of Supreme Court or any of the High Courts in India.

These orders come into force on a date to be specified by the President of India in this behalf.

The copies of its orders are laid before the House of the People and the State Legislative Assembly concerned, but no modifications are permissible therein by them.

#### Constitutional Provisions for Delimitation

- Clause (2) of Article 81** provided that, there shall be allotted to each State a number of seats in the House of the People in such a manner that the ratio between that number and the population of the State is, so far as practicable, the same for all States.
- Clause (3)** defined the expression "population" for the purposes of Article 81 to mean the population as ascertained at the last preceding Census of which the relevant figures have been published.
- Each state is divided into territorial constituencies in such a manner that the ratio between population of each constituency and the number of seats allotted to it is the same throughout the state.

- Through these provisions the constitution ensures that there is uniformity of representation in two respects-
  - Between different states
  - Between different constituencies of the same state
- After every census, a readjustment is to be made in the-
  - Allocation of seats in the Lok Sabha to the states
  - Division of each state into territorial constituencies

### Problem

- The problem is that the current population of our country stands at 121 Crore, which is way more than what was there in 1976, when the figures were frozen. Basing the 1971 Census figure of 54.81 crore to represent today's population presents a distorted version of our democratic polity and is contrary to what is mandated under Article 81 of the Constitution.
- Concerns expressed by the States in 1976 which necessitated the freezing of seat allocation on the basis of 1971 population figures would appear to hold good even today and have to be addressed to the satisfaction of all stakeholders. Now the first census figures after 2026 will be available for 2031, which will already be too late to envelope the reality of Indian electorates.
- More number of members jostling with each other to capture attention to raise their respective issues would make it a difficult task for the presiding officer to ensure smooth functioning of House.

### Way Forward

- There is a need for a debate now on how to deal with the problems that are likely to arise else we will be forced to postpone the lifting of the freeze to a future date as was done in 2001.

## 3.2. WHIP

### Why in News?

Recently, the issuing of whip by political parties on multiple issues has been questioned.

### What is Whip?

- Every Political Party has its own whip, who is appointed by the party to serve as an assistant floor leader.
- He has the responsibility of ensuring the attendance of his party members in large numbers and securing their support in favour of or against a particular issue.
- He regulates and monitors their behaviour in the Parliament.
- He communicates the decision of the party leader to the members and the opinion of the party members to the party leader.
- The members are supposed to follow the directives given by the Whip. Failing to do so can invite disciplinary actions like disqualification from party membership or expulsion under the Anti Defection Law.

### Whip in USA and UK

In the USA, the party whip's role is to gauge how many legislators are in support of a bill and how many are opposed to it — and to the extent possible, persuade them to vote according to the party line on the issue.

In the UK, the violation of certain whips is taken seriously — occasionally resulting in the expulsion of the member from the party. Such a member can continue in Parliament as an independent until the party admits the member back into the party.



- The office of Whip, in India, is mentioned neither in the Constitution nor in the rules of the house, nor in the Parliamentary statutes.
- It is based on the conventions of the Parliamentary government. In India, the concept of the whip was inherited from colonial British rule.

### Problem

- Critics note that with the increasing issuance of whip, the political parties restrict the internal democracy of the party. The individual members are therefore not allowed to represent their individual views. It impacts the freedom of speech and expression of the party members.
- It creates a 'forced consensus' on various issues and defeats the purpose of democracy as the institution of whip makes it mandatory for the party members to follow the decision of the party, this restricts the ability of the party members to put forth their individual views or views of the people of their constituency.

### Significance of Whip

It may be possible that all the members of parliament, irrespective of their party affiliation, may hold different views (even different from the one held by their respective party leadership). In such a case, s/he might deviate from the party view/stand in times of voting.

### Way Forward

- There is a need to build a political consensus so that the room for political and policy expression in Parliament for an individual member is expanded. This could take many forms. For example, the issuance of a whip could be limited to only those bills that could threaten the survival of a government, such as money bills or no-confidence motions.
- A widespread debate, over such issues in the country, must be undertaken by the government, which would encourage beneficial people's participation in the long run.

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## 4. ELECTIONS IN INDIA

### 4.1. DEMAND FOR A HYBRID ELECTORAL SYSTEM

#### Why in News?

Various political parties have told a Parliamentary panel that the existing first-past-the-post-system needs to be replaced with a hybrid format.

#### What is Hybrid Electoral System?

- A hybrid/mixed system refers to an electoral system in which two systems are merged into one combining the positive features from more than one electoral system.
- In a mixed system, there are two electoral systems using different formulae running alongside each other. The votes are cast by the same voters and contribute to the election of representatives under both systems.
- One of those systems is a plurality/majority system (or occasionally an 'other' system), usually a single-member district system, and the other a List PR system.
- There are two forms of mixed system-
  - When the results of the two types of election are linked, with seat allocations at the PR level being dependent on what happens in the plurality/majority (or other) district seats and compensating for any disproportionality that arises there, the system is called a **Mixed Member Proportional (MMP) system**.
  - Where the two sets of elections are detached and distinct and are not dependent on each other for seat allocations, the system is called a **Parallel system**.
- While an MMP system generally results in proportional outcomes, a Parallel system is likely to give results the proportionality of which falls somewhere between that of a plurality/majority and that of a PR system.

#### Why is there a Demand for Hybrid System?

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

#### Various types of Electoral Systems

- First Past The Post System
- Proportional Representation
- Mixed systems also sometimes referred to as Hybrid System

In India, we follow both FPTP as well as Proportional Representation systems of voting. For example, in the elections for the Lok Sabha we have FPTP and for the Presidential Elections we follow Proportional Representation.

#### What is FPTP?

- The First Past the Post system is the simplest form of plurality/majority system, using single member districts and candidate-centred voting.

- The voter is presented with the names of the nominated candidates and votes by choosing one, and only one, of them.
- The winning candidate is simply the person who wins the most votes; in theory, he or she could be elected with two votes, if every other candidate only secured a single vote.
- It is used in the UK to elect members of the House of Commons, both chambers of the US Congress and the lower houses in India and Canada as well as other place that used to be British colonies.

### Why we chose FPTP?

The country chose FPTP for of election system because of following reasons-

- **Simplicity** - most of the Indian population was not literate at the time of independence, and unable to understand the complexity of the PR SYSTEM.
- **Familiarity** - Before independence several elections were held regularly on the basis of FPTP system which made this process more familiar to the general public of the country.
- PR SYSTEM establishes party as a major centre of power whereas FPTP gives an individual as a representative of the people of certain specific area. Given India's condition at the time of independence this was a big concern for our leaders as people connected more to their leaders rather than a certain political party.

### Difference between FPTP & PR

	Proportional Representation		First Past The Post
1)	Faithfully translate votes cast into seats won.	1)	It does not completely translate the number of votes into seat.
2)	Facilitate minority parties' access to representation depending on the or the district magnitude.	2)	It might not encourage minority parties.
3)	Makes power-sharing between parties and interest groups more visible.	3)	The power sharing between various groups is not as visible.
4)	The single party dominance is difficult to achieve. This system does not exclude the smaller parties from representation	4)	It gives rise to single-party governments. It excludes smaller parties from 'fair' representation.

## 4.2. NOTA IN RAJYA SABHA POLLS

### Why in News?

In the context of the recent Gujarat elections (April, 2017) for Rajya Sabha, following issues have been raised regarding the Proportional representative election system followed in RS polls, viz-

- None Of The Above
- Open Ballot system

### None Of The Above (NOTA)

- 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.
- The Election Commission had issued a circular in January 2014 that the provisions of NOTA be included in the Rajya Sabha elections too, after it was included as one of the options in the Electronic Voting Machines in 2013.

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### What is the Issue?

- In recent elections in Gujarat for the Rajya Sabha membership, the option of **NOTA** has been challenged through a petition to the Election Commission.
- The election also highlighted the secrecy debate over the procedural matrix of the **'open ballot' system under Rule 39AA of the Conduct of Election Rules of 1961**.
- In the petition to the Election Commission, it was said that use of NOTA during the Rajya Sabha elections was contrary to the mandate of the Constitution, the Representation of People's Act, the conduct of election rules.
- The petition further said that use of NOTA in "indirect elections" was in direct conflict with and militates against the system of proportional representation by means of single transferable vote.
- The petition reflects the apprehensions of political parties about the defection and rebellious party members. Use of NOTA by such members may lead to the defeat of their representative.
- Both Supreme Court and the Election Commission, however, upheld the use of NOTA in Rajya Sabha elections.

### Elections to Rajya Sabha

- Elections to one-third of the RS seats happen every two years.
- Members of a state's legislative assembly vote in the Rajya Sabha elections in what is called the **proportional representation with the single transferable vote (STV)** system. Each voter's vote is counted only once.
- To win a Rajya Sabha seat, a candidate should get a required number of votes. A candidate requires one-fourth of the total number of votes plus one to get elected.
- Each voter ranks his preferences and if the first choice candidate has enough votes already or no chance of being elected, the vote is transferred to the second choice and so on.
- Only the elected members of the Legislative Assemblies participate in the election of the members of Rajya Sabha.
- In Rajya Sabha polls, the MLAs have to show their ballot paper to an authorised party agent before putting it in ballot box.

### Implications of NOTA in RS

- If a voter (MLA) defies the party directive and votes for someone else or uses NOTA option, he cannot be disqualified as a legislator. But the party is free to take disciplinary action. The party high command can issue a whip for a Rajya Sabha candidate, but anti-defection law provisions do not apply, and a defiant MLA cannot be disqualified from membership of the House.
- In principle, the presence of the NOTA option for the legislator allows the possibility of a protest vote against the party high command for choosing candidates who are not agreeable to them, without having to choose candidates from opposing parties.

### Rule 39AA of the Conduct of Election Rules of 1961

- This rule says that a voter may show his/her marked ballot paper to the authorised

#### Kuldip Nayar v.s Union of India, 2006 case-

It challenged amendments made in the Representation of People Act, 1951 (for short, 'the RP Act', 1951) through Representation of People (Amendment) Act 40 of 2003 which came into force from August, 2003.

In the writ petition, Open Ballot System was also challenged which, according to the petitioner, violates the principle of 'secrecy'.

representative of his/her political party before dropping it into the ballot box.

- The EC has observed that Rule 39AA "is very clear that the elector has to show his ballot paper only to the authorised representative of his party and to no one else. While, in case of independent MLAs, they do not have to show their votes to anyone at all.
- However, Rule 39AA is silent on who would be the authorised representative for a rebel MLA.
- In the **Kuldip Nayar v.s Union of India, 2006, case**, the five-judge Constitution Bench of the Supreme Court said that "free and fair elections" would not stand defeated by "open ballot" to give effect to concept of proportional representation.

### 4.3. NRIS PERMITTED TO VOTE THROUGH PROXY

#### Why in news?

The Union cabinet has recently approved proposal to change the electoral laws to allow NRIs to vote in the Lok Sabha and assembly elections through a proxy. Earlier, this was permitted only to service personnel.

#### Details

- Overseas electors will have to appoint a nominee afresh for each election — one person can act as proxy for only one overseas voter. This is unlike the armed forces who can nominate their relatives as permanent proxy to vote on their behalf.
- Service voters can cast their vote through post as well but this is not permitted for NRIs as the government felt that it could become an administrative and logistic nightmare.

#### Current Status

- In 2010, Representation of the People (Amendment) Act was amended to introduce Section 20A to make NRI eligible to be registered as a voter in the constituency mentioned in her Indian passport.
- Before this amendment, only "ordinary residents" could cast their vote.
- However, Section 20A required NRIs to be physically present in their respective constituencies at the time of elections.

#### Challenges with proxy voting

- **Violates right to equality** – It gives special privilege to person who have migrated abroad but not to people who have domestically migrated.
- **Difficulty in checking illegal practices** – such as buying of votes from the NRIs' nominees, bribery and inducements of voters abroad, checking concurrence in proxy vote with the main voter etc.
- Violates the principle of secrecy of voting
- It would be difficult to ascertain the genuineness of proxy selected by an NRI

#### Arguments in favor of bill

- Citizens have a democratic right to choose their legislators irrespective of their place of residency.
- With the rapid increase in cross-border migrations, the concept of nationhood and political membership is increasingly being decoupled from territorial locations.

#### Way forward

- The government can make Aadhaar mandatory for all, including the NRIs, for voting.
- NRIs may be allowed to do e-voting from their workplaces overseas for e.g. Mahe residents have for long been voting online in the French elections.



## 4.4. CEC APPOINTMENT ISSUES

### Issues related to Chief Election Commissioner

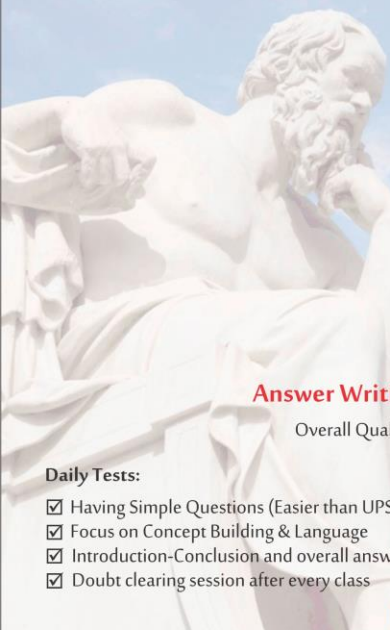
- The appointment of CEC and other ECs according to the Article 324, shall be done as per the law made by the Parliament in this regard. However, no such law has yet been made which leaves a “gap”. Recently, Supreme Court had asked the centre why no enabling law has yet been framed.
- This leaves the appointment of such a crucial post solely to the executives (President on the advice of PM and Council of Ministers).
- The constitution has not prescribed the qualifications (legal, educational, administrative, or judicial) of the members of election commission.
- The constitution has not debarred the retiring Election commissioner from any further appointment by the government.
- There is also no clarity regarding the power division between the Chief Election Commissioner and other Election Commissioners.

### Constitutional Provisions related to EC

As per the **Article 324** of the constitution, “The Election Commission shall consist of Chief Election Commissioner and such numbers of other Election Commissioners, if any, as the President may from time to time fix and appointment of CEC and other ECs shall, subject to provisions of any law made in that behalf by the Parliament, be made by the President.”

### Way forward

- **2<sup>nd</sup> ARC**, in its fourth report on '**Ethics in Governance**', has said that it would be appropriate to have a collegium headed by the Prime Minister to appoint the chief and members of the EC which has a far reaching importance and critical role in working of the democracy.
- The court acknowledged that the appointments of CEC and ECs till now have been fair and politically neutral. But the void in law needs to be filled to ensure “fair and transparent selection”.
- A clear set of rules can bring more clarity in the appointment and may avoid such petitions and questions in future.



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## 5. JUDICIARY

### 5.1. MAKING INDIA HUB OF ARBITRATION

#### Why in News?

The High-Level Committee, under the **Chairmanship of Justice B. N. Srikrishna**, to review the institutionalization of arbitration mechanism and suggest reforms thereto has submitted its report recently.

#### Background

- The Government of India has laid emphasis on making Arbitration a preferred mode for settlement of commercial disputes by taking legislative and administrative initiatives on arbitration.
- The initiatives aim at minimizing court intervention, bring down costs, fix timelines for expeditious disposal, and ensure neutrality of arbitrator and enforcement of awards.
- Arbitration is often the first alternative amongst various ways to manage contract related disputes and it holds the promise of flexibility, speed and cost-effectiveness.
- The **Arbitration and Conciliation (Amendment) Act, 2015** envisages various ways to encourage foreign investment by projecting India as an investor friendly country having a sound legal framework and ease of doing business in India.

#### Problem

- The World Bank's Ease of Doing Business ranking for 2017 reveals that India continues to fare badly on enforcement of contracts, with an average of 1,420 days taken for enforcement. The absence of effective means for enforcement of contracts is a serious fetter on the legal system and impedes economic growth and development.
- Also, it was found that judicial intervention and failure of the government and its agencies to use institutional arbitration has, among others, led to India's reputation as an "arbitration-unfriendly" jurisdiction.
- In India, both ad hoc arbitration mechanism and institutionalised mechanism are riddled with various problems. Besides this a lack of awareness about the advantages of institutional arbitration and the existence of certain institutions leads to parties avoiding institutional arbitration or preferring foreign arbitral institutions over Indian ones.

#### Report Recommendations

- The committee in its report has recommended strengthening of institutional arbitration in India. The Committee has divided its Report in three parts.
- The **part I** is devoted to suggest measures to improve the overall quality and performance of arbitral institutions in India and to promote the standing of the country as preferred seat of arbitration. Important points in this part are-
  - Setting up of an autonomous body called **Arbitration Promotion Council of India (APCI)**, having representatives from all the

The **ICADR** is an autonomous organization with its headquarters at New Delhi. The Regional Centres of ICADR are fully funded and supported by the respective State Governments.

It was set up by the Department of Legal Affairs as an autonomous body registered under the Societies Registration Act, 1860.

The Minister for Law & Justice is the Chairman of ICADR. Its main object is to promote popularise and propagate Alternative Dispute Resolution to facilitate early resolution of disputes to reduce the burden of arrears in the Courts.

stakeholders for **grading arbitral institutions** in India.

- APCI may recognize professional institutes providing for acceleration of arbitration.
- Creation of a **specialist arbitration bench** to deal with commercial disputes in the domain of the courts.
- The committee also opined that the **National Litigation Policy** must promote arbitration in government contracts.
- The Committee in **Part II of the Report** reviewed the working of **International Centre for Alternate Dispute Redressal (ICADR)**. It called for declaring the ICADR as an Institution of national importance.
- In the **III part**, the committee has recommended for the creation of post of '**International Law Advisor**' (ILA) to advise the Government and coordinate dispute resolution strategy for the Government in disputes arising out of its international law obligations, particularly disputes arising out of BITs.

### Significance

- With India's focus gradually shifting towards greater growth and development through increased Foreign Investment, it is essential for the government to make India safer for the foreign investments.
- To achieve this goal institutionalization of the arbitration mechanism can help to make dispute settlement easier and quicker.
- As also the mechanism, has become crucial for commercial dispute resolution, particularly for high-value disputes involving international parties, in most advanced jurisdictions.
- The recommended steps might not necessarily lessen the burden of judiciary but will push the developmental agendas of the government further.

## 5.2. A CASE FOR LARGER BENCHES

### Why in News?

- Setting up of 9-judge bench to hear case of right to privacy has once again renewed the debate on setting up of larger constitutional benches to deal with important cases.

### Background

- In the early years, all 8 judges including chief justice sat together to hear the cases.
- With the increase in workload, Parliament increased the number of judges gradually from 8 in 1950 to the present 31 and the constitution of benches also changed and they sat in smaller benches of two and three to dispose of backlogs (currently about 60,000 cases)
- In the 1960s, Supreme Court heard about 100 five-judge or larger benches a year. By the first decade of the 2000s, the court averaged only about 10 constitution benches a year.
- Thus, various important cases are being heard by smaller benches such as RTE act case was decided by three judges, Naz Foundation case by just two judges etc.
- However, focusing more judges on constitution benches also comes with a concern that it could come at the cost of less access to the court for other matters.

### Reason for demands for larger benches:

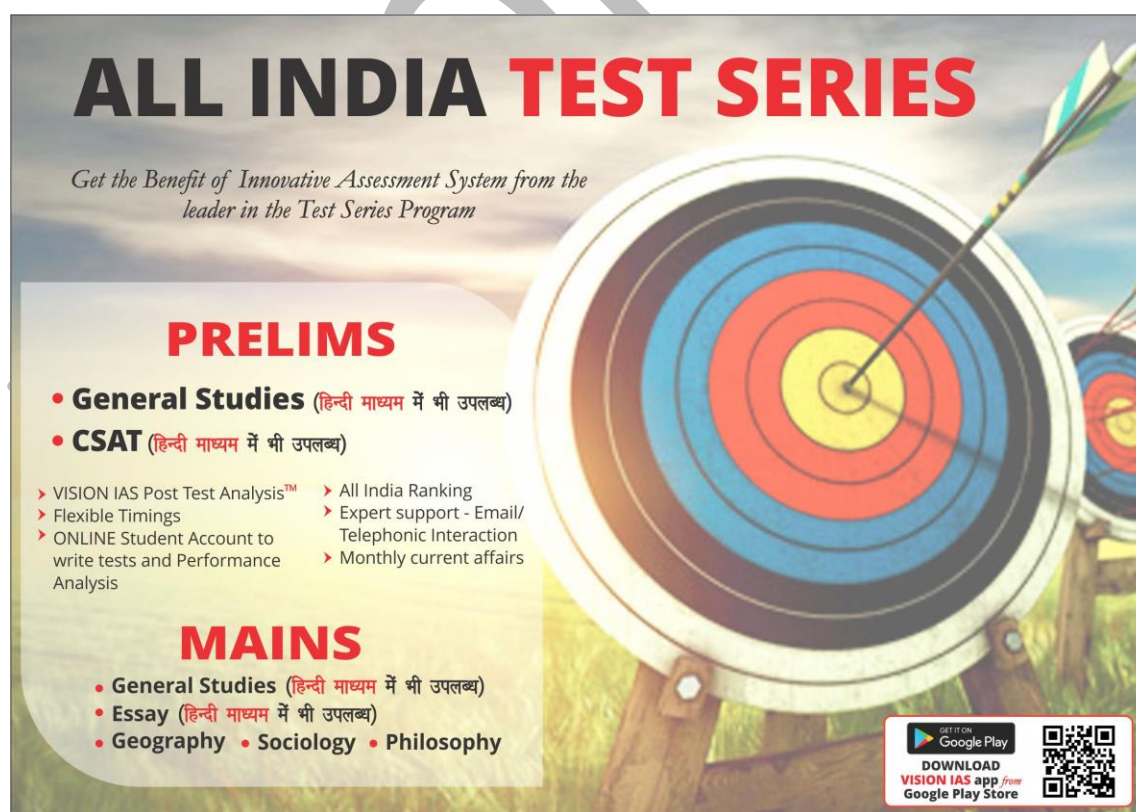
- **Article 145(3) of constitution:** states that any "substantial question of law" relating to the interpretation of the Constitution must be heard by benches of at least five judges
- More judges mean that there will be **more points of view**, greater reflection and more thorough analysis in vital cases. It will also add to **legitimacy** thus, minimizing coming up of

same issue frequently. For example - The issue of privacy itself has been debated in eight or more instances

- It is more **difficult to overturn** a five-judge bench than a two- or three-judge bench, meaning the public can have more confidence in the stability of the law
- Stability would also set the **doctrine of precedent** because as of now both High Courts and lower courts are left confused as to which of the various pronouncements they are meant to follow

#### Way forward

- There needs to be clarity in determining when a case involves a “substantial question” of constitutional law and so requires a larger bench.
- Also, explanation needs to be given to justify why the matter was being heard by less than five judges



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## 6. IMPORTANT ASPECTS OF TRANSPARENCY & ACCOUNTABILITY

### 6.1. PREVENTIVE VIGILANCE

#### Why in news?

- Recently, 7<sup>th</sup> edition of vigilance manual of CVC was released which talked about Preventive Vigilance.

#### What is preventive vigilance?

- It is adoption of a package of measures to improve systems & procedures to **eliminate/reduce corruption**, promote transparency and ease of doing business.
- Vigilance is defined as watchfulness and alertness. Thus, vigilance administration often includes an oversight mechanism to take up preventive and punitive anti-corruption measures and ensure functioning of systems in an efficient way.

#### Preventive vigilance measures

As there are various potential areas of corruption such as procurement, human resource management, delivery of services, sale of goods and services, enforcement of rules & regulations etc., there is a need to adopt following preventive vigilance measures:

- **Simplification and standardization of rules** by undertaking a complete review of existing rules and regulations. It will improve clarity and accountability and eliminate discretion and arbitrariness, thus reducing corruption.
- **Leveraging technology** – such as E-procurements, E-payments, websites for dissemination of information and creating awareness, CCTV in places of public dealing, GPS enabled devices / RFIDs, computer assisted audit techniques for detecting frauds etc.
- **Automation** – using IT reduces interface / interaction between public officials and common public which removes monopoly in delivery of services and reduces opportunity for discretion
- **Business Process Re-engineering** – helps organisation rework their processes to achieve the objectives of organisation. Re-engineering may also lead to even prevent leakage of revenue
- **Transparency:** Transparency removes the information gap between the public and public officials which in turn reduces corruption.

Vigilance administration in India includes:

- Central Vigilance Commission - established on the recommendations of Santhanam Committee
- Administrative Vigilance Division in DoPT
- Central Bureau of Investigation
- Vigilance units in the Ministries / Departments of GOI, Central PSEs & other autonomous organisations
- Disciplinary authorities
- Supervisory officers

#### Causes of corruption

- Government taking upon itself more than what it could manage by way of regulatory functions,
- Scope for personal discretion to different categories of Govt. servants
- Cumbersome procedures in dealing with various day to day affairs
- Monopoly over delivery of goods / services
- Lack of transparency & accountability & inadequacy of regular / periodic / surprise checks
- Poor regulatory framework & very low rate of detection of corruption
- Lack of awareness about rights, duties, procedure to complain, rules, laws, etc. & poor grievance redressal mechanism
- Absence of a formal system of inculcating values, ethics & integrity



- **Accountability & Awareness** - A system with clear accountability along with effective punitive action in case of misconduct is necessary for smooth functioning & efficiency. Also Public officials should be made aware of their duties and responsibilities, code of conduct, rules, procedures etc.
- **Control & Supervision:** Regular and routine inspections, surprise inspections, audit and reviews keep a check on aberrant and corrupt behavior. Also early detection of misconducts may enable recouping the loss and facilitate control of further damage
- **Time bound & effective punitive action** – as encourages and emboldens others to take risk of committing misconduct under the belief that nothing would happen to them
- **Providing necessary infrastructural facilities:** as Non-provision of adequate infrastructural facilities such as accommodation, conveyance, utilities etc. also induce corruption.
- **Awareness in public** – about their rights to enable them to raise their voice against arbitrary behavior by public officials
- **Conducive work environment** – includes identification of sensitive posts and keeping a person with integrity at such posts, protection to whistleblowers etc.
- **Inculcating moral values** - Inculcating ethical behaviour among public, particularly the younger generation is an important tool of preventive vigilance
- **Integrity pact** – a written agreement between Government/Government Department/ Government Company, etc. and all the bidders agreeing to refrain themselves from bribery, collusion, etc. It is implemented by CVC and sanctions are applied on violation of the pact. It is monitored through CVC nominated IEM (Independent External Monitor)

#### Recent steps taken by government

- Amendment in PCA to ensure an environment to every officer to perform without feeling intimidated by anyone
- Simplifying laws by repealing redundant laws
- Digitization – such as Government e-market for procurement, BHIM for e-payments
- Amendment to Benami Transactions (Prohibition) Act, 1988
- Bringing more transparency in electoral funding
- Direct benefit transfers to beneficiaries such as for LPGs etc.
- Double taxation avoidance agreement with countries such as Mauritius etc.
- Targeted real estate sector absorbing significant chunk of corruption

#### Key findings in the report of Transparency International on corruption in Asia-Pacific region

- People in India were most positive about their governments' efforts in fighting corruption, with 53% saying that Government is doing well to tackle corruption.
- Only 41% respondents in India think that the level of corruption has increased. This is substantially lower than countries like China (73%), Indonesia (65%) etc.
- Police forces are perceived to have the highest level of corruption of all the public services accessed by the people.
- India has the highest bribery rate of 69%

Although India has taken several measures to root out corruption, but it still has a long way to go. The ranking of Indian in corruption perception index of transparency international is very low, that is, 79 out of 176 countries. Thus, India should undertake measures like operationalizing Lokpal, increasing public participation in the war against corruption.

## 6.2. AMENDMENTS TO WHISTLE BLOWER PROTECTION ACT

### Why in News?

Recently the government suggested amendments to the Whistle Blower Protection Act, 2014 to address the concerns of national security, which has seen opposition from the civil society.

### Background

- There have been multiple instances of threatening, harassment and even murder of numerous whistle blowers in the country. For example, the murder of Satyendra Dubey in 2003.
- After a long struggle demanding protection for the people to unveil any corrupt or wrong doing in a public organization, in 2014, the Whistle Blower Protection Act finally received President's assent.
- The importance of such progressive expansion is underlined by the fact that in the last few years, more than 65 people have been killed for exposing corruption in the government on the basis of information they obtained under the Right to Information (RTI) Act.
- However, instead of operationalising the Whistle Blower Protection law, an amendment Bill, which fundamentally dilutes the law, was introduced in Parliament in 2015 by the government without public consultation.

### Provisions under Whistle Blower Protection Act (WBPA), 2014

- It provides a broad definition of a whistle blower which goes beyond government officials and includes any other person or non-governmental organisation.
- The person may make a public interest disclosure to a competent authority (CA), notwithstanding anything contained in the provisions of Official Secrets Act, 1923.
- The CA may seek assistance of the CBI or police authorities or any other authority to carry out inquiries under the Act. For the purpose of inquiries, CA shall have all the powers of a civil court.
- Directions of this authority are binding. The organization in question is to act on recommendations within 3 months (max 6 months) or record reasons in writing for disagreement, else pay penalty for non-compliance.
- It ensures confidentiality and penalizes any public official that reveals a complainant's identity, without proper approval, with up to three years imprisonment and a fine of up to 50,000 rupees.

### Recommended Amendments to the Act

- The amendment Bill seeks to remove immunity provided to whistle-blowers from prosecution under the draconian Official Secrets Act (OSA) for disclosures made under the WBP law. Offences under the OSA are punishable by imprisonment of up to 14 years.
- To bring the WBP Act in line with the RTI Act, complaints by whistle-blowers containing information which would prejudicially affect the sovereignty, integrity, security or economic interests of the state shall not be inquired into.
- In addition, certain categories of information cannot form part of the disclosure made by a whistle-blower, unless the information has been obtained under the RTI Act. This includes what relates to commercial confidence, trade secrets which would harm the competitive position of a

These categories include information related to: (i) economic, scientific interests and the security of India; (ii) Cabinet proceedings, (iii) intellectual property; (iv) that received in a fiduciary capacity, etc.

third party, etc. These exemptions have been modelled on Section 8(1) of the RTI law which lists information which cannot be disclosed to citizens.

### Issues

- The amendment restricts complaints to a certain domain. This would exclude crucial areas from being scrutinised. For example, exposing corruption in nuclear facilities or sensitive army posts not be inquired may not be inquired. Surely the country would benefit if such wrongdoing is exposed so that appropriate action can be taken.
- The RTI Act already makes a lot of information inaccessible to the public on various grounds. By making it imperative for whistle blowers to prove they have obtained information through RTI, the amendment bill leaves very little room for actually calling out corruption in the system.
- The amendment talks about conflating the two acts. However, the two acts have different intent and purpose all together. The purpose of the RTI Act is to make information with public authorities accessible to all citizens in order to promote transparency and accountability while the purpose of WBPA is to reveal corruption related information to the public authority.
- Also, the information under RTI is what people have the right to know. While the information divulged under WBPA might or might not be meant for the public knowledge.
- RTI Act permits the relevant public authority to disclose information, if the public interest in revealing information outweighs the harm done to protected interests. The Whistle blower (Amendment) Bill 2015 does not have such provisions.

### Way Forward

- Concerns related to national security can at no level be misjudged. However, such concerns can be well integrated with protection and encouragement for genuine whistle blowers without compromising the real intent behind WBPA, 2014.
- If the intention was to ensure that sensitive information pertaining to national security and integrity is not compromised, instead of carving out blanket exemptions the government could have proposed additional safeguards such as requiring complaints to be filed using sealed envelopes to the competent authorities.
- Government must take steps to make people aware of the existing provisions to file such complaints such as Public Interest Disclosure and Protection of Informer.
- Whistle Blowers take severest of risks for the integrity of the nation. The WBPA was well intended to protect this stratum of citizenry. And no such step should be taken that renders them vulnerable in the hands of corrupt people of the society.

## 6.3. NEED FOR SOCIAL AUDIT

### Why in News?

Increasingly there is a demand for more transparency and accountability of government in regards to the various policies launched which calls for strengthening social auditing mechanism.

### What is Social Audit?

- Social audits refer to a **legally mandated process** where potential and existing beneficiaries evaluate the implementation of a programme by comparing official records with ground realities.

- The beneficiaries, implementing agency and the oversight mechanism come together and discuss at length about the implementation and progress of a particular programme.

### CAG and Social Audit

- CAG's audit is an external audit on behalf of the tax payers. The Union and State Legislatures discuss the matters brought out in CAG's audit reports and make recommendations to the executive for appropriate management action. In a broad theoretical sense, therefore, CAG's audit itself is a social audit.
- Yet, CAG audit remains a Government process. However, Social audit seeks to make the audit process more transparent and seeks to take audit findings to a wider public domain of stakeholders, i.e. users of the Government schemes, services and utilities.
- The primary focus of the CAG's performance audits remains, in most cases, processes within Governmental agencies, with the actual verification of outputs and outcomes being only of secondary focus which are primary agendas of social audits.

Audit of local self-government institutions is a **States subject** and the primary (external) audit of PRIs and ULBs is with the **State Local Funds Audit Department (LFAD)**, or with the designated auditors as specified in the State laws.

### Importance of SA

- Following the recommendations of **14<sup>th</sup> Finance Commission** in regards to expansion in the role of **PRIs, ULBs** and other agencies, social audit becomes crucial as the CAG's audit jurisdiction over such entities is nebulous.
- The mechanism is well established providing direct evidence for inputs, processes, financial and physical reporting, compliance, physical verification, assurance against misuse, fraud and misappropriation, and utilisation of resources and assets.
- **Strengthening the democratic process** – People directly observe the implementation of Government programmes in their region making the process participatory. This, in the long run, empowers the people and makes the process of development more inclusive.
- It involves scrutiny of both financial and non-financial used by public agencies for development initiatives.

### Limitations of Social Audit

- The scope of social audits is intensive but highly localised and covers only certain selected aspects out of a wide range of audit concerns in the financial, compliance and performance audits.
- The monitoring through social audits is informal and unprocessed with limited follow-up action.
- The institutionalisation on the ground has been inadequate, and it has faced great resistance from the establishment due to the lack of adequate administrative and political will in institutionalising social audit to deter corruption.
- Inadequate access to data and lack of expertise are other obstacles.
- Lack of focused media attention and scrutiny to social audits.
- While formal social audit arrangements have been provided for in NREGA, other programmes like PDS, NRHM etc. have varying arrangements for grass-root level monitoring, limiting their utility.

## Recommendations

- Social audit compliments the CAG's audits and therefore it should be mainstreamed into our processes for audit of all social sector programmes.
- Learning from the progress made by the civil society groups and Gram Sabhas in **Andhra Pradesh and Rajasthan** in setting up separate directorates for social audit, other states can also introduce such measures.
- There must be a formal framework of cooperation and coordination for mutual communication of various audit plans and their synchronization.
- Uniformity of social audit at the village level for all social sector programmes can be taken up so that arrangements for community participation are better institutionalised.
- Education and awareness of Gram Sabha should be initiated to enable them to comprehend and understand their rights better.
- NGOs can help in strengthening social audits such as **MKSS** in Rajasthan.

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## 7. GOVERNANCE

### 7.1. PRISON REFORMS

#### Why in news?

- The murder of a women life convict in Byculla women's prison over some missing ration in June has brought back focus on prison reforms especially on vulnerability of inmates to custodial violence

#### Issues related to prisons

- **Overcrowding** - The occupancy rate at all-India level was 117.4 percent, till December 2014.
- **Undertrials** - the number of under-trials constitute 64.7 percent of total inmates with major reasons being lack of money to obtain bail or delay in trial.
- Neglect of **health and hygiene** and giving Insufficient food and inadequate clothing
- **Focus on retribution** rather than reformation and rehabilitation
- **Cumbersome process to conduct research** after new rules have been put in place owing to Nirbhaya documentary incident.
- No policy to monitor and constructively engage the inmates after their release. This hinders their **re-integration in the society**.
- **Prison management is a state subject**. Therefore, there are great variations in Prison manuals among different states.

#### Solutions

- **Accountability**: The only way to thwart what goes on in these institutions is to make them accountable.
- **Surveillance**: Supreme Court last year ordered to install CCTV cameras in all the prisons in the country.
- **Monitoring**: Prison monitors are mandated to regularly visit jails, listen to prisoners' grievances, identify areas of concern, and seek resolution.
- **Psychological**: Providing counselling to inmates is crucial to deal with the ordeal they undergo in custody.
- **Registering and reporting cases**: File FIR and report all cases of custodial death to the NHRC within 24 hours of their occurrence and giving punishment to the erring prison officials
- **Guidelines**: NHRC has repeatedly issued guidelines to prevent and respond to custodial deaths. It is time for the State governments to start taking these guidelines seriously.
- **Comprehensive anti-torture legislation** - Even Supreme court has told government to consider passing a comprehensive anti-torture legislation
- **Independent investigation** - Establishing an independent mechanism for timely and effective investigation of cases of custodial torture and for the rehabilitation and compensation for victims as investigation by police itself may be biased.
- **Focus on reformation** - The main objective of 'correction' strategy should be to induce positive change in the attitude of criminals. For this, providing them vocational training, employing them meaningfully after release, creating an open prison system for non-hard core criminals etc. should be tried
- **Uniformity** - Central Government along with NGO's and prison administration should take adequate steps for a uniform jail manual throughout the country.

- **Intensive 'After Care'** on completion of the term to overcome their inferior complex and save them from being ridiculed as convicts.
- **Reforms in bail laws-** so that bail remains a norm and jail an exception for all people not just rich and affluent.

#### Recent steps

- In March 2017, Bombay High court directed government to comprehensively review conditions in prisons following which an empowered committee was set up.
- The National Legal Services Authority (NALSA) in collaboration with the National Informatics Centre (NIC) is working on a national digital database of undertrials.
- Proposals for video-conferencing facilities in recently established Legal Assistance Establishments where undertrials or their kin or legal representatives can view information about their cases.
- Supreme Court ordered to release undertrials who have already completed half of their jail term if they would have been found guilty.
- The **Parivarthana programme** taken up in Andhra Pradesh has proved to be a boon to prisoners to reform themselves and lead a dignified life after their release from jail. Under this, Parivarthana Centres have come up at district jail and sub-jails.

## 7.2. PUSH FOR LAW TO ENSURE TRANSPARENCY RULES

### Why in News?

- The government could consider introducing a new law to ensure transparency of rules after the Economic Survey (II) has suggested the introduction of Transparency of Rules Act (TORA).

### Need for TORA

- Rule of Law is the fundamental need for Good Governance which in turn depends on aware and vigilant citizens.
- The problem is that it is not easy for ordinary citizens in India to navigate the multitude of rules, regulations, forms, taxes and procedures which are further updated and changed as per the requirement.
- This is the cause of a lot of inefficiency, and delay. Arguably it is also an important source of corruption and endless litigation.
- Apart from Economic Survey, the '**Three Year Agenda**' by NITI Aayog also talked about the need for Creation of a repository of all existing Centre and State laws, rules and regulations for the establishment of Rule of Law in the country.

### Features of TORA

The proposed legislation would have the following three elements.

- It would make it mandatory for all departments to place every citizen-facing rule, regulation, form and other requirement on its website (preferably in English, Hindi and regional language). Once a department is declared "TORA-complaint", any rule that is not explicitly on the website would be deemed not to apply.
- It will further specify that all laws, rules and regulations need to be presented as an updated, unified whole at all times.

- The websites should clearly state the date and time when each change is made. Laws would normally be applicable after a specified time after the rule has been posted to give citizens a reasonable time to comply. The officials cannot retrospectively change the rules.

#### Significance

- All three of the above features are crucial for addressing the issues like lack of awareness, delay and ultimately corruption.
- The proposed law is solely concerned about the ease of finding out these varied rules and regulations that the citizens are expected to know about. It will also support the Digital India initiative.
- Once a department has shifted to the platform, it can be deemed “TORA-compliant” and citizens can be sure that the information is authentic and updated.

## 7.3. CIVIL SERVICES REFORMS

### 7.3.1. LATERAL ENTRY INTO CIVIL SERVICES

#### Why in News

Recently Department of Personnel & Training (DoPT) has been asked to prepare a proposition on lateral entry into Civil Services.

#### Background

- The decision has been taken in response to a **Central Government Staffing Policy Paper** in which a shortage of officers in middle ranks was admitted by DoPT. Presently the numbers to be inducted are approximately 40.
- However lateral entry to civil services is not a new phenomenon in India. Domain experts have been brought in from outside to head various committees.
- **1st ARC** as early as in 1965 talked about **need for specialization**. The **10th Report of 2nd ARC** has also recommended an institutionalised transparent process for lateral entry at both central and state levels.
- Other two committees that followed the suit were **Surinder Nath Committee** and **Hota committee** in 2003 and 2004 respectively.

#### Why we Need Lateral Entry

- The **Basawan Committee (2016)** had pointed out that the bigger states like Bihar, MP and Rajasthan have a deficit of over 75 to 100 officers. Lateral induction is, therefore, being seen as a small step towards essential housekeeping in central government staffing.
- Shift from uniformity of centrally planned economic policy to diverse demands of **competitive federalism** requires specialized skills and knowledge for informed policy making.
- Various think-tanks have also explained how the IAS is hamstrung by political interference, out-dated personal procedures and a mixed record on policy implementation. There is no correlation between the postings of the Civil Service Officers and their area of specialization which comes only at a later stage.

#### Concerns

- Although in theory the step is much needed one, but in practice it would require much more commitment and restructuring. The process has been pushed back from Bureaucrats and sheer institutional inertia of civil services.

- The work profile of a civil servant is that of a higher acumen and responsibility who need to present a well-researched and sourced information in a manner that political executives can understand, weigh and consider options before making equitable and effective policy choices.
- There are also concerns regarding politicization of this process.
- Further, in addressing problem of shortage, lateral entry may also lead to deluge of inductions in administration.

#### Way forward

- Current recruitment process of civil servants is **career based system** (with tenure security) while the change is expected towards a **position based system** (like in Australia, New Zealand and Britain). Both have their own pros and cons which must be carefully examined.
- This intended restructuring of the induction of private members through a Position Based System if implemented properly can help in **providing much needed expertise** in various fields of administration. However, the job must be entrusted to a body supervised by UPSC which is the only way to ensure merit based, politically neutral civil service.
- Inductions through the competitive examinations must also expand incrementally in keeping with the country's needs.

### 7.3.2. NEW RATING SYSTEM FOR BUREAUCRATS

#### Why in news?

The parliamentary standing committee has criticized the new 360-degree rating system for the bureaucrats proposed as one of the major administrative reform by the government.

#### What is the 360-degree rating system?

- The 360-degree approach is a new multi-source feedback system for performance appraisal of bureaucrats started by the current government for future postings.
- The system seeks to look beyond the ratings received in appraisal reports written by their bosses. It relies on feedback of juniors and other colleagues for an all-round view.

#### Criticism of the rating system

- According to the Second Administrative Reforms Commission, in the context of India, where strong hierarchical structures exist and for historical and social reasons it may not be possible to introduce this system unless concerns of integrity and transparency are addressed.
- The report notes that the 360-degree approach does not have any statutory backing, or supported by any Act.

#### Advantages

- It Improves credibility of performance appraisal as it reduces bureaucrat's zone of maneuverability such as lobbying the minister concerned for a job in his department, or even other senior bureaucrats in key positions.
- It provides feedback from all angles and bring to table differing opinions and perspectives.
- It positively impacts the work culture of an organization.

## 7.4. GOVERNMENT E-MARKETPLACE

### Why in news

- Recently 5 States and a Union Territory (UT) formally adopted the Centre's initiative called the Government e-Marketplace (GeM).

### What is GeM

- GeM is an Online Market platform to facilitate procurement of goods and services by various Ministries and agencies of the Government.
- It aims to ensure that public procurement of goods and services in India which is worth more than Rs. 5 lakh crore annually, is carried out through online platform.
- GeM is a completely paperless, cashless and system driven e-market place that enables procurement with minimal human interface.

### Significance

- Transparency:** It will bring greater transparency and efficiency in public procurement. It is a Seamless processes and facilitate online time-bound payment.
- Efficiency:** Direct purchase on GeM facilitate reasonable price discovery for government and saving on administrative cost for vendor. Thus government can save upto 10-15% on every bulk purchase of good and services through GeM platform.
- Eliminating corruption:** Online process will reduce corruption from public procurement.
- In future GeM would eventually emerge as the **National Public Procurement Portal**, keeping in tune with the Global best practices.

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## 8. LOCAL GOVERNANCE

### 8.1. FINANCING CITIES

#### Why in News?

A new credit rating system has been adopted by the government for inviting private investment.

#### Background

- Government launched various urban development schemes like AMRUT, Smart Cities Mission, HRIDAY, Urban Transport, etc.
- These schemes fund only a fraction of the required investment and cities are tasked with finding other ways to bridge the funding gap.
- Public-private partnerships (PPPs) have been the preferred route for infrastructure creation in India.
- PPPs have not worked as well as they were expected to, owing to the poor rate of return for the private sector and other inefficiencies.

#### Recommendations for Financing ULBs (Urban Local Bodies)

Ministry of UD wants States and Cities to go beyond taking small steps for rapid urban transformation and in this regard, a group of secretaries early this year have recommended:

- Formulation of **VCF policy**, tools and rules at State level
- Municipal bonds to be raised for the cities that have good rating.
- Enactment of **Land Titling Laws** and their implementation in a specific time frame.
- **Professionalisation of Municipal Cadre**, i.e. establishing cadre with assessment of requirements, formulation of Recruitment Rules
- **Cities will be ranked** based on performance under each reform category for providing reform incentive.
- Higher the rating, higher would be the potential for inviting investment.

#### Problem

- The financial health of Indian cities is in a pathetic state that the urban local self-governments have to rely on state governments to fund even the basic operational expenditures.
- The steps suggested by the government through investment mode are based on rating system which in turn has rated as many as 49% of cities as unworthy of investment.
- Higher the rating, higher would be the investment, which leaves the cities rated below BB, which require comparatively more funds, parched of investment.
- With the banking system heavily stressed with bad debts, urban rejuvenation might not receive the necessary impetus from the private sector in the short term.

**Value Capture Financing** seeks to enable States and city governments raise resources by tapping a share of increase in value of land and other properties like buildings resulting from public investments and policy initiatives, in the identified area of influence.

The VCF is constituted of four steps:

- **Value Creation**- Creating new development opportunities.
- **Value Capture**- Investment turned into monetary value.
- **Value Realisation**- Sharing of gains through agreed instruments of VCF
- **Value Recycling**- Resources thus collected are used for local development projects, thus looping the loop.

**Other Suggestions**

- Various experts have made a strong case for cities to be able to access a broad portfolio of taxes which are currently appropriated by state governments. This would involve amending the Constitution to have these taxes included in the municipal finance list.
- He also advocates for the inclusion of a city GST (goods and services tax) rate within the state GST rate, a formula-based mechanism to ensure municipalities get their share.
- The next step is a rational user charge scheme for the continued provision of public services like water supply.
- Besides it is not just a question of funds. Funds already allocated for various schemes are many times do not reach their intended destination. There needs to be greater autonomy to the local government.

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## 9. OTHER IMPORTANT LEGISLATION/BILLS

### 9.1. DNA BASED TECHNOLOGY (USE AND REGULATION) BILL, 2017

#### Why in news?

- Law Commission of India has released The DNA Based Technology (Use and Regulation) Bill, 2017.
- It aims to prevent misuse of DNA technology by regulating and standardizing DNA testing as well as supervising the activities of all authorized laboratories

#### Advantages of DNA technology

- It can almost accurately ascertain the identity of a person, establish biological relationships between individuals etc. Thus, useful in investigations of crime, identification of unidentified bodies, or in determining parentage.
- It can also reveal person looks, eye colour, skin colour as well as more intrusive information like their allergies or susceptibility to diseases.

#### What the Bill proposes?

- **Establishing new institutions** – a DNA profiling Board, a National DNA Data Bank and regional DNA databanks in every state or one or more states.
- **Only for identification:** It restricts DNA profiling to the purpose of identification only and not for extracting any other information
- **Mandatory consent:** No bodily substances will be taken from a person unless consent is given by him except if the individual is arrested for certain specific offences or if magistrate is satisfied of the need for DNA test
- **Option for deletion of data** - There is also provision for defined instances for deletion of profiles and destruction of biological samples.
- **Rights to an undertrial** – He can request for another DNA test in case of doubts that his earlier samples may have been contaminated.
- **Penalties:** Any violation would attract imprisonment up to three years and a fine up to 2 lakhs.
- Only accredited labs by DNA profiling Board would be authorised to carry out DNA testing and analysis.
- The new Bill has also removed a provision that allowed DNA profiles in the databank to be used for “creation and maintenance of population statistics databank”.
- Samples picked up from a crime scene, belonging to those who are not offenders or suspects, would not be matched with the databases. They would have to be expunged from the records on a written request from the individual concerned.

#### DNA Profiling board

- It is an 11 members regulatory authority with following functions
  - grant accreditation to DNA laboratories
  - lay down guidelines, standards and procedures for labs
  - advise central and state governments on “all issues relating to DNA laboratories”
  - make recommendations on ethical and human rights, including privacy, issues related to DNA testing

#### DNA data bank

- Data from the analysis will need to be shared with the nearest regional data bank which will store it.
- All regional DNA databanks will be mandated to share their information with the national databank.
- They will also be responsible for maintaining certain indices, like crime scene index, suspects’ index, missing persons’ index etc. DNA experts would be notified as government scientific experts.

### Criticism

- **Not foolproof** - Although DNA technology is the best method available to carry out identification, it is still probabilistic in nature. There are chances, however remote, that a wrong match is generated, causing unnecessary harassment to an individual.
- **Issue of privacy** - such as whose DNA can be collected and under what circumstance, who can access the database, the circumstances under which a record can be deleted etc.
- **Issue of security** - Though the Law Commission cites the use of the 13 CODIS (Combined DNA Index System) profiling standard as a means to protecting privacy in its report — this standard has yet to find its way in the text of the Bill. It has been pointed out that information like ancestry or susceptibility to a disease, or other genetic traits, is liable to be misused.
- **No improvement in conviction rates** - Over the last 25 years; most countries have adopted a DNA fingerprinting law and have developed databases for use primarily in criminal investigation, disaster identification and forensic science. However, DNA tests have not led to an improvement in conviction rates in countries where it is already being followed.

## 9.2. JHARKHAND'S ANTI-CONVERSION BILL

### Why in news?

Jharkhand cabinet has approved the Jharkhand Religious Independence Bill, 2017 that forbids religious conversion through allurement or coercion.

### What are the provisions of the bill?

- It carries jail term of three years and/or fine of Rs 50,000 for anyone found guilty of converting people by alluring or forcing them. The punishment goes up if the person being converted is a minor, women or member belonging to the Scheduled Caste or Scheduled Tribe community.
- Those converting willingly will have to inform the district administration or they are liable to face action.

### States with similar laws

- In 1967, Odisha's Swatantra Party government enacted India's first anti-conversion law calling it "Freedom of Religion" Law.
- Today five states – Odisha, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh – have active anti-conversion laws.
- Arunachal Pradesh has an anti-conversion law but it is in limbo since the rules have not been framed. Rajasthan passed a similar law a decade ago but the bill is yet to get the assent of the President of India.

### Criticisms surrounding the bill

- Penal provisions already exist under Section 295(A) of IPC for those indulging in coercive conversion or using allurement.
- It can infringe the fundamental rights provided by constitution under Article 25, i.e., freedom to practice and profess one's religion.
- It may lead to communal disharmony as it involves wide and vague terminologies such as the term "force" includes "threat of divine pleasure" or "fraud" includes "misrepresentation".

### 9.3. NABARD (AMENDMENT) BILL, 2017

#### Why in news

- Recently, Lok Sabha has passed the **National Bank for Agriculture and Rural Development (Amendment) Bill, 2017**. The Bill seeks to amend the NABARD Act, 1981.

#### Highlight of the Bill

- Increase in capital of NABARD:** Bill allows the central government to increase its capital from Rs 5000 crore to Rs 30,000 crore. The capital may be increased to more than Rs 30,000 crore by the central government in consultation with the RBI, if necessary
- Transfer of the RBI's share to the central government:** The Bill transfers the share capital held by the RBI and valued at Rs 20 crore to the central government.
- Micro, small and medium enterprises (MSME):** The Bill includes terms 'micro enterprise', 'small enterprise' and 'medium enterprise' as defined in the **MSME Development Act, 2006**.
- Consistency with the Companies Act, 2013:** The Bill substitutes references to provisions of the Companies Act, 1956 under the NABARD Act, 1981, with references to the Companies Act, 2013.

#### National Bank for Agriculture and Rural Development (NABARD)

- It was established on the recommendations of **Shivaraman Committee**.
- It is an **apex institution** which has power to deal with all matters concerning policy, planning as well as operations in giving credit for agriculture and other economic activities in the rural areas.
- It **promotes rural industries, small scale and cottage industries** including tiny sectors by providing loans to commercial and co-operative banks.
- The bank provides **funds to State governments** for undertaking developmental and promotional activities in rural areas.
- It also **supports the Self-help Group (SHG)** and works for the restructuring of credit institutions, and training and development of staff.

#### Significance

- Integrated Rural Development:** By including MSME Act, NABARD will be able to **finance non-farm activity** as well, which will facilitate promotion of **integrated rural development** and securing prosperity of rural areas including generation of more **employment**.
- Improving Infrastructure in Rural Areas:** Proposed increase in authorised capital would enable NABARD to respond to commitments it has undertaken, particularly in respect of the Long Term Irrigation Fund and the recent Cabinet decision regarding on-lending to cooperative banks.
- RBI share transfer:** It will **remove the conflict in RBI's role** as banking regulator and shareholder in NABARD. But some have raised issues with this move like:
  - ✓ RBI would lose an important supervisory and development institution in rural credit activity.
  - ✓ Nabard also stands to forfeit the wisdom and guidance that it sourced from the RBI.

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